



**Negative Impact of H.R. 4879, “Protect Interstate Commerce Act of 2018”  
(King Amendment to the 2018 Farm Bill):  
An Analysis and Michigan Laws and Regulations at Risk**

The following analysis is taken from two papers by the Animal Law & Policy Program, Harvard Law School, “Legislative Analysis of H.R. 4879: The ‘Protect Interstate Commerce Act of 2018’” (April 2018), and a supplement, “Index of Laws and Regulations Potentially Preempted by H.R. 4879: The “Protect Interstate Commerce Act of 2018” (May 2018) [“Harvard Analysis and Index].<sup>i</sup>

Attorneys for Animals strongly opposes the inclusion of the King Amendment in the 2018 Farm Bill. It is counter to our system of federalism, is not supported by interpretations of the Commerce Clause of the US Constitution, and has the potential to upend important laws in every US state in many areas of human, animal and environmental safety and welfare. While it purports to be a response to conflicting state regulations, it takes a sledgehammer to a wide range of legislation traditionally part of the states’ police powers to regulate health and safety.<sup>ii</sup>

Essentially, H.R. 4879 represents a race to the bottom. No state able to adopt standards that exceed those of the state with the lowest standards. Its reach, according to the Harvard Analysis and Index is: any state law that touches out-of-state agricultural producers would be prohibited unless it mirrors federal law or the laws in the state of production. In order to enforce this change in Commerce Clause jurisprudence, the bill includes a broad citizen-suit provision that authorizes any person to sue state and local officials to block regulation of agricultural products, and also obtain monetary damages against state and local governments.<sup>iii</sup>

The potential for unintended consequences if H.R. 4879 becomes law are enormous.

Consider this list of Michigan laws and regulations<sup>iv</sup> that could be overturned, compiled from the Harvard Law Index, by subject matter category.

## **I. Food**

### **A. Food Safety Generally**

1. Date Labels • These laws require and regulate “sellby” date labels on food items. They are intended to promote both food quality and safety.

*Mich. Comp. Laws Ann. § 288.539 Mich. Comp. Laws Ann. § 289.8107 (Page 59, 60)*

2. Sale of Expired Foods • These regulations prohibit or restrict the sale of food items past their expiration date. Most of these laws apply generally to many types of food items and are intended to protect quality and safety.

*Mich. Comp. Laws Ann. § 288.539 Mich. Comp. Laws Ann. § 289.8107 (Page 63, 64)*

Source: Harvard Law School Animal Law & Policy Program, Analysis of the “Protect Interstate Commerce Act of 2018” H.R. 4879. 2018: [animal.law.harvard.edu/projects/analysis-of-the-protect-interstatecommerce-act-of-2018-h-r-4879/](http://animal.law.harvard.edu/projects/analysis-of-the-protect-interstatecommerce-act-of-2018-h-r-4879/) at page noted

## **B. Meat**

### 1. Date Labeling and Sale of Expired ●

These laws either provide specific date labeling requirements or restrict the sale of meat to customers past the expiration date provided.

*Mich. Comp. Laws Ann. § 289.8107 (Page 65)*

## **C. Dairy**

### 1. Date Labels: These laws require milk or other dairy products be marked with a “sell-by” label to indicate the date by which the product should be sold to consumers.

*Mich. Comp. Laws Ann. § 288.539 (Page 66, 67)*

## **D. Ginseng**

- a. Import Certification Requirements ● These laws require that ginseng imported from out of state be accompanied by documentation from the state where it was harvested. These laws are intended to prevent trafficking in illegally obtained or poached wild ginseng.

*MI ST 290.777 (Page 83)*

## **E. Prepackaged Foods**

- a. Date Labels ● These regulations impose date labeling requirements on foods or drinks that have been prepackaged prior to sale.

*Mich. Comp. Laws Ann. § 289.8107 (Page 87)*

- F. Cottage Food Production Labeling, Production, and Restriction on Sale ● These laws place conditions or restrictions the production and sale of cottage foods—those foods not produced in a commercial kitchen but instead created in home kitchens or smallscale production facilities. They are intended to ensure that the food is safe and properly labeled.

*MI ST 289.4102 (Page 91)*

## **II. Drugs**

### A. Recreational

- a. Salvia ● Salvia divinorum or “Salvia” is a species of plant whose leaves have psychoactive properties when consumed or inhaled. Some laws criminalize the sale or possession of salvia, while others impose age restrictions for purchase.

*MI ST 333.7212 (Page 94, 95)*

### B. Tobacco

- a. Fire Safety Standards ●

These state laws require that any cigarettes offered for sale or sold in the state be tested in accordance with specific test methods and meet certain flammability standards. They are intended to reduce the risk of unintended fires caused by discarded cigarettes.

*Mich. Comp. Laws Ann. § 29.495; Mich. Comp. Laws Ann. § 29.497;*

*Mich. Comp. Laws Ann. § 29.499; Mich. Comp. Laws Ann. § 29.501 (Page 97, 100)*

## **III. Home Goods and Products**

#### A. Children's Products and Upholstery

- a. Chemical Flame Retardants Brominated Flame Retardants ●  
These laws restrict the use or impose requirements on the use of brominated flame retardants and other flameretardant chemicals in children's products, upholstery, and other goods offered for sale within the state. They are intended to protect consumers from their potentially toxic or carcinogenic effects, to which young children are particularly susceptible. Frequently, these laws set maximum allowable levels of brominated flame retardants that may appear in items offered for sale. They could be preempted to the extent that these chemicals are applied to agricultural products, which may include furniture, changing pads, and bedding.

*MI 38 M.R.S.A. § 1609 (Page 129)*

### IV. Live Animal Imports

#### A. Aquaculture

- a. Aquaculture Import and Disease Reporting ●  
Many states require reporting of various communicable diseases found in fish farms. Additionally, many states require permits and/or health testing for importation of fish to fish farms.

*Mich. Stat. 287.729a (sections 701-747) Mich. Stat. 324.48735 (Page 133, 134)*

- b. Viral Hemorrhagic Septicemia ●  
These laws impose import requirements or other restrictions on certain species of fish in order to prevent the spread of viral hemorrhagic septicemia, a disease that causes internal bleeding and death among infected animals. Previously, the federal government regulated this disease; however, on April 14, 2014 federal restrictions were removed with the thought that existing statelevel regulation was effective and sufficient to limit spread of the disease.

*Mich. Stat. 287.729a (sections 701-747) Mich. Stat. 324.48735 (Page 135)*

- c. Genetically Modified Organisms Import ●  
These laws place restrictions on the importation into the state of genetically modified plants or animals that may adversely impact human health or safety as well as local agriculture or wildlife.

*M.C.L.A. 287.712 Mich. Comp. Laws § 287.731 (Page 138, 139)*

#### B. Cattle and Bison

- a. Anthrax ● Anthrax is an infectious bacterial disease often found in cattle and sheep that causes sudden death and is transmissible to humans. Most often, it is spread through exposure to the spores formed during the decay of deceased animals. Federal regulation prohibits the interstate movement of animals affected by anthrax. However, states impose further restrictions on the import ation of animals that have been or may have been exposed to the disease.

M.C.L.A. 287.720 [http://www.michigan.gov/documents/mdard/2017DiseaseReport\\_615164\\_7.pdf](http://www.michigan.gov/documents/mdard/2017DiseaseReport_615164_7.pdf) (Pages 143, 145)

- b. Brucellosis ● Brucellosis is a contagious and costly disease typically affecting cattle, bison, cervids (elk and deer), and swine that also affects humans. It is a bacterial infection that spreads from animals to people most often through ingestion of unpasteurized milk, cheese, and other dairy products. All 50 states participate in a voluntary program with the federal government to control brucellosis in cattle, and many states impose additional regulations requiring testing, reporting, and regulating of imports

*Mich. Admin. Code R 287.712 MI ST 287.730a (Page 149, 150)*

- c. Bovine Tuberculosis ● In the early 19th century, bovine tuberculosis caused more deaths of cattle than all other diseases combined. It is a chronic bacterial disease of cows that can spread to humans, typically by the inhalation of aerosols or the ingestion of unpasteurized milk. All 50 states participate in a voluntary program administered in conjunction with the federal government requiring testing, quarantine, and destruction of diseased animals. In addition many states have enacted special legislation addressing the importation of cattle into the state.

*Mich. Admin. Code R 287.712 (Page 152, 153)*

- d. Rabies ● Rabies can occur in all warmblooded animals and is always fatal if not treated promptly after exposure. All forms of livestock and companion animals are at risk for contracting the disease. Transmission often occurs through a bite from a rabid animal and as such the disease can travel between wild and domestic species. These laws prohibit the importation of animals exposed to rabies or impose additional restrictions to prevent the spread of this disease.

M.C.L.A. 287.720 [http://www.michigan.gov/documents/mdard/2017DiseaseReport\\_615164\\_7.pdf](http://www.michigan.gov/documents/mdard/2017DiseaseReport_615164_7.pdf) (Page 156, 158)

### C. Cervids

- a. Bovine Tuberculosis ●  
Bovine tuberculosis also affects cervids. Deer and other cervids are generally included in the bovine tuberculosis regulations. ○  
See discussion above under “Cattle ” as well as relevant citations.
- b. Chronic Wasting Disease (“CWD”): Restrictions ●  
These laws impose import restrictions and other requirements to ensure that cervids entering the state are not carriers of chronic wasting disease. Some regulations require that only cervids that have been enrolled in a voluntary CWD Herd Certification Program and have undergone testing for the disease may enter the state. These laws are intended to protect local deer producers and wild deer populations.

*MI ST 287.730a (Page 164, 165)*

#### D. Bees

- a. Bee Quarantines ● These laws impose or authorize quarantines that restrict the importation of bees or apiary equipment. They are intended to protect local bee populations and combat the spread of disease.

*M.C.L.A. 286.811 (Page 169)*

#### E. Horses

- a. Equine Infectious Anemia ● Equine Infectious Anemia (“EIA” or “Swamp Fever”) is a viral disease that is extremely contagious, spread through fly bites, and leads to severe, chronic disease or death. Federal regulations restrict the interstate movement of horses once they test positive for EIA but impose no testing requirement. States regulate the importation of horses, often requiring a negative EIA test prior to import.

*M.C.L.A. 287.726a (Page 173, 175)*

#### F. Sheep and Goats

- a. Scrapie ● Scrapie is a fatal, degenerative disease that affects the nervous systems of infected sheep and goats. It is one of several transmissible spongiform encephalopathies (“TSEs”)—which are related to bovine spongiform encephalopathy (“BSE” or “mad cow disease”) and chronic wasting disease in deer. Some states participate in the voluntary National Scrapie Eradication Program to test and destroy animals that test positive for scrapie. In addition, many states require negative testing or certification prior to importation.

*M.C.L.A. 287.719 MI ST 287.728 MI ST 287.727, (Page 176, 178)*

#### G. Swine

- a. Pseudorabies ● Pseudorabies is an infectious, herpesvirus disease of the central nervous system that causes convulsions, intense itching, and is generally fatal. Some states participate in the voluntary Pseudorabies Eradication State-Federal Industry Program which includes surveillance, herd certification, and herd cleanup once an animal tests positive. Additionally, many states require testing or certification prior to import.

*MI ST 287.837 MI ST 287.839, (Page 181, 182)*

- b. Swine Vesicular Disease ● Swine vesicular disease causes lesions on the feet, snout, and mouth of swine, and is economically costly because it must be distinguished from foot-and-mouth disease. These laws restrict the importation of pigs to prevent the spread of swine vesicular disease.

*M.C.L.A. 287.720 [http://www.michigan.gov/documents/mdard/2017DiseaseReport\\_615164\\_7.pdf](http://www.michigan.gov/documents/mdard/2017DiseaseReport_615164_7.pdf) (Page 184, 187)*

## V. Companion Animals

### A. Dogs and Cats

Source: Harvard Law School Animal Law & Policy Program, Analysis of the “Protect Interstate Commerce Act of 2018” H.R. 4879. 2018: [animal.law.harvard.edu/projects/analysis-of-the-protect-interstatecommerce-act-of-2018-h-r-4879/](http://animal.law.harvard.edu/projects/analysis-of-the-protect-interstatecommerce-act-of-2018-h-r-4879/) at page noted

i. Minimum Age at Sale ●

These laws restrict the sale of certain animals, most commonly dogs and cats, under a specific age. Often, these animals must be at least seven or eight weeks old and fully weaned prior to being offered for sale.

*M.C.L. 287.335a (Page 198, 199)*

## VI. Products for Animals

### A. Pet Food

i. Content Requirements Ingredients ●

These laws impose content requirements for pet food. Often they regulate the maximum or minimum amounts of crude protein, fat, fiber, and moisture that may go into a product. Others limit the types of ingredients that may be used, such as those regulations prohibiting the use of meat products that do not come from licensed processing plants subject to inspection.

*Mich. Admin. Code R 285.635.3 (Page 205, 206)*

ii. Labeling

1. Nutritional Labeling ●

These laws impose nutritional standards for pet food marketed as “complete” or “balanced.” They are intended to ensure accuracy and prevent false claims.

*Mich. Admin. Code R 285.635.3 (Page 208)*

2. Flavor Labeling ●

These regulations govern flavor designation and labeling on pet food packaging.

*Mich. Admin. Code R 285.635.4 (Page 210)*

## VII. Dead Animals and Animal Parts

A. Animal Carcasses and Grease ■ Transport Requirements: Use of a Leakproof Container ●

These laws require that certain unsavory or odorproducing substances such as the carcasses of animals or grease be transported by licensed vehicles, packaged in a way that prevents spillage, or in a way that shields the load from public view. Others impose sanitization or recordkeeping requirements that must be carried out prior to transport. These laws are intended to provide for public health and sanitation.

*Mich. Admin. Code R. 287.653 (Page 217)*

## VIII. Invasive Pests, Plants, and Disease

A. Noxious Weeds ●

These laws augment and supplement the federal list of noxious weeds according to the concerns of a state. Some prohibit any importation of a plant or seedling, while others set maximum allowances for noxious weed seeds that may be intermixed with any

other agricultural seed sold within the state. They are intended to inhibit the spread of undesirable plants and weeds throughout the United States.

*Mich. Admin. Code R. 285.715.7 (Page 243, 244)*

## **IX. Procurement**

### **A. Agricultural Goods •**

These laws regulate government bid and solicitation preferences for products or services. Often, they impose preferences for in-state producers of agricultural products.

*M.C.L.A. §18.1261 (Page 248, 250)*

---

<sup>i</sup> <http://animal.law.harvard.edu/wp-content/uploads/2018/05/Harvard-ALPP-PICA-Report.pdf>

<sup>ii</sup> A summary of the legal argument can be found at the Executive Summary and Overview portions of the Harvard Analysis and Index, pages 3,4

<sup>iii</sup> Fan 1, page 3

<sup>iv</sup> This article includes an interactive map of the United States, based upon the Harvard Law Index, with <https://www.ewg.org/agmag/2018/06/king-amendment#.WyeSZadKjIX>