

Interstate Commerce of Animals

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Overview

During the 1980s, only four states - Massachusetts, Michigan, Oklahoma, and Rhode Island - had felony level penalties for malicious cruelty to animals.¹ Today, all 50 states have such a policy, and there is a national consensus that vicious acts of animal abuse and torment should be treated as a serious crime. President Nixon once said:

"Nothing is more priceless and more worth of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans."

- President Nixon

His words have proven true, in this case, as increasing interest in animal rights law has led Congress and the Courts to take a more direct approach in the regulation, preservation, and welfare of wildlife. One of the primary topics of interest is the interstate commerce of animals.

Interstate commerce refers to the purchase, sale, or exchange of commodities, money or goods, and navigation of waters between different states.² So, the interstate commerce of animals refers to the sale, transportation, and treatment of animals that are moved between multiple states. Article I of the U.S. Constitution authorizes the federal government to regulate interstate commerce. The federal government can also regulate commerce within a state when it may impact interstate movement of goods and services and may strike down state actions which are barriers to such movement.³ This look into the interstate commerce of animals will analyze (I) Federal Law & Animal Rights, and (II) South Carolina Law & Animal Rights.

I. Federal Law & Animal Rights

The federal government of the United States is granted implied authority over the regulation of animal rights law through the commerce clause of the U.S. Constitution. This authority is exercised by way of congressional legislation and federal court rulings. Their intent is to form limitations upon state authority in the regulation of animal protection and commerce. This section will explore federal authority and its effect on animal rights law through (A) Constitutional Authority and (B) Congressional Legislation.

¹ Michael Markarian, *Make a PACT to Stop Animal Cruelty*, Advocacy for Animals May 15, 2015, <http://advocacy.britannica.com/blog/advocacy/tag/interstate-commerce-act/> (last visited March 24, 2019).

² U.S. Legal, Interstate Commerce Law, <https://definitions.uslegal.com/i/interstate-commerce/> (last visited March 25, 2019).

³ U.S. Legal, Interstate Commerce Law, <https://definitions.uslegal.com/i/interstate-commerce/> (last visited March 25, 2019).

A. Constitutional Authority

The commerce clause has been perhaps the most important of the federal powers over the past half century in justifying federal laws impacting wildlife.⁴ Under Article I, Section 8 of the U.S. Constitution, the Commerce Clause states that Congress shall have the power “to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes.”⁵ While the primary use of this power is to justify new federal laws controlling some activity, it is also the basis for limiting state laws, like those that deal with the preservation and transportation of wildlife.

B. Legislative Protection

Through its Constitutional power, Congress has enacted various legislation to regulate the protection and commerce of animals in America. For example, Congress passed the Endangered Species Act in 1973 to lawfully protect the few remaining members particular species at risk of extinction.

One of these species is the Palila, a small bird found only in certain higher elevations of the Hawaiian Islands. The U.S. Fish and Wildlife Service declared the area essential for the Palila’s survival. However, the area was populated by goats and sheep that were destroying the habitat with their eating habits, detrimental to the survival of the Palila. The Sierra Club and others brought a lawsuit on behalf of the bird to force the state to adopt a program to eradicate the goats and sheep from the Palila’s critical habitat.⁶ The state argued sovereign immunity and unconstitutionality of the Endangered Species Act, but the Court ruled in favor of the The Sierra Club (on behalf of the bird) on the grounds that the legislation was a proper exercise of the federal commerce power.⁷

In that case, the Court determined that federal authority may override a state program notwithstanding the following facts:

- That the species does not migrate across state lines;⁸
- That the species does not now have any commercial value and apparently never did;⁹
- That the critical habitat is state land;¹⁰

⁴ David Favre, American Wildlife Law - An Introduction, Animal Legal & Historical Center, 2003, <https://www.animallaw.info/article/american-wildlife-law-introduction> (last visited March 25, 2019).

⁵ US Const. Art. I, sec. 8, clause 3.

⁶ Palila (Loxioides bailleui) v. Haw. Dep't of Land & Natural Res., 2013 U.S. Dist. LEXIS 50477 (D. Haw. Apr. 8, 2013).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

- That state officials were pursuing an adopted policy.¹¹

This test created by the court in *Palila*, is still used today in determining the constitutionality on government intervention in state interests and actions.

Next we will explore a few acts of Congress that directly relate to the welfare of wildlife involved in interstate commerce. Legislation to be examined include (1) Endangered Species Act, (2) Animal Welfare Act, and (3) Lacey Act.

1. Endangered Species Act (“ESA”)

Enacted in 1973, the ESA provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found.¹² One of the lead federal agencies for implementing the ESA is the U.S. Fish and Wildlife Service (“FWS”). The law requires federal agencies, in consultation with the FWS, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species, or their habitats.¹³ The ESA makes it unlawful to transport or ship in interstate or foreign commerce in the course of a commercial activity when knowingly in violation of any state law or regulation.¹⁴ The ESA has jurisdiction over interstate commerce, but commercial activities that take place entirely in one state and involve legally acquired endangered or threatened species are not prohibited by the ESA.¹⁵ The Endangered Species Act is known as America’s strongest conservation law.

2. Animal Welfare Act (“AWA”)

The Animal Welfare Act regulates the limitations on how animals may enter the controlled chain of commerce, to eliminate the use of stolen animals. The U.S. Constitution does not mention animals, and the primary legal authority for the control of animals is at the state level of government. As a result, the question that must be addressed is why there are laws about the conditions of animals at the federal level and how these laws differ from those at the state level. State law governs the issues of liability for harm to animals, or harm caused by animals. Moreover, for over 120 years, state law has been the location for the criminal prohibitions against cruel acts to animals and the requirement of duty of care. But, these criminal laws are ineffective in many circumstances and are often difficult to prosecute or do not apply to specific areas of use such as animals in research. Additionally, a number of animal activities have a multi-state focus that makes one state’s efforts to control a problem difficult, e.g. the interstate shipment of stolen pets. Therefore, a national law has been sought for a limited

¹¹ *Id.*

¹² 16 U.S.C. § 1531 et seq. (1973), *Endangered Species Act*, EPA, <https://www.epa.gov/laws-regulations/summary-endangered-species-act> (last visited March 27, 2019).

¹³ 16 U.S.C. § 1531 et seq. (1973), *Endangered Species Act*, EPA, <https://www.epa.gov/laws-regulations/summary-endangered-species-act> (last visited March 27, 2019).

¹⁴ U.S. Fish & Wildlife Service, *Endangered Species*, <https://www.fws.gov/endangered/> (last visited March 28, 2019).

¹⁵ U.S. Fish & Wildlife Service, *Endangered Species*, <https://www.fws.gov/endangered/> (last visited March 28, 2019).

number of topics, particularly where there has been a desire to create a regulatory structure; with national rules, inspections, and reports.¹⁶

3. Lacey Act

Congress passed the Lacey Act in 1900, marking the first federal law protecting wildlife.¹⁷ Under the Lacey Act, it is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.¹⁸ This legislation enforces civil and criminal penalties for the illegal trade of animals and plants. Today it regulates the import of any species protected by international or domestic law and prevents the spread of invasive, or non-native, species.¹⁹

II. South Carolina Law & Animal Rights

In the 2018 edition of the U.S. animal protection law state rankings, published by the Animal Legal Defense Fund ("ALDF"), South Carolina is in the bottom tier at 40th out of 50, making the list for worst 10 states for animals regarding protection laws.²⁰ Even though all 50 states have laws that treat cruelty towards animals as a serious crime, deserving of a felony charge, South Carolina is among the weakest states for animal protection laws.

The U.S. Constitution does not mention animals, and the primary legal authority for the control of animals is at the state level of government. State law governs the issues of liability for harm to animals, or harm caused by animals. Moreover, for over 120 years, state law has been the location for the criminal prohibitions against cruel acts to animals and the requirement of duty of care, yet these criminal laws are ineffective in many circumstances and are often difficult to prosecute or do not apply to specific areas of use such as animals in research. Additionally, a number of animal activities have a multi-state focus that makes one state's efforts to control a problem difficult, e.g. the interstate shipment of stolen pets.²¹

This section will discuss the exercise of interstate commerce through South Carolina laws and regulation. South Carolina animal law is based upon (A) Implied

¹⁶ David Favre, *American Wildlife Law - Animal Welfare Act*, Animal Legal & Historical Center, 2002, <https://www.animallaw.info/article/overview-us-animal-welfare-act> (last visited March 27, 2019).

¹⁷ U.S. Fish and Wildlife Service, International Affairs - Lacey Act, <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html> (last visited March 29, 2019).

¹⁸ U.S. Fish and Wildlife Service, International Affairs - Lacey Act, <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html> (last visited March 29, 2019).

¹⁹ U.S. Fish and Wildlife Service, International Affairs - Lacey Act, <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html> (last visited March 29, 2019).

²⁰ Animal Legal Defense Fund, 2018 U.S. animal Protection Laws State Rankings, <https://aldf.org/project/2018-veterinary-reporting/> (last visited March 30, 2019).

²¹ David Favre, *American Wildlife Law - Animal Welfare Act*, Animal Legal & Historical Center, 2002, <https://www.animallaw.info/article/overview-us-animal-welfare-act> (last visited March 27, 2019).

Constitutional Authority, and (B) South Carolina Farm Animal and Research Facilities Protection Act.

A. Implied Constitutional Authority

In the 1995 opinion of *United States v. Lopez*²² delivered by the U.S. Supreme Court, Chief Justice Rehnquist quoted James Madison's Federalist No. 45, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."²³ The Court recognized that Congress could use the power to involve itself in "intrastate activities having a substantial effect on interstate commerce," and created a four-pronged analysis to determine whether an intrastate issue amounted to a substantial effect on interstate commerce.²⁴ The factors include 1) whether the statute is economic in nature; 2) whether the statute has an express jurisdictional limit to its reach so it only regulates activities that have a clear connection to interstate commerce; 3) whether the statute has congressional findings linking the substantial effect to interstate commerce; and 4) whether the statute's effect on interstate commerce is too attenuated.²⁵

Even though the U.S. Constitution does not explicitly mention animals, federal authorities can intervene in state matters if it satisfies the test to be considered substantially related to a government interest.

B. South Carolina Legislative and Statutory Protection

South Carolina serves the preservation and welfare of animals through legislation and state statute. This section will discuss (1) South Carolina Farm Animal Research Facilities Protection Act and (2) State Malicious Cruelty Law, and (3) Title 47 of the South Carolina Code.

1. Farm Animal Research Facilities Protection Act

Also known as the South Carolina Ecoterrorism Act, the Farm Animal Research Facilities Protection Act protects the treatment of animals under one's care. Under the legislation, A person commits an offense if, without the effective consent of the owner, the person exercises control over an animal facility or the property located there, or if that person damages the facility or its property.²⁶ A person also commits an offense if he or she enters a facility without the effective consent of the owner and remains concealed with the intent to disrupt or damage the enterprise conducted at the animal facility.²⁷ Violation for disruption or damage to a facility or its property is a misdemeanor with a fine of up to \$10,000 and/or 3

²² *United States v. Lopez*, 514 U.S. 549 (1995).

²³ *Id.* at 552 (quoting THE FEDERALIST No. 45, at 292-293 (James Madison) (Clinton Rossiter ed., 1961)).

²⁴ *Lopez*, 514 at 559.

²⁵ *Id.* at 560-575.

²⁶ Code 1976 § 47-21-10 to 90

²⁷ Code 1976 § 47-21-10 to 90

years imprisonment. Violation for illegal entry is a misdemeanor with a fine up to \$5,000 and/or 1 year imprisonment.²⁸ This Act remains one of the most influential in regulating commerce among animals in the state of South Carolina.

2. State Malicious Cruelty Law

Under the South Carolina Malicious injury to animals' law, it is unlawful for a person to willfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.²⁹ A person who violates the provisions of this section is guilty of a:

(1) Felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;³⁰

(2) Felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;³¹

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both.³²

This law and its severe penalties serve as protection to animals at risk of mistreatment and as a deterrent to possible offenders.

3. Title 47 of the South Carolina Code

Title 47 of the South Carolina Code ("SC") sets forth the limitations and regulations pertaining to animals, livestock, and poultry. This law regulates the treatment and transport of animals. Under SC law, "animal" means a living vertebrate creature except a homo sapien, however, SC does not recognize a chicken as an animal.³³

In regards to animal rights during transport, No railroad company in the carrying or transportation of animals shall overload the cars nor permit the animals to be confined in cars for a longer period than thirty-six consecutive hours without unloading them for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes

²⁸ Code 1976 § 47-21-10 to 90

²⁹ S.C. Code § 16-11-510.

³⁰ S.C. Code § 16-11-510.

³¹ S.C. Code § 16-11-510.

³² S.C. Code § 16-11-510.

³³ S.C. Code § 47-1-10.

beyond the control of such railroad company; provided, however, that when animals shall be carried in cars in which they can and do have proper food, water and space and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.³⁴ Animals unloaded as required by Section 47-1-90 shall be properly fed, watered and sheltered during such rest by the owner or person having the custody thereof or, in case of his default in so doing, then by the railroad company transporting such animals at the expense of the owner or person in custody thereof; and the company shall, in such case, have a lien upon such animals for food, care and custody furnished and shall not be liable for any detention of such animals.³⁵) During transportation, an animal must not be confined in one area for more than twenty-four consecutive hours without being adequately exercised, rested, fed, and watered. The time may be extended reasonably when an act of God causes a delay. The animal must be provided adequate space and ventilation.³⁶

Although South Carolina is among the weakest states in animal rights law, recent efforts have created an increasingly safe and respected home for wildlife in the state of South Carolina.

Conclusion:

The interstate commerce of animals is a complex issue that demonstrates the importance of cooperation between federal and state governments. With South Carolina, along with the other 49 states, making substantial strides into the protection and welfare of animals, the future is bright for animals in America, thanks to the governing laws that preserve and protect their natural beauty.

³⁴ S.C. Code § 47-1-90.

³⁵ S.C. Code § 47-1-100.

³⁶ S.C. Code § 47-1-200.