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# Chapter 568: Saving our Voiceless Companions, One Life at a Time

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**Chapter 568: Saving our Voiceless Companions, One Life at a Time**

*Kelci Binau\**

*Code Section Affected*

Civil Code §§ 1834.7 (repealed), 1834.7 (new)  
AB 2269 (Waldron); 2016 STAT. Ch. 568.

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## I. INTRODUCTION

In November 2013, Shy Guy, a malnourished and scared hound mix, lay on a piercingly cold, steel surgical table.<sup>1</sup> A veterinarian euthanized Shy Guy in order to take a tiny sample of his jawbone, and then discarded Shy Guy into a black, plastic trash bag.<sup>2</sup> Just eight weeks prior, during an experiment conducted at Georgia Regents University, six dogs, including Shy Guy, had their teeth removed and replaced with dental implants.<sup>3</sup> Shy Guy “stopped breathing on the surgical table during the removal of his teeth,” only to survive six more weeks before he was euthanized.<sup>4</sup>

Georgia Regents University and many other research facilities conduct unnecessary experiments and replace dogs’ teeth with FDA approved, human dental implants.<sup>5</sup> During the last moments of their lives, Shy Guy, and the other 65,000 dogs sold to research facilities each year, endure numerous unnecessary and painful procedures that leave them mutilated until the animal dies or researchers euthanize and dispose of the animals’ bodies.<sup>6</sup> Many of these research facilities decline to use alternative means for research and, rather than conducting tests required by law or for the progression of science, they test animals purely for profit.<sup>7</sup>

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\* J.D. Candidate, University of the Pacific, McGeorge School of Law, 2018; M.Ed., University of Nevada, Reno, 2013; B.A., University of Nevada, Reno, 2010. I would like to extend my profound thanks to Professor Courtney Lee, my Primary Editor Hannah, the *Law Review* staff, my “law school life partner” Jessica, and my “law school mom” Chris. I would also like to thank my parents, sister, and aunt, Judy, Joel, Kirsha and Aunt Jan for their open ears during “therapy sessions,” and ongoing positivity and support. But most of all, I would like to thank my husband Steve and my dog Fabio for their never-ending support, love, and patience as I follow my childhood dreams. This journey was amazing because of all of you!

1. *University Animal Lab Investigation; Narrated by Kim Basinger*, YOUTUBE (Nov. 20, 2013), [https://www.youtube.com/watch?v=WhYt2oNtrtk&s\\_src=web\\_85543593](https://www.youtube.com/watch?v=WhYt2oNtrtk&s_src=web_85543593) [hereinafter *University Lab Investigation*]; Ashley Collman, *Shocking Video of Dogs Having Their Teeth Pulled out in Name of Medical Testing Before Being put Down Sparks Outrage*, DAILY MAIL (Nov. 29, 2013, 9:51 EST), <http://www.dailymail.co.uk/news/article-2515568/Video-dogs-going-horrid-dental-surgery-medical-testing-sparks-outrage-protests.html> (on file with *The University of the Pacific Law Review*).

2. Janel Davis, *Humane Society Accuses Georgia Regents University of Inhumane Animal Treatment*, THE ATLANTA JOURNAL-CONSTITUTION (Nov. 20, 2013), available at <http://www.ajc.com/news/news/humane-society-accuses-georgia-regents-university/nby8x/> (on file with *The University of the Pacific Law Review*); *University Lab Investigation*, *supra* note 1; Collman, *supra* note 1.

3. Davis, *supra* note 2; *University Lab Investigation*, *supra* note 1; Collman, *supra* note 1.

4. *University Lab Investigation*, *supra* note 1.

5. Davis, *supra* note 2; *University Lab Investigation*, *supra* note 1; Collman, *supra* note 1.

6. *University Lab Investigation*, *supra* note 1; *Exposing the Supply and Use of Dogs and Cats in Higher Education*, DYING TO LEARN, 1, 13, 23 (Apr. 24, 2009), available at <http://www.dyingtolearn.org/dyingToLearn.pdf> (last visited July 25, 2016) [hereinafter *Supply and Use of Dogs and Cats*] (on file with *The University of the Pacific Law Review*).

7. *Supply and Use of Dogs and Cats*, *supra* note 6 (explaining that tests conducted on animals are quite often on products that are already approved and the companies conduct the animal testing to compare their product to their competitor’s so they can adjust their product in the hopes that they will sell more products).

According to the Humane Society of the United States, despite the numerous alternatives to animal research, “it is estimated that more than 25 million vertebrate animals (animals with a skeleton made of bone) are used annually in research, testing, and education in the United States.”<sup>8</sup> Furthermore, “the most common laboratory animals—rats and mice bred for research, who make up 85–90 percent of all animals used—are not counted in the annual statistics that the USDA collects on the use of animals in the United States; nor are they protected under the Animal Welfare Act.”<sup>9</sup>

Researchers acquire the majority of animals they use for experiments from animal dealers who purchase them from pounds or animal shelters, adopt them for free from advertisements, or breed them specifically for research.<sup>10</sup> Similar to Shy Guy’s fate, when researchers are done with the more than 25 million animals they test on, most of the animals either die or the researcher euthanizes the animal.<sup>11</sup> Currently, 68 percent of Americans oppose sending animals from animal shelters and pounds to research facilities for experiments.<sup>12</sup> In response to the public’s opposition, legislators enact bills to better align laws with America’s morals and continue to propose animal welfare laws.<sup>13</sup>

California conducts the most animal testing of all the fifty states, even though it has some of the most sympathetic and protective animal welfare laws compared to the other states.<sup>14</sup> For example, the majority of California’s municipalities ban pound seizure despite the lack of a uniform state law.<sup>15</sup> Assemblymember Waldron introduced Chapter 568 to unify the state’s laws by prohibiting the purchase of living animals from shelters and pounds for the purpose of research.<sup>16</sup> This article explains the legal background of animal

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8. *Questions and Answers about Biomedical Research*, THE HUMANE SOCIETY 1, [http://www.humanesociety.org/issues/biomedical\\_research/qa/questions\\_answers.html?referrer=https://www.google.com/](http://www.humanesociety.org/issues/biomedical_research/qa/questions_answers.html?referrer=https://www.google.com/) (last visited July 25, 2016) [hereinafter *Biomedical Research*] (on file with *The University of the Pacific Law Review*).

9. 7 U.S.C.A. § 2132(g); *Biomedical Research*, *supra* note 8.

10. *Biomedical Research*, *supra* note 8.

11. *Id.*; *What is Animal Testing?*, CRUELTY FREE INT’L, <https://www.crueltyfreeinternational.org/why-we-do-it/what-animal-testing> (last visited July 22, 2016) (on file with *The University of the Pacific Law Review*).

12. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2269 (June 28, 2016), available at [http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab\\_2251-2300/ab\\_2269\\_cfa\\_20160816\\_091520\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2251-2300/ab_2269_cfa_20160816_091520_sen_floor.html) (on file with *The University of the Pacific Law Review*).

13. See *infra* Part III.

14. LilJegren Law Group, *Animal Testing in the U.S. [Interactive Map]* 5 (Apr. 6, 2016), <http://www.liljegreninjurylawyers.com/animal-testing-in-the-u-s-interactive-map/> [hereinafter *Animal Testing in the U.S.*] (on file with *The University of the Pacific Law Review*).

15. Monica Engebretson, *California Should Ban Laboratories From Using Shelter Animals for Experiments*, CRUELTY FREE INT’L. (Apr., 27, 2016), <https://www.crueltyfreeinternational.org/california-should-ban-laboratories-using-shelter-animals-experiments> (on file with *The University of the Pacific Law Review*).

16. CAL. CIV. CODE § 1834.7(c)(2) (enacted by Chapter 568).

welfare law and analyzes Chapter 568's potential to protect California's lost and abandoned animals.<sup>17</sup>

## II. LEGAL BACKGROUND

Despite numerous animal welfare laws, both at the federal and state levels, pound seizure persists.<sup>18</sup> Pound seizure is when animal shelters and pounds sell or give away living or dead animals, and those animals are used for research, testing, and experimenting.<sup>19</sup> Research facilities purchase animals directly from pounds and shelters or from animal dealers.<sup>20</sup> Class B animal dealers are licensed, or should be licensed, and purchase animals from animal shelters and pounds to sell for research.<sup>21</sup> The majority of animals acquired from shelters and pounds are known as "random source" animals.<sup>22</sup> Random source animals acquire this name because these animals have varying genetics and unidentifiable health records.<sup>23</sup>

Researchers prefer to use purebred rather than random source animals as research subjects because the unknown backgrounds of the random source animals produce inaccurate study results.<sup>24</sup> Class B animal dealers have been known to steal family pets from neighborhoods and backyards to satisfy researchers' demand for purebred animals.<sup>25</sup> Pound-seized and stolen purebred animals that Class B animal dealers obtain are held at the dealer's compound for extended periods of time in dirty cages with no room to move or are chained outside with little to no food and no attention before being transferred to a

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17. See *infra* Parts II–IV (discussing the evolution of laws protecting animal rights and analyzing Chapter 568's impact on current law).

18. See *Laboratory Animal Welfare Act*, REVOLVY, [http://broom02.revolvy.com/main/index.php?s=Laboratory%20Animal%20Welfare%20Act&item\\_type=topic](http://broom02.revolvy.com/main/index.php?s=Laboratory%20Animal%20Welfare%20Act&item_type=topic) (last visited July 1, 2016) (on file with *The University of the Pacific Law Review*) (this shows the multiple amendments the AWA experienced, yet none ban pound seizure).

19. *Supply and Use of Dogs and Cats*, *supra* note 6.

20. *Help Save Companion Animals: Animal Shelters: Hope for Homeless*, WORLD ANIMAL FOUND. (2015), [http://www.worldanimalfoundation.net/companion\\_animals.html#TOC-Animal-Shelters:-Hope-for-the-Home](http://www.worldanimalfoundation.net/companion_animals.html#TOC-Animal-Shelters:-Hope-for-the-Home) [hereinafter *Save Companion Animals*] (on file with *The University of the Pacific Law Review*).

21. Animal Welfare Act, 7 USCA § 2134.

22. Crystal Schaeffer, *Animal Dealers Roots in the 19<sup>th</sup> Century*, ANTI-VIVISECTION MAGAZINE, no. 1-3, 2013, at 6.

23. *Pound Seizure*, LAST CHANCE FOR ANIMALS, <http://www.lcanimal.org/index.php/campaigns/class-b-dealers-and-pet-theft/pound-seizure> (last visited July 22, 2016) (on file with *The University of the Pacific Law Review*).

24. *Id.*

25. *Fact Sheet: Pets Used in Experiments*, THE HUMANE SOCIETY OF THE U.S., [http://www.humanesociety.org/iss/pets\\_experiments/qa/questions\\_answers.html?referrer=https://www.google.com/](http://www.humanesociety.org/iss/pets_experiments/qa/questions_answers.html?referrer=https://www.google.com/) (last visited July 22, 2016) (on file with *The University of the Pacific Law Review*).

research facility.<sup>26</sup> Quite often, due to the horrendous conditions of animal dealer compounds, the animals die before ever arriving at a research facility.<sup>27</sup>

Many researchers do not use anesthesia or pain management techniques during their procedures, so animals—including family pets stolen from their backyards—experience repeated painful experiments, become ill, and are not treated.<sup>28</sup> If an animal does not first die from an experiment or an acquired illness, the researcher will typically euthanize and dispose of the animal's body.<sup>29</sup>

The federal Animal Welfare Act of 1966 (AWA) creates a platform for animal welfare laws; municipalities in California have expanded the AWA by passing laws that completely ban pound seizure, hoping to influence the legislature and the nation.<sup>30</sup> Banning pound seizure is an integral part of Chapter 568; therefore, the effects of Chapter 568 reach far beyond pounds and shelters.<sup>31</sup> Chapter 568 will affect researchers who use living animals seized from pounds in their experiments, people who take animal-tested medication or use animal-tested makeup, and even the neighborhood child who loses his pet and searches for him at the local pound.<sup>32</sup>

This article analyzes the immediate effect of banning pound seizure of living animals and the resulting influence it has on society.<sup>33</sup> Part A of this section discusses federal law's history, which sets the stage for Chapter 568.<sup>34</sup> Part B explains the history of animal experimentation, animal testing, and the available alternatives to both.<sup>35</sup> Part C describes the laws that other states enacted to

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26. *Animal Dealers*, DYING TO LEARN 14, <http://www.dyingtolearn.org/sourceDealers.html> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*); see generally Daniel Engber, *Where's Pepper?*, SLATE (June 1, 2009, 10:53 AM), [http://www.slate.com/articles/health\\_and\\_science/pepper/2009/06/wheres\\_pepper.html](http://www.slate.com/articles/health_and_science/pepper/2009/06/wheres_pepper.html) (on file with *The University of the Pacific Law Review*) (the story of a stolen family pet, Pepper, who was stolen by an animal dealer and had been kept at a compound with hundreds of other caged animals).

27. *Supply and Use of Dogs and Cats*, *supra* note 6.

28. Karen E. Lange, *High Suffering, Low Penalties*, THE HUMANE SOCIETY (Jan. 13, 2015), [http://www.humanesociety.org/news/news/2015/01/high-suffering-low-penalties-at-animal-research-labs.html?credit=web\\_id86361242](http://www.humanesociety.org/news/news/2015/01/high-suffering-low-penalties-at-animal-research-labs.html?credit=web_id86361242) (on file with *The University of the Pacific Law Review*) (two examples of tragic animal deaths, "thirty monkeys died when a lab room overheated and staff ignored alarms" and "an inattentive employee for the same company sent a monkey through a cage washing machine. Scalded by 180 degree-water, the monkey . . . died."); *Where's Pepper?*, *supra* note 26; *What is Animal Testing?*, *supra* note 11.

29. *What is animal testing?*, *supra* note 11.

30. See Benjamin Adams & Jean Larson, *Legislative History of the Animal Welfare Act: Introduction*, U.S. DEP'T OF AGRIC., <https://www.nal.usda.gov/awic/legislative-history-animal-welfare-act-introduction> (last visited July 1, 2016) [hereinafter *History of AWA*] (on file with *The University of the Pacific Law Review*) (summarizing the history of the Animal Welfare Act).

31. See *Supply and Use of Dogs and Cats*, *supra* note 6 (depicting the far reach that pound seizure has on different communities).

32. *Pound Seizure*, *supra* note 23; *Where's Pepper?*, *supra* note 26.

33. See *infra* Part I–V.

34. See *infra* Part II.A. (describing the amendments the Animal Welfare Act of 1966 has undergone).

35. See *infra* Part II.B. (discussing the history of animal experimentation and the host of alternatives available).

protect animals from being sold for research.<sup>36</sup> Part D describes California's pound seizure laws prior to Chapter 568.<sup>37</sup>

A. *How did Federal Law Become the Foundation for Animal Welfare Laws?*

The AWA is the foundation of animal welfare law at the federal and state levels.<sup>38</sup> Congress passed the AWA to respond to public outcry regarding the unregulated, painful, and deadly experiments that many research facilities, schools, and other institutions conduct on living animals.<sup>39</sup> The federal government requires all states to regulate their research facilities and treatment of enumerated animals.<sup>40</sup> However, under the AWA, states do not have to regulate or protect animals in research facilities that are not expressly listed as protected by law.<sup>41</sup> Nor are states required to regulate Class B dealers' compounds or the horrible conditions pound-seized and stolen animals experience while waiting for dealers to transfer them to research facilities.<sup>42</sup> While the regulation of animal testing is a step in the right direction, animals' lives are still in danger through continued pound seizure.<sup>43</sup>

The U.S. Department of Agriculture (USDA) monitors how research facilities treat animals and tries to stop Class B animal dealers from stealing backyard pets and selling them to research facilities.<sup>44</sup> The AWA mandates that animal dealers obtain a license to sell animals to research facilities and keep receipts and records of the animals involved in their transactions.<sup>45</sup> Although

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36. See *infra* Part II.C. (providing an overview of other state's laws regarding pound seizure and animal welfare).

37. See *infra* Part II.D. (discussing how new California law will affect pound seizure and animal experimentation).

38. *Laboratory Animal Welfare Act*, *supra* note 18.

39. *Background of the Issue*, PROCON.ORG, <http://animal-testing.procon.org/view.resource-newblue.php?resourceID=006512> (last updated May 24, 2016, 1:28 PM) (on file with *The University of the Pacific Law Review*).

40. Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C.A. § 2143 (a)(3) (1985)); Tadlock Cowan, CONG. RESEARCH SERV., RS22493, THE ANIMAL WELFARE ACT: BACKGROUND AND SELECTED ANIMAL WELFARE LEGISLATION 2 (June 12, 2013) ("The AWA applies to any live or dead cat, dog, hamster, rabbit, nonhuman primate, guinea pig, hamster, rabbit, or other warm blooded animal determined by the Secretary of Agriculture for research or exhibition, or used as a pet.").

41. 7 U.S.C.A. § 2132(g) (excluded by the AWA's coverage as: "birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research"); Cowan, *supra* note 40.

42. See Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C.A. § 2143 (a)(3) (1985)) (displaying that a Class B dealer's compound is absent from the required standards list).

43. Liz Hecht, *Pound Seizure When Will it End?*, CITIZENS FOR ALTERNATIVES TO ANIMAL LABS 14 (Fall 1999), available at <http://www.banpoundseizure.org/ps2.pdf> (enumerating a number of reasons why pound seizure has yet to be completely eradicated).

44. Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2143 (a)(3) (1985)); *Laboratory Animal Welfare Act*, *supra* note 18.

45. Animal Welfare Act, 7 USCA § 2134.

Congress had ambitious goals when it initially passed the AWA, the AWA ultimately was not comprehensive enough, which caused the need for many amendments.<sup>46</sup> The AWA required animal dealers to keep more extensive records of the animals they bought to sell for research, which led the dealers to engage in more under the table transactions and backyard animal thefts because they often did not have the required documentation.<sup>47</sup>

Throughout the years, Congress amended the AWA several times.<sup>48</sup> In 1970, Congress broadened the definition of “animal” to protect a wider range of animals because the majority of animals used in experiments were not enumerated as “protected” under the AWA.<sup>49</sup> Congress broadened the USDA’s oversight and the USDA refined required drug use during animal experiments to help manage the pain animals experienced during procedures where researchers previously did not use anesthesia or pain management techniques.<sup>50</sup> In 1976, Congress amended the AWA because the public was concerned about underground animal fighting and the inhumane way shelter and pound animals, acquired through pound seizure, were transported to research facilities.<sup>51</sup> In order to reduce the amount of pain and injury animals, including many pound seized animals, experience, the AWA adds several standards to ensure carriers transport animals safely and healthily.<sup>52</sup>

In the 1980s, a group of United States citizens became increasingly concerned about animal rights, and they created People for the Ethical Treatment of Animals (PETA).<sup>53</sup> PETA fights for voiceless animals, and attempts to reduce the millions of animals that are tortured and killed each year.<sup>54</sup> PETA advocates for the complete abolishment of pound seizure and the use of animals for research.<sup>55</sup> In response, legislators introduced numerous bills to build upon the AWA and to further regulate laboratories where pound seized animals were

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46. *History of AWA*, *supra* note 30.

47. 7 U.S.C.A. § 2158(b)(1)–(b)(3); Engebretson, *supra* note 15; *Laboratory Animal Welfare Act*, *supra* note 18.

48. *History of AWA*, *supra* note 30.

49. Animal Welfare Act Amendments of 1970, PUB. L. NO. 91-579, § 3(3) (Dec. 24, 1970) (current version at 7 U.S.C.A. § 2132(g) (1985)); *Background of the Issue*, *supra* note 39.

50. Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2143(a)(3)(A) (1985)). *Background of the Issue*, *supra* note 39 (explaining that “The USDA breaks down its data by three categories of pain type: animals that experience pain during their use in research but are given drugs to alleviate it (339,769 animals in 2010); animals who experience pain and are not given drugs (97,123); and animals who do not experience pain and are not given drugs (697,801).”).

51. Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2143(a)(4) (1985)); *History of AWA*, *supra* note 30.

52. Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2143 (a)(2)(A) (1985)) (human handling requirements such as “housing, feeding, watering, sanitation, ventilation . . . .”); *History of AWA*, *supra* note 30.

53. *History of AWA*, *supra* note 30.

54. *Our Mission Statement*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/about-peta/> (last visited Aug. 3, 2016) (on file with *The University of the Pacific Law Review*).

55. *Id.*

sent.<sup>56</sup> Congress developed an information program for both the public and research community to educate people about inhumane animal practices, including pound seizure.<sup>57</sup> Congress named this program the Animal Welfare Information Center.<sup>58</sup> The 1985 amendment mandated Institutional Animal Care and Use Committees to monitor animals in certain settings, including laboratories, animals in exhibits, animals in higher education institutions, and marine mammals.<sup>59</sup>

Section 2503 of the Food, Agriculture, Conservation, and Trade Act of 1990 requires animal shelters to retain acquired animals for five days prior to selling them to an animal dealer or research facility.<sup>60</sup> Congress created the five-day hold to give the public the time to adopt animals or reunite with lost family pets.<sup>61</sup> Unfortunately, many animal shelters hide purebred animals for the five-day adoption period so they can sell them to research facilities.<sup>62</sup> The Trade Act of 1990 prohibits animal dealers from selling animals they did not breed, such as pound seized animals, to research facilities unless they provide record of the animal's origin to the research facility.<sup>63</sup> The AWA does not protect 85–90 percent of research animals.<sup>64</sup> Congress amended the AWA in 2007 and exposed those who violate the animal fighting provisions to being charged with a felony, thus saving animals—often pound seized animals—from cruelty, pain, and death.<sup>65</sup> In 2008, Congress further amended the AWA to ban the import of animals younger than six months into the U.S., in turn, prohibiting the use of imported dogs under the age of six months from being used in research experiments.<sup>66</sup>

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56. *History of AWA*, *supra* note 30.

57. *Id.*

58. *Id.*

59. Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2143(a)(3)(E) (1985)); *History of AWA*, *supra* note 30.

60. Food, Agric., Conservation, and Trade Act of 1990, PUB. L. NO. 101-624, § 2503, 104 Stat. 3359 (codified as amended at 7 U.S.C. 2158 § 28(a)(1) (1990)).

61. *Id.*

62. See COLO. REV. STAT. ANN. § 35-42.5-101(1)(a)(II) (2016) (the state of Colorado created a section within their statute to combat against pounds and shelter who participated in “red tagging” the “isolation, without opportunity for adoption, of healthy, amiable dogs and cats for research animal buyers.”); *Supply and Use of Dogs and Cats*, *supra* note 6; *Pet—Shelters, Pounds, and Euthanasia*, LIBRARY INDEX, <http://www.libraryindex.com/pages/2206/Pets-SHELTERS-POUNDS-EUTHANASIA.html> (last visited July 25, 2016) [hereinafter *Shelters, Pounds and Euthanasia*] (on file with *The University of the Pacific Law Review*); see *Animal Dealers*, *supra* note 26 (explaining that random source animals purchased from Class B dealers are less expensive than purebred animals because they produce unpredictable test results).

63. Food, Agric., Conservation, and Trade Act of 1990 § 2503.

64. 7 U.S.C.A. § 2132(g) (2014); *Biomedical Research*, *supra* note 8.

65. Animal Welfare Act of 1966, PUB. L. NO. 89-544, § 26 as added Pub. L. No. 94-279, § 17, 90 Stat. 421 (codified as amended at 7 U.S.C. 2156 (2007)); Cowan, *supra* note 40.

66. Animal Welfare Act Amendments of 1976, PUB. L. NO. 94-279 (Apr. 22, 1976) (current version at 7 U.S.C. § 2148(b)(1)(C)) (1985); Cowan, *supra* note 40.

Congress will continue to alter the AWA based on society's morals, and society's core values will continue to shape future legislation.<sup>67</sup> As long as researchers can legally experiment on animals, state legislatures will continue to suggest and pass animal welfare laws.<sup>68</sup> To align with modern societal values, throughout the varying amendments and laws, Congress and the states attempt to incorporate the "Three Rs" for using animals in research humanely: Replacement (replacing the use of animals with alternative research methods), Reduction (minimizing the use of animals whenever possible), and Refinement (reducing suffering and improving animals' living conditions).<sup>69</sup>

*B. How Did Animal Experimentation Begin and Are There Viable Alternatives?*

Dating as far back as 300 B.C., scientists such as Aristotle, Galen, and Vesalius, chose to perform vivisection<sup>70</sup> on animals and experiments on human corpses to practice surgical techniques and learn and teach anatomy.<sup>71</sup> Audience members expressed legal and ethical concerns regarding the use of human corpses, and in response, scientists transitioned and began using solely animals for their dissections because they believed animals felt no pain.<sup>72</sup> However, over the years, scientists learned animal and human anatomy was vastly different and an animal's anatomy did not directly transfer to humans.<sup>73</sup>

Educational programs continue to use vivisection in their classrooms.<sup>74</sup> These programs receive cats and dogs from animal dealers or acquire them directly from pounds and shelters, thereby participating in pound seizure.<sup>75</sup> Some university programs require vivisection procedures where "students sever the

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67. *History of AWA*, *supra* note 30.

68. *See infra* Part III (new stricter laws enacted by Chapter 568 to protect more living animals from being sold for research).

69. *Background of the Issue*, *supra* note 39; Darian M. Ibrahim, *Reduce, Refine, Replace: The Failure of the Three R's and the Future of Animal Experimentation*, 2006 U. CHI. LEGAL F. 195, 197, 199, 206–08 (2006). The Three R's were proposed by English scientists Rex Burch and William Russell in their book, *The Principles of Humane Experimental Technique*. Burch and Russell purported the belief that the humane treatment of animals was a requirement to the success of animal experimentation. Congress made many amendments in the AWA to reflect the Three R's such as veterinarian care and the use of pain medicine during certain procedures and mandating research facilities to complete annual reports demonstrating the consideration of alternatives to animals being used during experimentation. *Id.*

70. 3 PA. STAT. AND CONS. STAT. ANN. § 459-102 (West 2008) (vivisection is defined as "the cutting of or operation on a living animal for physical or pathological investigation or animal experimentation").

71. *History of Vivisection and Dissection*, DYING TO LEARN, <http://www.dyingtolearn.org/animalUseHistory.html> (last visited July 30, 2016) (on file with *The University of the Pacific Law Review*).

72. *Id.*; *Background of the Issue*, *supra* note 39.

73. *History of Vivisection and Dissection*, *supra* note 71; *Background of the Issue*, *supra* note 39.

74. *History of Vivisection and Dissection*, *supra* note 71.

75. *Supply and Use of Dogs and Cats*, *supra* note 6 ("Of 92 university records reviewed from 2005–2007 regarding the use of dogs and cats for teaching and training purposes: 52% are using live or dead dogs and cats. 26% are using live dogs and cats. Of 150 university biology departments in a separate survey conducted in 2008 [20% response rate]: 63% are using dead cats to teach anatomy and physiology.").

nerves in donkeys' toes, cut animals' ligaments, insert plastic tubes through their noses and into their stomachs, surgically puncture their abdomens, cut their tracheas, and remove fluid from their joints."<sup>76</sup> Most educational programs that still teach using vivisection allow students to refuse to participate in the dissections, sometimes by offering alternatives.<sup>77</sup> Many public and private universities, however, promote laws that ban pound seizure and minimize or discontinue the use of vivisection.<sup>78</sup> When the public voices concern about vivisection in the classroom, many teachers begin to supplement or replace vivisection with advanced alternatives.<sup>79</sup>

Scientists began testing drugs on animals consistently when a drug that was not tested on animals was distributed and "led to a mass poisoning causing the deaths of more than a hundred people."<sup>80</sup> This caused public upheaval, and Congress decided to require scientists to test drugs on animals before selling them to humans, which increased the number of animals required for testing and increased the number of pound-seized animals.<sup>81</sup> However, the thousands of pound-seized animals euthanized because of drug testing has proven futile since drugs "that have proven to be safe and effective in animals have often been proven to be unsafe and ineffective in humans."<sup>82</sup> Despite the thousands of animals' lives lost during testing of drugs thought to be safe, the FDA recalls hundreds of drugs a year that cause the death of thousands of innocent humans.<sup>83</sup>

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76. *Humane Veterinary Education—Overview*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/issues/animals-used-for-experimentation/animals-used-experimentation-factsheets/dissection-lessons-cruelty/humane-vet-ed/> (last visited Aug. 4, 2016) (on file with *The University of the Pacific Law Review*).

77. N.J. STAT. ANN. § 18A:35-4.25 (2006); *Supply and Use of Dogs and Cats*, *supra* note 6; Telephone Interview with Kirsha B. Fredrickson, Veterinary Medicine Student, Colorado State University (July 30, 2016) (notes on file with *The University of the Pacific Law Review*) (one of the vivisection classes offered at CSU is an elective rather than a required course, and students can choose whether or not to register for the class).

78. ME. REV. STAT. ANN. 7, § 3971, (2015); *Supply and Use of Dogs and Cats*, *supra* note 6.

79. See generally M. Valliyate, N.G. Robinson, & J.R. Goodman, *Current Concepts in Simulation and Other Alternatives for Veterinary Education: A Review*, 57 VETERINARI MEDICINA 325, 326–27, 333–34 (2012) (providing an "overview of simulation methods for veterinary education" as opposed to using vivisection); see generally *Alternatives in Education*, NEW ENG. ANTI-VIVISECTION SOC'Y, <http://www.neavs.org/alternatives/in-education> (last visited Aug. 3, 2016) (on file with *The University of the Pacific Law Review*) (a discussion of educational alternatives to vivisection).

80. Rachel Hajar, *Animal Testing and Medicine*, 12(1) HEART VIEWS 42 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3123518/?report=printable>.

81. Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. § 355 (2015); Hajar, *supra* note 80.

82. *Animal Testing in the U.S.*, *supra* note 14.

83. *Id.* (explaining that Vioxx caused "over 60,000 deaths in the U.S. alone, however another study "potentially links over 500,000 deaths to Vioxx," potentially including deaths outside of the U.S.); see also Safety of Vioxx, WL 5225986 (2004).

*C. How Do Animal Welfare State Laws Vary?*

Due to the AWA allowing pound seizure, some states created laws to eradicate pound seizure.<sup>84</sup> Pound seizure is an outdated practice because animals from pounds, which are typically random source animals with varying genetics and unidentified health records, produce unreliable research results.<sup>85</sup> In 1983, Massachusetts was the first state to ban pound seizure and, in doing so, showed the United States that banning pound seizure did not adversely impact research in the state.<sup>86</sup> Eighteen states, not including California, currently ban pound seizure.<sup>87</sup> Oklahoma and Ohio, on the other hand, actually require public shelters and pounds to supply research facilities with animals for research.<sup>88</sup> The remaining states have no laws regulating pound seizure.<sup>89</sup> Overall, state laws will continue to vary until Congress bans pound seizure completely.<sup>90</sup>

*D. California Law Before Chapter 568*

California law declares an animal abandoned when its owner leaves it at an animal care facility for 14 days.<sup>91</sup> When an owner leaves an animal for 14 days, the animal care facility must try to find the animal a new home for a minimum of ten days or transfer the animal to an approved agency or shelter.<sup>92</sup> If after ten days the animal hasn't been adopted, the animal care facility may euthanize the animal.<sup>93</sup> Animal care facilities are not allowed to euthanize adoptable animals that are either healthy or are ill but treatable unless the minimum hold time has been met trying to adopt the animal.<sup>94</sup> If a person abandons an animal at a veterinary hospital or an animal care facility, that entity is prohibited from selling the animal for research.<sup>95</sup> Prior to Chapter 568, pounds and animal shelters were

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84. *Shelters, Pounds, and Euthanasia*, *supra* note 62 (giving the example of the AWA creating a minimum for holding time for animals at shelters and many states built upon this and require more than the required minimum).

85. *Pound Seizure*, *supra* note 23.

86. MASS. GEN. LAWS ANN. CH. 140, § 151 (2012); *Pound Seizure*, *supra* note 23; *Massachusetts Outlawing Laboratory Use of Pets*, N.Y. TIMES (Dec. 27, 1983), available at <http://www.nytimes.com/1983/12/27/us/massachusetts-outlawing-laboratory-use-of-pets.html> (on file with *The University of the Pacific Law Review*).

87. *Pound Seizure*, *supra* note 23.

88. OKLA. STAT. ANN. § 394 (2016); OHIO REV. CODE ANN. § 955.16 (2012).

89. *Pound Seizure*, *supra* note 23; Liz Hecht, *Pound Seizure When Will it End?*, CITIZENS FOR ALTERNATIVES TO ANIMAL LABS 12–13 (Fall 1999), available at <http://www.banpoundseizure.org/ps2.pdf> (on file with *The University of the Pacific Law Review*).

90. *Supply and Use of Dogs and Cats*, *supra* note 6.

91. CAL. CIV. CODE § 1834.5(a) (West 2016).

92. *Id.*

93. *Id.* at (a), (b).

94. CAL. CIV. CODE § 1834.4 (West 2016).

95. § 1834.5(e).

allowed to transfer living or dead animals to research facilities.<sup>96</sup> However, any pound or animal shelter that transfers living or dead animals to “biological supply facilities”<sup>97</sup> or “research facilities”<sup>98</sup> must place a clear and unobstructed sign to the public stating, “Animals Turned in to This Shelter May Be Used For Research Purposes or to Supply Blood, Tissue, or Other Biological Products.”<sup>99</sup>

California’s varying municipal laws regarding pound seizure confused and misled the public.<sup>100</sup> The state’s laws created gaps, and the city or county a person abandoned an animal in dictated whether or not the animal could be pound seized and sold for research.<sup>101</sup> The public lost trust in pounds and animal shelters that chose to sell an animal for research rather than find the animal a home, which created the need for unifying pound seizure legislation in California.<sup>102</sup>

### III. CHAPTER 568

Assemblymember Waldron introduced Chapter 568 to prohibit pound seizure of living animals and to create uniformity across California.<sup>103</sup> Chapter 568 repeals and amends the Civil Code to impose the same restrictions on animal shelter entities (ASE) that many California municipalities already practice.<sup>104</sup>

Chapter 568 adds ASEs to the list of entities prohibited from selling abandoned animals to “research facilities,”<sup>105</sup> “animal dealers,”<sup>106</sup> or “persons”<sup>107</sup>

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96. § 1834.7 (as repealed by Chapter 568).

97. *Id.* at (c) (biological supply facilities to include “any blood bank, laboratory, firm, association, corporation, copartnership, or educational institution that sells biological materials such as blood or animals, either alive or dead, to research facilities, educational institutions, or veterinarians.”).

98. *Id.* at (b) (defining animal research facility to include “any laboratory, firm, association, corporation, copartnership, and educational institution.”).

99. *Id.* at (a).

100. Engebretson, *supra* note 15.

101. CAL. CIV. CODE § 1834.5(e) (West 2016).

102. *See* Schaeffer, *supra* note 22, at 5 (shelters that held strong to anti-pound seizure were “accountable to the public trust”).

103. CAL. CIV. CODE § 1834.7(c)(2) (West 2016); *see generally* CAL. CIV. CODE § 1834.7 (West 2016) (strengthening California’s laws to work towards prohibiting pound seizure and punishing those that sell and accept pound or animal shelter animals for research); *Save Shelter Pets from Forced Research*, GOVBUDDY (Mar. 25, 2016), <https://www.govbuddy.com/directory/press/CA/save-shelter-pets-from-forced-research/40801/> (on file with *The University of the Pacific Law Review*).

104. § 1834.7(a)(2) (defining animal shelter entity as “includes, but is not limited to, an animal regulation agency, humane society, society for the prevention of cruelty to animals, or other private or public animal shelter”); *see infra* Part III (detailing the restrictions Chapter 568 creates).

105. CAL. CIV. CODE § 1834.7(a)(4) (as amended by Chapter 568) (research facility as defined by Section 2132 of Title 7 of the United States Code, effective February 7, 2014 “any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments: *Provided*, That the Secretary may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except

in order to protect more animals from being sold.<sup>108</sup> ASEs that transfer dead animals to “a biological supply facility or a research facility for research purposes or to supply blood, tissue, or other biological products” are required to post a notice that is “clearly visible to a majority of persons when surrendering animals to the shelter.”<sup>109</sup> The ASEs must include certain language on the notice, and must also provide notice on owner surrender forms.<sup>110</sup> Under Chapter 568, a person or ASE that accepts abandoned or stray animals cannot transfer unwanted living animals for “research, experimentation, or testing.”<sup>111</sup>

Chapter 568 prohibits a “research facility, animal dealer, or other person” from receiving “a living animal for the purpose of research, experimentation, or testing” from a shelter or person who accepts stray animals.<sup>112</sup> Chapter 568 does not allow a person or animal shelter to euthanize an animal in order to facilitate its transfer “to a research facility or animal dealer.”<sup>113</sup> For any institution that violates Chapter 568, there is the potential for a \$1,000 penalty.<sup>114</sup> Overall, Chapter 568 unifies California pound seizure law and protects animal welfare by banning pound seizure of living animals across the state.<sup>115</sup>

#### IV. ANALYSIS

Assemblymember Waldron introduced Chapter 568 to eradicate pound seizure and to unify California law by banning the transfer of living animals from shelters and pounds for research.<sup>116</sup> The following sections will analyze the effect

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those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Secretary) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Secretary, any such exemption does not vitiate the purpose of this chapter).

106. § 1834.7(a)(1) (enacted by Chapter 568) (defining animal dealer as any “person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, or who buys, sells, or negotiates the purchase or sale of any animal, whether alive or dead, for research, teaching, exhibition, or biological supply.”).

107. *Id.* § 1834.7(a)(3) (defining person as “an individual, partnership, firm, limited liability company, joint-stock company, corporation, association, trust, estate, governmental agency, or other legal entity.”).

108. *Id.* (expanding the list that previously only prohibited sales by veterinarian hospitals, kennels, pet grooming parlors, and animal hospitals).

109. *Id.* § 1834.7(b)(1).

110. *Id.* § 1834.7(b)(2).

111. *Id.* § 1834.7(c)(1).

112. *Id.* § 1834.7(c)(2).

113. *Id.* § 1834.7(b)(3), (e) (explaining that the penalty shall be payable to the general fund of the governmental entity that brought the AWA in to assess the penalty).

114. *Id.*

115. *Id.* § 1834.7(c)(2) (displaying that the new statute bans the transfer of living pound animals, as many California pounds and animals shelters practiced prior to the statute).

116. *Id.*

of Chapter 568 on entities that sell and receive living animals for research and evaluate whether Chapter 568 will achieve its goal.<sup>117</sup>

A. *What are the Financial and Policy Implications?*

Prior to Chapter 568, California law allowed animal shelters and pounds to transfer living and dead animals to animal dealers or research facilities.<sup>118</sup> Now, California requires animal shelters and pounds to ensure that no living animal is transferred to a “research facility, animal dealer, or other person.”<sup>119</sup> This requirement may create a higher burden on overpopulated animal shelters and pounds that previously controlled their animal population by selling living animals for research.<sup>120</sup> Additionally, animals that would otherwise be transferred for research, may now stay in cages at the shelter for longer periods of time and “acquire anti-social behaviors that further decrease their chances of being adopted.”<sup>121</sup> However, California animal shelters’ populations may not substantially change because the majority of California municipalities already ban pound seizure completely; therefore, most of them probably do not rely on selling living animals to research facilities.<sup>122</sup> Other states, such as Alaska and Alabama, take a more lenient approach and allow their cities to individually govern animal control, while states like Hawaii completely prohibit pound seizure of either living or dead animals.<sup>123</sup> Overall, Assemblymember Waldron could have chosen a stricter approach and completely banned pound seizure for both live and dead animals.<sup>124</sup> Instead, Chapter 568 only bans pound seizure of living animals.<sup>125</sup> Although Chapter 568 was not drafted in the strictest terms possible, it is among the strongest paths towards completely eradicating pound seizure.<sup>126</sup>

With Chapter 568’s changes, animal victims like Shy Guy, who are perfectly healthy and adoptable dogs, and lost companion animals that were sold to research facilities and later euthanized, will be given the chance to live, be

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117. See *infra* Parts IV.A–E (analyzing Chapter 568’s effect on animal shelters, pounds and research facilities, but specifically Chapter 568’s effect on abandoned animals).

118. § 1834.7(c)(1)

119. *Id.*

120. *Save Companion Animals*, *supra* note 20; *Shelters, Pounds, and Euthanasia*, *supra* note 62

121. *Save Companion Animals*, *supra* note 20.

122. Engebretson, *supra* note 15.

123. HAW. REV. STAT. ANN. § 143-18 (2016); *Pound Seizure Laws*, AM. ANTI-VIVISECTION SOC’Y, <http://aavs.org/animals-science/laws/pound-seizure-laws/#CA> (last visited July 22, 2016) (on file with *The University of the Pacific Law Review*).

124. CAL. CIV. CODE § 1834.7(c)(1); Engebretson, *supra* note 15.

125. *Id.*

126. *Id.*

adopted, or have their families find them.<sup>127</sup> This change will protect pet owners whose pets are lost and end up at a shelter or pound by disallowing the living animal to be sold for research.<sup>128</sup> Pet owners like Mrs. Simpson, whose dog ran away through no fault of her own, will now be able to sue the City of Los Angeles for selling her living companion to a research facility.<sup>129</sup> Although it appears that Chapter 568 helps diminish the class of animals that may be sold to research facilities and increases the number of animals whose lives are spared from unnecessary and painful research experiments, researchers will unfortunately continue to obtain animals elsewhere as long as animal research is still allowed.<sup>130</sup>

Chapter 568 impacts California animal shelters and pounds because it takes away the income these entities earn from selling living animals.<sup>131</sup> Animal shelters that still practice pound seizure rely on the economic benefit received from pound seizure transactions, “such as dead body removal.”<sup>132</sup> However, private donors fund many shelters, and those private donations could make up for any income the shelters lose.<sup>133</sup> The underlying purpose of animal care facilities is to save animal lives, provide a safe haven, and find them a forever home.<sup>134</sup> Banning pound seizure of living animals will further propel these facilities towards accomplishing this goal.<sup>135</sup> Furthermore, pound seizure is an outdated practice, and the majority of California animal shelters and pounds outlaw the transfer of living animals on their own.<sup>136</sup> Therefore, Chapter 568 will not likely create overly burdensome financial issues for California’s animal care facilities but will unify laws and increase the public’s trust in such facilities.<sup>137</sup>

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127. MICHIGAN POUND SEIZURE FACT SHEET, MICHIGANDERS FOR SHELTER PETS, <http://michigandersforshelterpets.org/wp-content/uploads/2011/06/PS-fact.pdf> (last visited Jan. 15, 2017) [hereinafter MICHIGAN POUND SEIZURE] (on file with *The University of the Pacific Law Review*).

128. *Simpson v. City of Los Angeles*, 40 Cal.2d 271, 276 (1953).

129. *Id.*

130. § 1834.7(b)(3), (c)(1), (c)(2)

131. *Shelters, Pounds, and Euthanasia*, *supra* note 62.

132. MICHIGAN POUND SEIZURE, *supra* note 127 (two pounds still practicing pound seizure in Michigan give animal dealers their choice of which animals they want to seize in return for “free” services “such as dead animal body removal.”).

133. *Shelters, Pounds, and Euthanasia*, *supra* note 62.

134. *Supply and Use of Dogs and Cats*, *supra* note 6.

135. *See* Engebretson, *supra* note 15 (elaborating that pound seizure disrupts an animal facility’s goal by defeating the goal of saving animals’ lives).

136. Engebretson, *supra* note 15.

137. *Id.* (explaining that because the majority of California municipalities ban pound seizure financial issues are unlikely to be created).

*B. Will a “Clearly Visible” Sign Actually be Acknowledged and Understood by Those Surrendering Animals?*

Chapter 568 seeks to notify owners surrendering their dogs of the possibility that if their dog is euthanized or dies, it may be transferred to a research facility when dead.<sup>138</sup> Chapter 568 alters the language on posted signs and owner surrender forms from “living or dead,” to only “dead,” and requires the notice to be “clearly visible to a majority of persons.”<sup>139</sup> Supporters of Chapter 568 contend that because of the change in language and visibility requirement, owners may choose to keep their pets instead of allow them to potentially be given to a research facility.<sup>140</sup>

Some states take a more informative approach and require the owner to understand and sign a specific form in which the owner specifies whether the animal can be transferred to a research facility.<sup>141</sup> In other states, a shelter employee personally notifies the owner of the possibility of the dog being transferred to a research facility to ensure that the owner is fully informed and understands the possibility at the time of surrender.<sup>142</sup> The problem with Chapter 568’s sign-posting requirement is that despite being “clearly visible to a majority of the public,” if an owner does not understand the sign, most shelters will not convey the sign’s message to the pet owner because they are not required to under Chapter 568.<sup>143</sup>

Chapter 568’s sign requirement presents issues in its application.<sup>144</sup> For example, the words “clearly visible” and “majority of the public” can have multiple meanings.<sup>145</sup> Although the plain meaning of clearly visible is “easy to see” and although the ordinary meaning of majority of the public is “a large number of people,” these words can be vague in application.<sup>146</sup> A court could interpret “clearly visible” to mean, “partially obstructed,” whereas another court

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138. CAL. CIV. CODE § 1834.7(b)(1)(2) (as amended by Chapter 568).

139. *Id.*

140. CAL. CIV. CODE § 1834.7(b)(1) (as amended by Chapter 568).

141. COLO. REV. STAT. ANN. § 35-42.5-101 (2016); UTAH CODE ANN. § 26-26-3 (2016); Liz Hecht, *Pound Seizure When Will it End?*, CITIZENS FOR ALTERNATIVES TO ANIMAL LABS 12–13 (Fall 1999), available at <http://www.banpoundseizure.org/ps2.pdf> (on file with *The University of the Pacific Law Review*).

142. COLO. REV. STAT. ANN. § 35-42.5-101 (2016); UTAH CODE ANN. § 26-26-3; Hecht, *supra* note 141, at 12–13.

143. Hecht, *supra* note 141, at 12–13.

144. See generally Lawrence M. Solan, *Precedent in Statutory Interpretation*, 94 N.C. L. REV. 1165, 1169, 1221 (2016) (discussing that the plain meaning approach to understanding the signs is not always used); *People v. White*, 93 Cal.App.4th 1022, 1026 (2001).

145. *Majority*, WEBSTER’S NEW WORLD COLLEGE DICTIONARY (2016), available at <http://www.yourdictionary.com/majority> (on file with *The University of the Pacific Law Review*) [hereinafter *Majority*, WEBSTER’S DICTIONARY].

146. *State v. Courchesne*, 296 Conn. 622, 721 (2010) (the plaintiff and defendant both read and analyzed the statute under different interpretations of “murder”); Solan, *supra* note 144, at 1195; *White*, 93 Cal.App.4th at 1026.

could find it to mean, “in full sight.”<sup>147</sup> Furthermore, a plaintiff can argue that a “majority of the public” means “more than half of the people who walk in the door” or “a large group of owners surrendering their pets.”<sup>148</sup> Because judges use many methods of statutory construction, it is unclear how these terms will be applied to individual shelters; however, the underlying purpose of the statute is to protect animals so judges should consider the intent of the Chapter 568 and err on the side of increasing animal protection rather than diminishing it.<sup>149</sup>

Although the notice requirement may help some pet owners make an informed decision, many pet owners have already exhausted alternative means to giving away their pets, and they are not likely to change their minds based on a sign or sentence in a standard form.<sup>150</sup> Furthermore, the change in language on the notice may actually broaden the class of owners surrendering their animals who would not otherwise have felt comfortable surrendering to a shelter that allows pound seizure of living animals.<sup>151</sup> On balance, Chapter 568 may cause litigation based on its vague terms, and there is a high probability that the notice requirement will not be understood by, and thus not impact, many pet owners.<sup>152</sup>

### *C. Are Pounds and Shelters Saving Lives or Killing for Research?*

Prior to Chapter 568, the public was not concerned about animal shelters and pounds euthanizing animals to transfer them to animal dealers or research facilities because these entities were allowed to transfer living animals and did not have to euthanize animals to facilitate their transfer.<sup>153</sup> Chapter 568 not only prohibits the transfer of living animals, but also expressly prohibits pounds and animal shelters from euthanizing an animal for the purpose of transferring it to a

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147. *White*, 93 Cal.App.4th at 1026.

148. *Courchesne*, 296 Conn. at 726 (courts quite often deal with multiple interpretations of statutes and must ascertain the intent and meaning of the statute); Solan, *supra* note 144, at 1198; *Majority*, WEBSTER’S DICTIONARY, *supra* note 145; *White*, 93 Cal.App.4th at 1026.

149. Solan, *supra* note 144, at 1195.

150. Shmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 8 DEPAUL BUS. & COM. L. J. 199, 205 (2010) (noting that people do not usually read standard form contracts); *Shelter Intake & Surrender*, AM. SOC’Y FOR THE PREVENTIONS OF CRUELTY TO ANIMALS, <http://www.aspc.org/animal-homelessness/shelter-intake-and-surrender> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*); see Jim Willis, *Sample From Pieces of My Heart: How Could You?* (2001), available at <http://www.crean.com/jimwillis/hcy.html> (on file with *The University of the Pacific Law Review*) (the tragic story of a family who became too busy for their family pet and abandons him at an animal care facility that then euthanized the animal).

151. *Stop Pound Seizure*, AM. HUMANE ASS’N, <http://www.americanhumane.org/animals/stop-animal-abuse/advocacy/campaigns/stop-pound-seizure.html?referrer=https://www.google.com/> (last visited Aug. 1, 2016) (on file with *The University of the Pacific Law Review*); *Profile Stephanie Shain*, ANTI-VIVISECTION MAGAZINE, no. 1-3, 2013, at 19.

152. Solan, *supra* note 144, at 1195; *Shelter Intake & Surrender*, *supra* note 150; see Willis, *supra* note 150 (depicting that a message on a sign most likely will not have a strong enough effect on a family who is too busy to take care of their pet).

153. CAL. CIV. CODE § 1834.7 (as repealed by Chapter 568).

“research facility, animal dealer, or other person.”<sup>154</sup> Many states either do not regulate animal euthanasia, or like Delaware, have a list of enumerated qualifications that must be met in order to euthanize an animal; however, selling animals to research facilities for a profit is not on that list.<sup>155</sup>

Though proponents argue that Chapter 568 will save animals’ lives by prohibiting animal shelters and pounds from euthanizing adoptable animals to enable their transfer for research, the fact that the legislature created a law to specifically prohibit this euthanasia shows it was a foreseeable issue.<sup>156</sup> Banning pound seizure of living animals may cause pounds and animal shelters to euthanize animals to facilitate their transfer for research for a variety of reasons, including financial gain or population control.<sup>157</sup> As shown in other states that have created laws banning pound seizure, people will create loopholes or break the law as soon as it is created.<sup>158</sup> Although California has a law against euthanizing animals for this purpose there are bound to be those who will break it.<sup>159</sup> Some pounds and shelters already hide animals during the AWA’s waiting period so they can sell animals to researchers for money, which begs the question: What will stop pounds and shelters from euthanizing animals just to sell them to research facilities?<sup>160</sup> However, despite the 18 states that passed pound seizure laws, euthanasia rates continue to steadily decline, showing that banning pound seizure does not appear to cause the rise of euthanasia rates.<sup>161</sup> California’s ban on the pound seizure of living animals is not, on its own, likely to be an outlier and to give rise to euthanasia rates.<sup>162</sup>

California’s animal care facilities have the same goal animal care facilities in other states have: to provide a safe harbor for abandoned or lost animals until a permanent, loving home can be found.<sup>163</sup> Given the morals of animal care facilities within the state, the legislature banning the euthanasia of pets to transfer

154. CAL. CIV. CODE § 1834.7(b)(3), (c)(1) (enacted by Chapter 568).

155. DEL. CODE ANN. tit. 16 § 3004F (2014).

156. CAL. CIV. CODE § § 1834.7(b)(3).

157. *Save Companion Animals*, *supra* note 20.

158. *See Animal Dealers*, *supra* note 26 (states where animal dealers continue to find ways to break the law).

159. *Animal Dealers*, *supra* note 26.

160. Kate Ramunni, *Connecticut Task Force Seeks To Reduce Animal Euthanasia*, HARFORD COURANT (Mar. 2, 2015, 3:09 PM), <http://www.courant.com/politics/hc-ap-task-force-humane-animal-treatment-20150303-story.html> (on file with *The University of the Pacific Law Review*).

161. *Pets*, MICH. ELIBRARY, (2010), <http://ic.galegroup.com/ic/ovic/ReferenceDetailsPage/DocumentToolsPortletWindow?displayGroupName=Reference&jsid=ee06f0164de586dbabd0f5d7e2b10c75&action=2&catId=&documentId=GALE%7CEJ3020780109&u=tecu26050&zid=a6f94bbcb44bae5be1532ad9f35d90db> (on file with *The University of the Pacific Law Review*).

162. Nick Cullen, *We’ve Made a Serious Dent in Animal Euthanasia Rates*, BAKERSFIELD.COM (July 1, 2015, 12:00 AM), <http://www.bakersfield.com/news/opinion/2015/07/01/we-ve-made-a-serious-dent-in-animal-euthanasia-rates.html> (on file with *The University of the Pacific Law Review*) (Kern County spays and neuters animals before they are adopted and provides clinics for low-income families who need to get their pet spayed or neutered).

163. *Supply and Use of Dogs and Cats*, *supra* note 6.

them for research was most likely a safeguard rather than an issue the legislature foresaw.<sup>164</sup> On balance, banning pound seizure of living animals is likely to save animals' lives and is not likely to result in animal care facilities euthanizing animals to transfer them for research.<sup>165</sup>

*D. Do Either Viable Alternatives to Animal Experimentation or Vivisection on Animals Compromise the Education of Our Children?*

Chapter 568's opponents removed their opposition to the bill, but many California medical researchers still share opponents' concerns "about the impact on the teaching programs for veterinary students and registered veterinary students."<sup>166</sup> Though Chapter 568 does not completely abolish the ability for medical researchers to experiment on animals in California, it does stop the ability for a research or teaching facility to receive a living animal that came from an animal shelter or pound.<sup>167</sup> On the other hand, Chapter 568 provides a broader opportunity for both research facilities and veterinary teaching programs to use and create more humane alternatives by eradicating the use of living animals and creating the opportunity for facilities to investigate other options.<sup>168</sup> Some institutions believe that students do not greatly benefit from alternatives to vivisection for a variety of reasons, and that alternatives are far too expensive.<sup>169</sup> However, studies show that most students benefit in a multitude of ways beyond what vivisection provides, and while the initial groundwork and training can be costly, institutions ultimately save money.<sup>170</sup> Most veterinary students oppose

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164. *Id.*

165. *Id.*

166. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2269 (June 28, 2016) (expressing California Veterinary Medical Association's representative, Christina M. DiCaro's statement that after working to amend the bill their opposition has been removed and further expressing the University of California's representative, Jason Murphy's statement that both he and his colleagues at the University of California, Davis School of Veterinary Medicine concerns were removed with the amendments at the hearing).

167. CAL. CIV. CODE § 1834.7(c)(2) (enacted by Chapter 568).

168. See *Alternatives to Animal Testing*, PETA, <http://www.peta.org/issues/animals-used-for-experimentation/alternatives-animal-testing/> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*); *Alternatives to Animal Testing*, CRUELTY FREE INT'L., <https://www.crueltyfreeinternational.org/why-we-do-it/alternatives-animal-testing> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*).

169. *Biomedical Research*, *supra* note 8 (more time, money and development of alternatives is needed for alternatives to be fully accepted by facilities).

170. *Supply and Use of Dogs and Cats*, *supra* note 6; *Alternatives in Education*, *supra* note 79; see generally M. Valliyate, N.G. Robinson, & J.R. Goodman, *Current Concepts in Simulation and Other Alternatives for Veterinary Education: A Review*, 57 VETERINARI MEDICINA 325, 326, 333 (2012) (alternatives to animal research that provide students with the opportunity for more in-depth feedback, repetition, hands-on activity, etc.); Telephone Interview with Kirsha B. Fredrickson, Veterinary Medicine Student, Colorado State University (July 30, 2016) (notes on file with *The University of the Pacific Law Review*) ("Virtual Canine Anatomy, a computer program developed by Professor Ray Whalen of Colorado State University, provides 3D images of the complete dissection of a dog and allows for repeated viewing and at-home review, that vivisection otherwise could not have provided").

pound seizure and animal testing.<sup>171</sup> Schools currently using pound seizure to facilitate their animal testing should reconsider because students can be negatively affected as “animal dissection can traumatize them, foster insensitivity toward animals, and even dissuade some from pursuing careers in science.”<sup>172</sup>

This change will protect animals like the “healthy sheep, donkeys, and goats” that Ross University School of Veterinary Medicine (RUSVM) requires its students to perform procedures on.<sup>173</sup> Chapter 568 may promote schools like RUSVM to join the mass of other schools that choose to use more humane and advanced technological alternatives.<sup>174</sup> If research facilities and teaching programs seek out and use alternatives to vivisection of pound seized animals, they could produce the same or possibly even better research results from their studies.<sup>175</sup> Therefore, Chapter 568 has the ability to save more animals’ lives because living animals will not be sold for dissections, which will reduce the practice of vivisection.<sup>176</sup> On balance, Chapter 568 banning the pound seizure of living animals could decrease the use of animals in research and save animals’ lives.<sup>177</sup>

*E. Subject to a \$1,000 Penalty, or a Nominal Fee of “Doing Business?”*

Though proponents argue Chapter 568 will deter facilities that sell and receive living pound seized animals from violating the new statute because of the \$1,000 penalty, history has shown that despite penalties, lawbreakers will continue to break the law.<sup>178</sup> The vague language the legislature used, namely “a

171. *Questions and Answers about Biomedical Research*, THE HUMANE SOC’Y, [http://www.humanesociety.org/issues/biomedical\\_research/qa/questions\\_answers.html?referrer=https://www.google.com/](http://www.humanesociety.org/issues/biomedical_research/qa/questions_answers.html?referrer=https://www.google.com/) (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*).

172. *Animals Used in Education*, PETA, <http://www.peta.org/issues/animals-used-for-experimentation/classroom-dissection/> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*); see Collman, *supra* note 1 (providing the example of “pre-veterinary science student Hannah Kellems” at Georgia Regents University, who after, “seeing the whole video straight convinced her and another student to transfer schools.”).

173. *Humane Veterinary Education*, *supra* note 76; *Alternatives in Education*, *supra* note 79.

174. *Id.*

175. Valliyate, et. al., *supra* note 170 (“even if a new method does not provide every benefit that the old method provided it may still be superior overall”).

176. *Alternatives in Education*, *supra* note 79; see Collman, *supra* note 1 (students who are opposed to vivisection would no longer be negatively effected by it if it were banned).

177. Valliyate, et. al., *supra* note 170 (“even if a new method does not provide every benefit that the old method provided it may still be superior overall”); see *Alternatives to Animal Testing*, PETA, <http://www.peta.org/issues/animals-used-for-experimentation/alternatives-animal-testing/> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*); *Alternatives to Animal Testing*, CRUELTY FREE INT’L., <https://www.crueltyfreeinternational.org/why-we-do-it/alternatives-animal-testing> (last visited July 25, 2016) (on file with *The University of the Pacific Law Review*) (listing a variety of alternatives and their different yet more precise methods and results).

178. See *Animal Dealers*, *supra* note 26 (explaining that despite a Class B dealer getting caught for over forty counts of violating the Animal Welfare Act, Robert Perry continued to sell improperly certified animals and that multiple other Class B dealers and research facilities continue to be fined for various violations); see

violation of this section is subject to a civil penalty” implies that the penalty is only a possibility and not an absolute.<sup>179</sup> Vague language creates issues of interpretation during litigation and a facility that considers violating the statute may view the possibility of a \$1,000 penalty as too remote.<sup>180</sup> The legislature’s vague language is likely to weaken the ultimate message, and an animal facility is likely to violate the statute, despite the threat of a nominal fine, because potential significant profits are worth the risk of a possible penalty.<sup>181</sup>

The majority of states also impose a \$1,000 fine on those breaking pound seizure laws, whereas some states, such as West Virginia, impose fines as low as \$450.<sup>182</sup> Some believe “the USDA has been totally unable to end the suffering of animals . . .” and that only a lawsuit and steep penalties will teach lawbreakers that they “are not above the law.”<sup>183</sup> On the other hand, many shelters and pounds are non-profit organizations without a great deal of money, which could make a \$1,000 fine an adequate deterrence from breaking the law.<sup>184</sup> On balance, Chapter 568’s small fine may send the message that this is not a very important issue, and facilities are likely to not be deterred from violating the statute.<sup>185</sup>

#### *F. Does the AWA Preempt State and Municipality Law?*

Delineated by the Constitution of the United States, acts of the federal government may preempt state laws when there is a conflict.<sup>186</sup> Congress passed the Animal Welfare Act, thereby establishing any state law in conflict with the AWA is invalid.<sup>187</sup> Congress used the word “minimum” throughout the AWA, which created a platform for states to build upon and create laws that reach beyond the AWA’s parameters.<sup>188</sup> The federal government’s word choice

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Press Release, Animal Legal Defense Fund, First-Ever Lawsuit Under California Cruelty Law Filed Against Animal Research Lab in Santa Cruz (Jan. 17, 2013) (on file with Animal Legal Defense Fund) (explaining that despite numerous citations over a six year span the Santa Cruz research facility continues to violate the law by neglecting their research subjects) [hereinafter Press Release].

179. Solan, *supra* note 144, at 1167 (depicting the common situation where judges make inferences and interpret statutes that result in varying outcomes).

180. CAL. CIV. CODE § 1834.7(e) (enacted by Chapter 568); *Animal Dealers*, *supra* note 26; *see generally* Press Release, *supra* note 178 (depicting Santa Cruz’s Biotech’s continued violations despite continuous citations).

181. *Cox v. U.S. Dept. of Agriculture*, 925 F.2d 1102, 1106 (1991) (despite defendant’s annual gross income of \$1 million, the sanctions imposed against them were extreme and that the factors to assess the sanction were incorrectly considered); *Animal Dealers*, *supra* note 26.

182. CAL. CIV. CODE § 1834.7(e); D.C. Code Ann. § 8-1831.01 (2008); W. VA. CODE ANN. § 19-20-23 (2001).

183. Press Release, *supra* note 178.

184. *Supply and Use of Dogs and Cats*, *supra* note 6.

185. Press Release, *supra* note 178.

186. Stephen Gardbaum, *Congress’s Power to Preempt the States*, 33 PEPP. L. REV. 39, 41 (2006).

187. *Id.*

188. *Id.* at 65 (when Congress sets a minimum requirement, if the state sets a higher requirement both laws can be followed and there is no conflict).

demonstrates that the AWA is not a complete, comprehensive plan, and that field preemption was not Congress' goal.<sup>189</sup>

It is well recognized that states have the power to preempt municipality law in any given area.<sup>190</sup> Many California cities and counties enacted pound seizure laws prior to Chapter 568.<sup>191</sup> While Chapter 568 bans the pound seizure of living animals, many municipalities additionally ban the pound seizure of dead or euthanized animals.<sup>192</sup> Chapter 568 does not expressly preempt the municipalities' existing laws.<sup>193</sup> The legislature wrote the statute to allow the municipalities to keep concurrent lawmaking powers and work in conjunction with those created laws.<sup>194</sup> Chapter 568 sets a minimum standard; therefore, as long as lower level government laws do not conflict with Chapter 568, they can coexist.<sup>195</sup> Ultimately, Chapter 568 is likely to unify California state law and work well in conjunction with existing municipality law.<sup>196</sup>

## V. CONCLUSION

When president Johnson signed the Animal Welfare Act of 1966, he stated that it would both bring awareness of animal abuse and help facilitate regulation of the treatment of animals transferred to research facilities and animal dealers.<sup>197</sup> Exactly fifty years, eight amendments, and thousands of laws later, Congress implemented the AWA to continue fighting for the welfare of animals.<sup>198</sup>

Prior to Chapter 568, an owner who abandoned an animal at enumerated facilities did not fear the animal being sold to an animal dealer or research facility, yet an owner who abandoned an animal at an animal shelter or pound did fear the living animal being sold for research.<sup>199</sup> Furthermore, the lack of uniformity amongst California city and county animal welfare laws caused the public to be weary of and question the true intentions of pounds and animal shelters.<sup>200</sup> Chapter 568 unifies California pound seizure law.<sup>201</sup> The public will

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189. *Id.* at 67.

190. CAL. CONST. art. XI § 7.

191. Engebretson, *supra* note 15.

192. HEARING ON AB 2269 BEFORE THE SENATE JUDICIARY COMMITTEE, 2015–2016 Reg. Sess. (2016)

193. Gardbaum, *supra* note 186, at 67.

194. *Id.*

195. *Id.* at 65 (when Congress sets a minimum requirement, if the state sets a higher requirement both laws can be followed and there is no conflict).

196. *Id.* (when Congress sets a minimum requirement, if the state sets a higher requirement both laws can be followed and there is no conflict).

197. *Laboratory Animal Welfare Act*, *supra* note 18 (the public outcry to pass legislation to protect the care of animals involved in experimentation after articles published by Sports Illustrated and Life in 1965 and 1966 which detail).

198. See *Laboratory Animal Welfare Act*, *supra* note 18 (enumerating the various amendments the AWA has experienced and the state laws that continue to build on it).

199. CAL. CIV. CODE § 1834.5(e)(as repealed by Chapter 568).

200. *Profile Stephanie Shain*, *supra* note 151; *Supply and Use of Dogs and Cats*, *supra* note 6.

now see that California pounds and animal shelters have the true intention of saving animals' lives and finding them forever homes.<sup>202</sup> California animal shelters and pounds now truly embody a safe haven for surrendered animals because those living abandoned animals can no longer be sold to a "research facility, animal dealer, or other person."<sup>203</sup>

Chapter 568's enactment took a tremendous leap towards abolishing the use of live animals for testing because it elevates awareness of the value of animals' lives and the unnecessary torture and death that pound seizure creates.<sup>204</sup> The legislature promulgates laws like Chapter 568 in an effort to align animal welfare laws with modern society's morals and belief system.<sup>205</sup> In the words of Senator Hannah-Beth Jackson, "thank you for this bill, and thank you for the hard work that you've done." ". . . on behalf of all the animals . . . this is . . . important."<sup>206</sup> Echoing the Animal Welfare Act of 1966, the fight for animal welfare is far from over, however, Chapter 568 is a step in a more positive direction.<sup>207</sup>

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201. Engebretson, *supra* note 15.

202. *Profile Stephanie Shain*, *supra* note 151; *Supply and Use of Dogs and Cats*, *supra* note 6; *Pound Seizure*, NAT'L ANTI-VIVISECTION SOC'Y, <http://www.navs.org/what-we-do/keep-you-informed/legal-arena/research/pound-seizure/> (last visited Aug. 1, 2016) (on file with *The University of the Pacific Law Review*).

203. CAL. CIV. CODE § 1834.7(c)(1) (enacted by Chapter 568).

204. *See Save Companion Animals*, *supra* note 20 (animal lives, whether a companion animal or not, should be valued); Schaeffer, *supra* note 22, at 5 (media reports surrounding a 1913 Pennsylvania bill that if passed, would have required pound seizure, explaining the bill as "vicious," "torture" and "legalized cruelty" that would "imperil the life and safety of every dog . . .").

205. *See Supply and Use of Dogs and Cats*, *supra* note 6 ("for many . . . harming animals for education purposes is a violation of deeply held principles and beliefs.").

206. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2269 (June 28, 2016) (Senator Jackson's closing statements at the meeting).

207. CAL. CIV. CODE § 1834.7 (as amended by Chapter 568) (Chapter 568 furthers the fight towards the complete abolishment of pound seizure); *History of AWA*, *supra* note 30.