



PennState Law

Center for Agricultural
and Shale Law



2nd Annual Pennsylvania Farm Show Agricultural Law Symposium

January 11th

1:00-2:00pm (EST)

2:15-3:15pm (EST)

January 13th

1:00-2:00pm (EST)

2:15-3:15pm (EST)



2021 Pennsylvania Farm Show Agricultural Law Symposium

Tuesday, January 11, 2022 (1:00 – 3:15 pm)

- 1:00 - 2:00 pm **Agricultural Law: The Year in Review and the Year Ahead**
 - A review of major legal developments from 2021.
 - A look ahead at the issues that are pending before the U.S. Supreme Court for resolution in 2022.

- 2:15 - 3:15 pm **Emerging Legal Issues in Agricultural Markets**
 - The legal treatment of geographical indications from food names/labeling in international trade.
 - Antitrust litigation and enforcement in beef, pork, and poultry.



2021 Pennsylvania Farm Show Agricultural Law Symposium

Thursday, January 13, 2022 (1:00 – 3:15 pm)

- 1:00 - 2:00 pm **Legal Issues in Diversification of Farm Income**
 - Agritourism immunity.
 - Carbon contracts and markets.
 - Grid-scale solar project siting controls.
- 2:15 - 3:15 pm **Evolving Environmental Regulation Issues in Agriculture**
 - EPA/litigation re: dicamba registrations & chlorpyrifos use.
 - Chesapeake Bay litigation and the role played by the Conowingo Dam.
 - EPA's proposed "Waters of the United States" definition (*déjà vu all over again*).



Logistics

- This webinar is being recorded
 - A link to the recording will be available on our YouTube channel:
 - [Center for Agricultural and Shale Law YouTube channel](#)
 - Materials will be available here:
 - <https://aglaw.psu.edu/event/2022-pennsylvania-farm-show-agricultural-law-symposium/>
- Questions? Please use Q&A during sessions.
 - Email: jks251@psu.edu



Attn: Pennsylvania Attorneys

- Attorneys fill out this form:
 - <https://forms.office.com/pages/responsepage.aspx?id=RY30fNs9iUOpwcEVUm61LmEBt7czRAtMjG3HomNI9AZUOFpEVEI0UkgwQ1g3Sk5YOVdVQIkxQVgwVS4u>
 - One code word will be provided during each hour.
 - These codes must be entered onto the form in order to receive CLE credits.

Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.





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2022 Pennsylvania Farm Show Agricultural Law Symposium

**Pennsylvania Department of Agriculture
Secretary Russell C. Redding**





Agricultural Law: The Year in Review and the Year Ahead

2022 Pennsylvania Farm Show Agricultural Law Symposium
January 11, 2022

Ross H. Pifer and Brook Duer,
Penn State Center for Agricultural and Shale Law



Stay Tuned . . .

- Executive Order on Competition
- Geographic Indications Litigation
- PA Agritourism Immunity Act
- Dicamba / Chlorpyrifos
- Chesapeake Bay
- Waters of the United States



National Developments

- **Animal Welfare/Confinement Issues**
- **Right to Farm**
- **Meat Labeling**
- **Biotechnology**
- **Ag Labor**
- **Dairy**
- **Misc. State Legislation / Ballot Initiatives**



Animal Welfare: Cage-Free Egg Laws – Utah

- March 17, 2021 – [SB 147](#) – “Confinement of Egg-Laying Hens”
- Beginning January 1, 2025, all egg-laying hens must be kept in either a cage-free housing system or in an enclosure with 1.0–1.5 square feet of usable floor space, as required by the [United Egg Producers’ Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing, 2017 Edition](#).
- Exemption for farms with less than 3,000 egg-laying hens
- Exceptions during veterinary care, transportation, fair exhibition, slaughter, and temporary animal husbandry of egg-laying hens, and for hens used in medical research
- Requires that UDAF compile a report for the November 2023 Business and Labor Interim Committee meeting on producer compliance and “the retail demand for and conditions related to the sale of cage-free eggs.”



Animal Welfare: Cage-Free Egg Laws – Nevada

- June 4, 2021 – [AB399](#)
- After July 1, 2022, the sale and production of eggs from birds confined in an enclosure with “less than 1 square foot of usable floor space per egg-laying hen” prohibited.
- After January 1, 2024, the legislation requires egg-laying hens to be kept in a “cage-free housing system.”
- Exception for producers with 3,000 or fewer egg-laying hens



Animal Welfare: Cage-Free Egg Laws – Other States

- California (see Proposition 12)
 - 2021 – all eggs sold in state must be cage-free
- Colorado: [HB20-13463](#)
 - By 2025 – all eggs sold in state must be cage-free
- Massachusetts: [2016 ballot initiative](#), Question 3
 - By 2022 – all eggs sold in state must be cage-free
- Washington: [HB 2049](#)
 - 2023 – all eggs sold in state must be cage-free
- Michigan: [SB 174](#)
 - 2024 – all eggs sold in state must be cage-free
- Oregon: [SB 1019](#)
 - 2024 – all eggs sold in state must be cage-free
- Rhode Island: [HB 7456](#)
 - Specifies confinement standards; only applies to in-state hens – effective 2023



Animal Welfare: Cage Free Egg Laws – European Union

- On June 10, 2021, the European Parliament [voted](#) 15-9 to pass resolution [2021/2633\(RSP\)](#), titled “Resolution on the European Citizens’ Initiative “[End the Cage Age](#),” which requests that the European Commission propose revisions to Directive [98/58/EC](#) to phase out the use of cages in animal agriculture by 2027.
- On June 30, 2021, the European Commission [announced](#) a [communication](#) committing to propose legislation by year-end of 2023 to eliminate the use of cages for most farmed animals.
 - laying hens, sows, calves, rabbits, pullets, broiler breeders, layer breeders, quail, ducks and geese
 - As “a major importer of food products,” the EU “bears a societal responsibility also with regard to the products it imports”
 - “the Commission will consider. . . introducing rules or standards for imported products that are equivalent to the EU’s and/or a labelling requirement, in compliance with WTO rules”



Animal Welfare: Colorado Ballot Initiative

- On June 21, 2021, the Supreme Court of the State of Colorado issued an [opinion](#) striking from voter consideration a [2021–2022 ballot initiative](#) approved by the state’s Title Board, [Initiative 2021–2022 #16](#), titled “Protect Animals from Unnecessary Suffering and Exploitation.”
- The initiative, if approved by voters, would have ended certain livestock exemptions from the state’s animal cruelty statute and created a class 1 misdemeanor for the artificial insemination of livestock and all animals.
- The court found that Initiative 16 involved at least two subjects, thus violating the single-subject requirement for a Colorado ballot initiative.



Right to Farm – North Carolina

McKiver v. Murphy-Brown, LLC (Fourth Circuit Court of Appeals, No. No. 19-1019)

- [Opinion](#) issued November 19, 2020.
- Upheld [trial court](#) finding of [liability](#), held N.C. Right to Farm Law inapplicable.
- Upheld trial court's award of \$75,000 in compensatory damages for each plaintiff.
- Remanded for recalculation of punitive damages without Smithfield's financial information (Jury awarded \$5 million for each plaintiff; reduced by state law to \$250,000).
- Smithfield has since settled multiple N.C. lawsuits.



Right to Farm – North Carolina

Rural Empowerment Association for Community Health v. State of North Carolina (N.C. Court of Appeals, 2021-NCCOA-693)

- Opinion issued December 21, 2021.
- Upheld dismissal of challenge to amended N.C. Right to Farm Law



Right to Farm – Florida

- April 29, 2021 – [SB 88](#) amends the state’s [Right to Farm Act](#)
 - Further restricts nuisance actions against farming operations
 - Includes requirements that property affected must be located within one-half mile of the farming operation and that the plaintiff must prove by clear and convincing evidence that the operation failed to comply with state or federal environmental laws, regulations, or best management practices
 - Expands the definition of a farm operation to include agritourism activities as defined in [Section 570.86](#) of Florida Statutes



Meat Labeling – Oklahoma

Oklahoma’s Meat Consumer Protection Act HB 3806

- Enacted May 19, 2020, effective November 1, 2020
 - It is a misrepresentation to represent “a product . . . not derived from harvested production livestock” as meat.
 - Not a violation if the “packaging displays that the product is derived from plant-based sources in type that is uniform in size and prominence to the name of the product.”
- Challenged in *Upton’s Naturals Co. v. Stitt* (U.S. Dist. Court for the Western Dist. of Oklahoma, No. [5:20-cv-00938](#))
 - Denied injunction
 - Upton’s use of terms “burger, bacon, chorizo, hot dog, jerky, meatballs, and steak” on plant-based products are potentially misleading to a reasonable customer.
 - Appealed to the Tenth Circuit, but Plaintiffs later withdrew appeal



Meat Labeling – Oklahoma

Oklahoma's Meat Consumer Protection Act HB 3806

- On November 9, 2021, the Plant Based Foods Association (PBFA) and others filed an amended [complaint](#) setting forth completely new constitutional challenges to Oklahoma's Meat Consumer Protection Act in the U.S. District Court for the Western District of Oklahoma, this time alleging that the law violates the Dormant Commerce Clause (imposing varying labeling standards among states) and the Due Process and Supremacy Clauses (vague standards and federal preemption) of the U.S. Constitution.



Meat Labeling – USDA

- On September 3, 2021, the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) posted an advance notice of proposed rulemaking (ANPR) in the Federal Register titled, “[Labeling of Meat or Poultry Products Comprised of or Containing Cultured Animal Cells](#)” (86 FR 49491).
- FSIS seeks comment on consumer labeling expectations regarding nutrition and the taste, color, odor, and texture of cell-cultured products; accurate, unambiguous product names; research regarding cell-cultured labeling nomenclature; and economic data on cell-cultured meat products.
- The 60-day comment period closed November 2, 2021.



Biotechnology – Arctic Apple

- On September 22, 2021, the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) [announced](#) that it will [no longer regulate the PG451 Arctic Gala](#), an apple variety genetically engineered by Okanagan Specialty Fruits, Inc. (OSF) to avoid browning.
- APHIS stated that after reviewing public comments from its PG451 Arctic Gala Plant Pest Risk Similarity Assessment (PPRSA), preliminary Determination, and OSF’s deregulation request, the agency has [determined](#) that the PG451 Arctic Gala apple is unlikely to present a plant pest risk.
- Previously, APHIS deregulated the same anti-browning trait in OSF’s GD743 Arctic Golden apple and GS784 Arctic Granny apple.





Biotechnology – GE Salmon

- On May 10, 2021, genetically engineered (GE) salmon producer AquaBounty [announced](#) that it had received purchase orders for all five metric tons of its first harvest of GE Atlantic salmon, due at the end of May, from the company's Albany, Indiana facility.
- AquaBounty is currently the only company producing U.S. Food and Drug Administration (FDA)-approved GE Atlantic salmon.
- For the history of FDA approval and related litigation regarding AquaBounty's GE salmon, see the Center's website's Agricultural Law Issue Tracker titled [Genetically Modified Salmon](#).



Agricultural Labor – New York

- On September 27, 2021, the New York State [Public Employment Relations Board](#) (PERB) [certified](#) Local 338 of the Retail, Wholesale and Department Store Union/United Food and Commercial Workers (RWDSU/UFCW) as New York's first agricultural worker union.
- In 2019, NY enacted the Farm Laborers Fair Labor Practices Act ([A8419](#)), effective January 1, 2020, which, among other rights, grants collective bargaining rights to agricultural and farm workers.
- According to an [announcement](#) from RWDSU/UFCW Local 338, which first filed with PERB on May 28, 2021, the union will represent twelve workers from Pindar Vineyards in Peconic, New York.



Agricultural Labor – Heat Safety

- On July 8, 2021, the Oregon state Occupational Safety and Health Administration [announced](#) an emergency rule requiring employers to implement heat stress prevention measures for indoor and outdoor worksites. Oregon’s rule requires that when the heat index is 80 degrees Fahrenheit or above, employers must provide adequate drinking water and access to sufficient shade, as specified in the rule. Once the temperature rises to 90 degrees Fahrenheit or more, employers must provide a ten-minute cool-down rest period every two hours.
- On July 9, 2021, Washington State Department of Labor and Industries [announced](#) a similar [rule](#). Washington’s rule requires employer-provided drinking water and paid cool-down rest breaks when the temperatures is 89 degrees Fahrenheit or more, and mandates 10-minute breaks every two hours when the temperature is 100 degrees Fahrenheit or higher.



Agricultural Labor – Heat Safety

- On October 27, 2021, the Occupational Safety and Health Administration (OSHA) published an advance notice of proposed rulemaking (ANPRM) in the Federal Register titled, “Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings” ([86 FR 59309](#)).
- Through the ANPRM, OSHA [announced](#) that it aims to develop a standard for hazardous heat in the workplace and seeks comment on the scope of hazardous heat in work settings and the efficacy of various controls and interventions to prevent heat-related illness and injury.
- The comment period for the ANPRM closed December 27, 2021.



Ag Labor – Swine Slaughter Line Speed Rule

- In October 2019, USDA eliminated pork slaughter plant line speed controls in the Modernization of Swine Slaughter Inspection Rule ([84 FR 52300](#)).
- The United Food and Commercial Workers Union (UFCW) challenged the rule on behalf of pork processing plant workers as an Administrative Procedure Act (APA) violation and claimed USDA failed to consider worker safety when it promulgated the rule.
- On March 31, 2021, the U.S. District Court for the District of Minnesota issued an [order](#) vacating the elimination of line speed requirements.
- On May 26, 2021, USDA FSIS posted an announcement titled, “[Special Alert: Constituent Update](#)” informing facilities to revert to a maximum line speed of 1,106 head per hour on June 30, 2021.



Ag Labor – Poultry Slaughter Line Speed Rule

- On January 22, 2021, the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) [withdrew](#) a notice of proposed rulemaking issued November 6, 2020, titled “[Maximum Line Speed Under the New Poultry Inspection System.](#)”
- The proposed rule would have allowed poultry lines to operate at speeds up to 175 birds per minute.



Dairy Policy – PA Legislation / Regulation

- **Termination Notice** – On May 12, 2021, the Pennsylvania Milk Marketing Board (PMMB) [submitted](#) to the Independent Regulatory Review Commission (IRRC) for approval [final form regulation 47-18](#) titled “[Transactions between dealers and producers; Termination of dealer-producer contract.](#)” It amends 7 Pa. Code § 143.31 to increase from twenty-eight to ninety the number of days’ notice required to be provided to a dairy producer by a milk dealer when terminating an agreement or course of dealing to purchase that producers’ raw milk.
- **Milk Sell By Date Labeling** – On June 30, 2021, Gov. Wolf signed [SB 434](#). The bill revises Title 3 (Agriculture) of Pennsylvania law by adding a new subchapter C to Chapter 57, Food Safety (not the Milk Sanitation Law), providing for milk “sell by” or “best by” date labeling. The law would allow milk processors to choose either a mandatory “sell by” date, or an alternative “best by” date label, both to be set no more than 17 days after pasteurization and both prohibiting sale after the date indicated. Individual processors, for specific types of milk, may apply to the Pennsylvania Department of Agriculture (PDA) to be approved to label for a period longer than 17 days, with an accompanying approval, laboratory testing and continuing compliance process, that proves bacterial counts remain within regulatory limits.



Upcoming Events

- **Quarterly Dairy Legal Webinar**
 - **February 15**
 - **Dairy Industry Carbon Reduction Programs**



New York Environmental Rights Amendment

- On November 2, 2021, New York voters [approved Ballot Proposal 2](#), which amends the state's constitution to add the following language, "§19 Environmental rights. Each person shall have a right to clean air and water, and a healthful environment."
- The ballot proposal was preceded by the New York legislature's approval of two identical bills in successive legislation sessions, [S2072](#), formerly [A2064](#), on April 30, 2019, and [S528](#), formerly [A1368](#), on February 8, 2021.



Maine Right to Food

- On November 2, 2021, Maine voters [approved](#) ballot measure [Question 3](#), which amends the state's constitution to create a "Right to Food," as follows, "All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food."



West Virginia Farm Bill

- On April 28, 2021, West Virginia Governor Jim Justice [signed](#) into law [HB 2633](#), passed by the West Virginia House of Delegates on April 6, 2021, and referred to as a “West Virginia Farm Bill.”
- As [announced](#) by West Virginia Agriculture Commissioner Kent Leonhardt, among other things, the bill creates a new Agriculture Investment Fund; extends the state’s Fresh Food Act to include dairy products; establishes West Virginia Department of Agriculture (WVDA) authority over farmers’ market regulations; allows for the sale of raw milk as a non-consumable product or animal feed; and removes the fee on untreated garbage feeding permits for swine.
- Commissioner Leonhardt stated “Just like the federal government and several other states, the Department has been working towards introducing a reoccurring farm bill. Our goal is to work towards updating chapter 19 code to modernize rules and regulations and reduce burdens on West Virginia farmers.”



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