

LEGISLATION and REGULATION



Farm Animal Welfare Legislation in the U.S.?

The legal profession is now giving increased attention to the question of animal rights, and more specifically, to the status of factory farm animals.

Attorney Jonny Frank has published an article entitled "Factory Farming: An Imminent Clash Between Animal Rightists and Agribusiness" (*Boston College Environmental Affairs Law Review* 7:423-461, 1979), which reviews the major welfare concerns in the factory farming of animals and presents a convincing case for the implementation of reforms.

According to Frank, current state anticruelty statutes, by virtue of their legal definition, are ineffective in stopping factory farm animal abuse. Farm animals may not even be considered part of the definition of "animal" in these statutes (a problem similar to the meaning of "animal" in the federal Animal Welfare Act). Moreover, in order to fulfill the legal meaning of "cruelty," a practice must be shown to be "unnecessary or unjustifiable." However, necessity of and justification for a practice are more

often determined by its economic benefit rather than by its effect on the animals' welfare.

Even in instances where the obstacles posed by legal language can be overcome, enforcement of the anti-cruelty statutes presents an additional set of problems. Agribusiness interests have traditionally exerted a great deal of influence on state agricultural and animal protection agencies. This factor, combined with the low priority usually given by law enforcement officers to animal protection and the frustration of private citizen efforts by current legal notions of the standing and rights of animals, makes enforcement of the statutes extremely difficult.

In view of the inadequacies of the current laws, Frank proposes a Model Farm Animal Protection Act (see below). The Act, which could be designed as either state or federal legislation, would be administered by a Bureau of Farm Animal Protection whose duties would include: "(1) investigation of the treatment of farm animals; (2) research into more humane alternative farming methods; (3) promulgation of rules and regulations for the protection of farm animals; and (4) enforcement of such rules and regulations" (p. 450).

Frank emphasizes the important point that the major costs of food production occur after the animal is slaughtered, with packing, shipping and marketing representing two-thirds of the retail cost (See J. Hightower, *Eat Your Heart Out—How Food Profiteers Victimize the Consumer*, Vintage Books, 1975). Therefore, savings in the growing of animals are not passed on to the consumer; they are pocketed by corporate factory farm enterprises. In fact, there is not even any definitive proof that the abusive factory farmer insures any savings at all in the rearing stage. One study of egg production revealed that the stress produced by overcrowding of chickens actually

decreased the net income per bird (J. Crober, Social and Economic Aspects of Commercial Poultry Production, *Anim Food Prod* 27,1977). Because of the economies of scale, more eggs will be produced from having four or five birds in a battery cage than two or three, even though net income per bird will be depressed. When egg prices are high (and hens therefore relatively cheap) it is common practice to overcrowd. The economic savings of more humane systems of livestock husbandry may not, therefore, be sufficient, and without a significant economic incentive, farmers will generally resist change. Hence the need for consumer awareness and action, price incentives to farmers whose animal produce has been raised humanely (e.g., labeling such produce with a humane grade at retail outlets and selling it at a slightly higher price, as with free range eggs in Holland), state and federal legislation, codes of practice, licensing of farms and regular inspection for compliance.

As Frank shows, many European countries are already far ahead of the U.S., not only in accepting that there are serious welfare concerns associated with factory animal farming, but also in drawing up protective legislation and minimal codes of practice. These countries include Sweden, Denmark, The Federal Republic of Germany, France, Great Britain, Austria, Cyprus, Greece, Iceland, Norway, Switzerland and Turkey. However, Frank also cautions against misreading the political climate in the U.S.: "...admittedly, no political realist could believe that this proposed statute [the Model Farm Animal Protection Act] would be enacted today. Therefore, animal rights groups must formulate presently viable strategies for reform. Such activists must seek to create a congenial political climate; and in the interim, should challenge the most atrocious factory farm methods through civil and criminal court actions, and through

civil disobedience if necessary."

Model Farm Animal Protection Act

101. Statement of Public Policy

All living sentient creatures are entitled to respect, protection and the minimum requirements for a healthy life such as shelter, a nutritious diet, proper medical care, opportunity for exercise and periods of rest. The legislature finds that modern farming procedures have caused severe physical and mental suffering to animals raised for food and fur production. While some of these procedures are essential to food production, others cause unjustifiable pain and suffering. The legislature finds that such infliction of unjustifiable pain and suffering corrupts the public morality and ignores the respect that these animals deserve.

Therefore, it is the policy of the [State of] [United States of America] to prohibit farming practices which cause unjustifiable pain and suffering and to conduct research to enhance the quality of life for all animals. The provisions of this Act are to be liberally construed to insure the implementation of policies announced in this section.

Comment:

This section recognizes the concept of legal rights for animals and recognizes the abuses of factory farming. The second paragraph indicates that research for a more humane farming method is an essential complement to government regulation. The last sentence is adapted from another model statute. It is designed to prevent the frustration of the aims of the Act by narrow judicial interpretation.

102. Definitions

As used in this Act unless other-

wise required by context or specifically stated:

- (a) "Animal" means any living creature other than man.
- (b) "Board" means the Board of Farm Animal Protection.
- (c) "Bureau" means the Bureau of Farm Animal Protection.
- (d) "Director" means the Director of the Bureau of Farm Animal Protection.
- (e) "Farm Animal" means any animal used in the production of food, fiber, or fur.
- (f) "Person" means any natural person, corporation, partnership, firm, association of other legal entity, whether for profit or otherwise.

103. Bureau; Board

There shall be in the [State Department] [Department of Agriculture] a Bureau of Farm Animal Protection. The Bureau shall be under the supervision and control of a Board of Farm Animal Protection consisting of nine members to be appointed by the [Governor], [President], with the advice and consent of Three members of the Board will be representatives of animal welfare and humane societies. Three members of the Board will be representatives of veterinary medicine. Three members of the Board will be representatives of animal husbandry. The [Governor] [President] shall initially appoint one member of the various representative groups for the respective terms of one, three and five years. Thereafter all appointments by the [Governor] [President], except those made to fill a vacancy in an unexpired term, shall be for five years, but no member who has served for a full term shall be eligible for reappointment.

Comment:

This section establishes the Bureau of Farm Animal Protection and the Board of Farm Animal Protection which supervises the Bureau. The

Act intentionally makes the Bureau somewhat autonomous. This is a reaction to a history of close connections between State Boards of Agriculture and agribusiness interests.

104. Removal from the Board

Members of the Board may be removed for cause by the governor, with the advice and consent of the for inefficiency, neglect of duty, misconduct in office, or other just cause. A board member shall be entitled to appear and be represented by counsel at a public hearing prior to his or her removal.

105. Powers and Duties of the Board

- a. The Board shall investigate the treatment and condition of farm animals.
- b. The Board shall conduct research and develop alternatives to farming practices which cause discomfort, pain or suffering to farm animals.
- c. The Board shall analyze and report on the economic savings realized by the consumer, if any, from the utilization of modern farm techniques.
- d. The Board shall annually publish a summary of its investigations conducted under paragraphs a, b, and c of this section along with its recommendations for change. A copy of this report shall be submitted to the [legislature] [Congress], [Governor] [President], and [list other desired agencies]. Copies shall be made available for public distribution.
- e. The Board shall make rules and regulations protecting animals from pain and suffering and encouraging the implementation of more humane farm procedures. These rules and regulations shall include, but shall not be limited to:

1. The prohibition of the keeping of any animal without the opportunity for exercise;

2. the prohibition of the keeping of any animal in an environment which produces an inordinate amount of stress;

3. the prohibition of painful surgical procedures without the use of a properly administered anesthesia; and

4. provisions for a licensing system for all farms. Such system shall include, but shall not be limited to, the following requirements:

- i. all farms shall be inspected prior to the issuance of a license.
- ii. farms shall thereafter be inspected at least once a year.
- iii. minimum requirements shall be provided to insure a healthy life for every farm animal. These requirements shall include, but not be limited to:
 - a. proper space allowances;
 - b. proper nutrition;
 - c. proper care and treatment of animals; and
 - d. proper medical care.
- f. The Board may enter into contract with any person, firm, corporation or association to handle things necessary or convenient in carrying out the functions, powers and duties of the Bureau. However, it shall not enter into a contract with any such firm or person who has a financial or commercial interest in any activity to be regulated or prohibited by this Act.

106. Director

The [Governor] [President], with the advice and consent of the shall appoint a Director from a panel of not less than three names submitted by the Board. No person shall be appointed Director who has a financial or commercial interest in any activity to be regulated or prohibited by this Act.

107. Powers and Duties of Director

The Director shall be the executive and administrative head of the Bureau. In addition, the Director shall:

- a. issue licenses in accordance with the procedures promulgated by the Board;

b. inspect and report to the Board on the treatment of animals in commercial farming;

c. investigate all complaints and allegations of unfair treatment of animals;

d. issue in writing, without prior hearing, a cease and desist order to any person if the Commission has reason to believe that that person is causing, engaging in, or maintaining any condition or activity which, in the Director's judgment, will result in or is likely to result in irreversible or irreparable damage to an animal or its environment, and it appears prejudicial to the interests of the [State] [United States] to delay action until an opportunity for a hearing can be provided. The order shall direct such person to discontinue, abate or alleviate such condition, activity, or violation. A hearing shall be provided with _____ days to allow the person to show that each condition, activity or violation does not exist; and

e. file a petition for custody of an animal whenever it becomes necessary to protect the animal from neglect or cruelty. The court shall order the animal committed to the Bureau if it finds that the welfare of the animal so requires. Animals committed to the Bureau may be sold or euthanized, or kept in the custody of the Bureau, as the Director determines.

Comment:

Subsection d was adopted in part from the Model State Animal Protection Act proposed by the Committee for Humane Legislation. That subsection, along with subsection e, are essential to protect abused animals from the delays of the judicial process. It is anticipated that the cease and desist order rather than the petition for custody will be used almost exclusively. Nevertheless, the power to petition for custody is included as an alternative remedy when cease and desist orders are inadequate.

108. Penalties

Violation of this Act or any rule or regulation promulgated by the Board is a misdemeanor punishable by a fine of not more than \$..... or by imprisonment for not more than one year, or both.

109. Private Right of Enforcement

In addition to criminal sanctions resulting from enforcement of the Act by the Director, any person may bring an action on behalf of an injured animal for any violation of this act or violation of any rules and regulations promulgated by the Board. Such action may seek civil damages as well as declaratory or injunctive relief. When civil damages are awarded, the judge may order the monies to be used either for the rehabilitation of the injured animal, or for research into more humane farming practices, or for both.

Reprinted from Jonny Frank, "Factory Farming: An Imminent Clash Between Animal Rights Activists and Agribusiness," Boston College Environmental Affairs Law Review 7(3): 457-461, 1979.