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From Downer Cattle to Mystery Meat: Chapter 194 Is California's Response to the Largest Beef Recall in History

Andrenna L. Taylor

Code Section Affected

Penal Code § 599f (amended).

AB 2098 (Krekorian); 2008 STAT. Ch. 194.

I. INTRODUCTION

On January 30, 2008, after a six-week investigation, the Humane Society of the United States (HSUS) released a video documenting horrific acts of violence on “downed” animals in a Chino, California meatpacking plant owned by Westland/Hallmark.¹ While admitting to the indiscretions of the meat-packing plant, the plant’s executive stated, “‘I was shocked. I was horrified. I was sickened,’ by video that showed employees kicking or using electric prods on ‘downer’ cattle that were too sick to walk, jabbing one in the eye with a baton and using forklifts to push animals around.”²

The U.S. Department of Agriculture (USDA) stepped in immediately, closing down the Westland/Hallmark plant.³ HSUS turned over the video to the District Attorney’s office in San Bernardino County, California,⁴ which promptly charged two workers with both felony and misdemeanor counts for activities at the plant.⁵

Subsequently, the USDA recalled 143 million pounds of beef—the largest beef recall in history.⁶ The recall included all beef sold from the Westland/Hallmark plant in the past two years.⁷ However, 8.4 million pounds of the meat was recovered, or about 17.5%.⁸ A whopping “37 million pounds [had

1. See, e.g., *Undercover Investigation Reveals Rampant Animal Cruelty at California Slaughter Plant—A Major Beef Supplier to America’s School Lunch Program*, HUMANE SOC’Y, Jan. 30, 2008, http://www.hsus.org/farm/news/ournews/undercover_investigation.html [hereinafter *Undercover Investigation*] (on file with the *McGeorge Law Review*) (defining “downed” cattle as “those who are too sick or injured to walk”).

2. Matthew L. Wald, *Meat Executive Admits Sick Cattle Were Used*, N.Y. TIMES, Mar. 13, 2008, at C3.

3. Joe Nocera, *A Case of Abuse, Heightened*, N.Y. TIMES, Mar. 8, 2008, at C1.

4. *Undercover Investigation*, *supra* note 1.

5. See Jacob Adelman, *Chino Meatpacking Worker Arrested in Recall Case; Daniel Ugarte Navarro Charged with Five Felony Counts*, ABC NEWS, Feb. 19, 2008, <http://abcnews.go.com/US/Story?id=4312250&page=1> (on file with the *McGeorge Law Review*) (describing the circumstances leading to the arrest of the two workers charged with animal cruelty).

6. See Recall Release, U.S. Dep’t of Agric., California Firm Recalls Beef Products Derived From Non-Ambulatory Cattle Without the Benefit of Proper Inspection, Feb. 17, 2008, http://www.fsis.usda.gov/PDF/Recall_005-2008_Release.pdf [hereinafter Recall Release] (on file with the *McGeorge Law Review*) (outlining the specific products to be recalled).

7. David Brown, *USDA Orders Largest Meat Recall in U.S. History*, WASH. POST, Feb. 18, 2008, at A1.

8. Victoria Kim & Mitchell Landsberg, *Huge Beef Recall Issued; About 143 Million Pounds Are*

already gone] to make hamburgers, chili[,] and tacos”⁹ for the National School Lunch Program.¹⁰ Jack in the Box and In-N-Out Burger were also customers of Westland/Hallmark at the time of the beef recall.¹¹ Chapter 194 specifically bans the sale of the meat from downed animals for human consumption.¹² Chapter 194 supporters hope that this measure will protect citizens and animals from mad cow disease and other illnesses originating from downer cow meat.¹³

II. LEGAL BACKGROUND

In 1906, Upton Sinclair’s *The Jungle* exposed the unsavory and unsanitary details of Chicago’s meatpacking industry.¹⁴ Sinclair’s book led to the passage of the Federal Meat Inspection Act of June 1906 (FMIA), which is the foundation of our meat inspection laws today.¹⁵ Chapter 194’s author, Assembly Member Krekorian, analogized *The Jungle*, which was the catalyst for the FMIA, to the HSUS videotape, arguing that the latter should serve as the catalyst for Chapter 194.¹⁶

A. Laws Governing Slaughterhouse Inspection

At its inception, FMIA established three major sanitary standards for the slaughterhouse inspections.¹⁷ “[FMIA] required mandatory inspection of livestock before slaughter, mandatory postmortem inspection of every carcass[,] and set explicit sanitary standards for slaughterhouses.”¹⁸ The USDA is the parent

Targeted, but the Amount may be Much Greater Due to Processing Methods, L.A. TIMES, Feb. 18, 2008, <http://www.latimes.com/news/local/la-me-beef18feb18,0,4428760.story> (on file with the *McGeorge Law Review*).

9. See Andrew Martin, *Slaughterhouse Orders Largest Recall Ever of Ground Beef*, N.Y. TIMES, Feb. 18, 2008, at A10.

10. Greg Toppo, *Beef Recall Spotlights Real Cost of Cheap School Lunches*, USA TODAY, Apr. 30, 2008, http://www.usatoday.com/news/education/2008-04-30-school-lunch-cost_n.htm (on file with the *McGeorge Law Review*).

11. Kim & Landsberg, *supra* note 8.

12. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS of AB 2098, at 3 (Apr. 23, 2008) (“Current law does not prohibit the purchasing, slaughter, and sale of non-ambulatory animals for consumption. This bill will amend the Penal Code to include this vitally important safeguard.”).

13. *Id.*

14. See generally UPTON SINCLAIR, *THE JUNGLE* (Simon & Schuster 2004) (1906).

15. United States Department of Agriculture, About FSIS: Celebrating 100 Years of FMIA, http://www.fsis.usda.gov/About_FSIS/100_Years_FMIA/index.asp (last visited Feb. 1, 2009) [hereinafter 100 Years of FMIA] (on file with the *McGeorge Law Review*).

16. Paul Krekorian, *Upton Sinclair’s “The Jungle” Revisited: California Legislation to Promote Food Safety and Outlaw Sale of Meat from Seriously Ill Cattle*, CAL. PROGRESS REP., Apr. 6, 2008, http://www.californiaprogressreport.com/2008/04/upton_sinclair.html (on file with the *McGeorge Law Review*).

17. United States Department of Agriculture, Fact Sheets, Production & Inspection: Slaughter Inspection 101, http://www.fsis.usda.gov/fact_sheets/Slaughter_Inspection_101/index.asp (last visited Feb. 1, 2009) (on file with the *McGeorge Law Review*).

18. 100 Years of FMIA, *supra* note 15.

agency of the Food Safety and Inspection Service (FSIS), which enforces FMIA.¹⁹

There are specific laws that govern the slaughter of downer cattle.²⁰ Consuming meat from downer cattle greatly increases the risk of food-borne illnesses such as E. Coli, salmonella, and bovine spongiform encephalitis²¹ (commonly known as “mad cow disease”).²² Mad cow disease is dangerous but rare—only three cases of mad-cow disease have been reported in the United States.²³

Both federal and state laws govern the inspection of slaughterhouses, including handling of downed cattle.²⁴ However, exceptions existed at both the state and federal level permitting the slaughter of downed cattle.²⁵

An exception in the federal law allows downer cattle to be slaughtered if done so separately and if reexamined postmortem by a veterinarian.²⁶ On May 20, 2008, the Secretary of Agriculture announced plans to terminate this exception.²⁷

California law allows meat procured from downed cattle to enter the food supply.²⁸ Prior California law made it a crime for slaughterhouses to buy or sell downed animals,²⁹ but did not ban the sale of downed cattle for human consumption.³⁰ “California ha[d] limited ability in preventing meat that [was] classified as unfit for human consumption from passing to the general public.”³¹

Some view the events at the Chino plant as proof of the inadequate oversight of slaughterhouses in the United States.³² As stated by a former Agriculture Department food-safety official, “[t]he failure of the inspection program to stop the [Westland/Hallmark] company’s egregious behavior is just another sign of how

19. *Id.*

20. *See generally* 21 U.S.C. § 601 (2000).

21. Krekorian, *supra* note 16.

22. *See Brown, supra* note 7 (describing the effects of “mad cow” disease).

23. Centers for Disease Control and Prevention, BSE (Bovine Spongiform Encephalopathy, or Mad Cow Disease), Sept. 18, 2008, <http://www.cdc.gov/ncidod/dvrd/bse/> (on file with the *McGeorge Law Review*).

24. 21 U.S.C. § 661; CAL. PENAL CODE § 599f (amended by Chapter 194).

25. 21 U.S.C. § 603; CAL. PENAL CODE § 599f (amended by Chapter 194).

26. 21 U.S.C. § 603.

27. *See* Press Release, Ed Schafer, USDA Sec’y, Agriculture Secretary Ed Schafer Announces Plan to End Exceptions to Animal Handling Rule, May 20, 2008, http://www.usda.gov/wps/portal/!ut/pl_s.7_0_A/7_0_1OB?contentidonly=true&contentid=2008/05/0131.xml (on file with the *McGeorge Law Review*).

28. CAL. PENAL CODE § 599f (amended by Ch. 194).

29. *Id.*

30. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS of AB 2098, at 3 (Apr. 1, 2008).

31. *Id.*

32. *See* David Kesmodel, Lauren Etter & Jane Zhang, *Beef Recall Raises Worry on Industrial Oversight*, WALL ST. J., Feb. 19, 2008, <http://online.wsj.com/article/SB120328489778174403.html> (on file with the *McGeorge Law Review*) (“The failure of the inspection program to stop the company’s egregious behavior is just another sign of how USDA’s thousands of meat inspectors are locked into a rigid, antiquated form of inspection that is not filling the bill on either food safety or animal welfare” (quoting former Agriculture Department safety official, Mike Taylor)).

USDA's thousands of meat inspectors are locked into a rigid, antiquated form of inspection that is not filling the bill on either food safety or animal welfare."³³

B. *Beef Recalls and the Westland/Hallmark Recall*

Beef recalls in the United States are quite common.³⁴ In 2007, there were twenty beef recalls, but most were due to fear of E. coli contamination rather than mad cow disease.³⁵ Until the Westland/Hallmark recall, the largest meat recall in history occurred in 1999, when the USDA recalled 35 million pounds of frozen meat products potentially contaminated with listeria bacteria.³⁶ The USDA reported no illnesses.³⁷

The Westland/Hallmark plant consistently received complaints about abusive treatment of animals.³⁸ In 1996, the Inland Empire Humane Society wrote a letter to the Westland/Hallmark plant, stating, "there is not another slaughterhouse in this area that has created more problems for the police department and our agency, than yours."³⁹ In response to these complaints, the plant made a pledge to treat downer animals humanely.⁴⁰ Despite their pledge, in May 1998, a HSUS worker saw a cow with a "hoof hanging by a tether of skin wandering around a parking lot for 15 minutes before the USDA inspector signed off to have it euthanized."⁴¹ Also, in 2005, the USDA reprimanded the plant for overusing electric cattle prods.⁴²

The January 2008 recall was in response to the release of a videotape by the HSUS worker⁴³ depicting plant workers using cruel measures to make downer animals stand so they could legally be slaughtered.⁴⁴ On June 20, 2008, one of the workers pled guilty to two felony counts and two misdemeanor counts for animal cruelty.⁴⁵

33. *Id.*

34. See Donald G. McNeil, Jr., *Questions on U.S. Beef Remain*, INT'L HERALD TRIB., June 11, 2008, <http://www.iht.com/articles/2008/06/11/asia/11beef.php> (on file with the *McGeorge Law Review*) (noting that in 2007 "[t]he USDA issued 20 meat recalls").

35. Brown, *supra* note 7.

36. *Top Six Meat Recalls in U.S. History*, U.S. NEWS & WORLD REP., Feb. 20, 2008, <http://www.usnews.com/articles/news/national/2008/02/20/top-six-meat-recalls-in-us-history.html> (on file with the *McGeorge Law Review*).

37. *Id.*

38. Julie Schmit, *Meat Plant Concerns Raised for Years*, USA TODAY, Mar. 5, 2008, http://www.usatoday.com/money/industries/food/2008-02-27-westland-meat-recall_N.htm (on file with the *McGeorge Law Review*).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Undercover Investigation*, *supra* note 1.

44. See Kim & Landsberg, *supra* note 8 ("[T]he Humane Society of the United States released a video showing workers at the plant using forklifts and water hoses, among other methods, to rouse cattle too weak to walk.").

45. *Hallmark Slaughter Plant Manager Convicted of Felony Animal Cruelty*, HUMANE SOC'Y, June 20,

Fortunately, no illnesses from the recalled meat have been reported.⁴⁶ The USDA recalled the meat from Westland/Hallmark because the cattle “did not receive complete and proper inspection.”⁴⁷ While the cattle did receive proper ante-mortem inspections, once they became non-ambulatory, they were not given proper second inspections.⁴⁸ Therefore, although the plant did not meet the proper inspection standards, the risk of illness was relatively low because the cattle did pass an inspection before being slaughtered.⁴⁹

III. CHAPTER 194

Chapter 194 explicitly prohibits the butchering of downed animals for human consumption and ensures the humane treatment of downed animals.⁵⁰ To protect meat consumers, Chapter 194 makes three changes to existing law. First, federally-inspected facilities are no longer exempt “from buying, selling[,] or receiving a nonambulatory animal.”⁵¹ Second, Chapter 194 renders the transportation and sale of meat of downed cattle for human consumption criminal conduct.⁵² Lastly, Chapter 194 increases existing penalties for violations of these provisions.⁵³ Violations may be charged as a misdemeanor or felony with \$20,000 fines and up to a year in state prison.⁵⁴

Chapter 194 also includes provisions to ensure the humane treatment of farm animals.⁵⁵ Chapter 194 requires slaughterhouses to humanely euthanize downed animals.⁵⁶ Additionally, facilities such as stockyards or dealers must either provide veterinary treatment to downed animals or humanely euthanize them.⁵⁷

2008, http://www.hsus.org/acf/news/pressrel/hallmark_slaughter_plant_manager_felony_cruelty_conviction_062008.html (on file with the *McGeorge Law Review*).

46. Kim & Landsberg, *supra* note 8.

47. Recall Release, *supra* note 6.

48. *Id.*

49. *Id.*

50. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2098, at 3 (Apr. 23, 2008).

51. *Id.* at 1.

52. CAL. PENAL CODE § 599f(b)-(c) (amended by Chapter 194).

53. *See id.* § 599f(h) (amended by Chapter 194) (“A violation of this section is subject to imprisonment in the county jail for a period not to exceed one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment.”). Prior law stated that a violation of the statute constituted a misdemeanor. *Id.* § 599f(d) (West 1999).

54. *Id.* § 599f(f) (amended by Chapter 194).

55. *Id.* § 599f(c)-(d) (amended by Chapter 194).

56. *Id.* § 599f(c) (amended by Chapter 194).

57. *Id.* § 599f(d) (amended by Chapter 194).

IV. ANALYSIS OF CHAPTER 194

Chapter 194's supporters hope that the new regulations on slaughterhouses will safeguard public health and enforce the humane treatment of animals.⁵⁸ San Bernardino's District Attorney said that if Chapter 194 was in place at the time of the incident, Westland/Hallmark itself could be charged, rather than just the employees.⁵⁹ Supporters hope the severe felony consequences of Chapter 194 will deter the slaughter of downed cattle at plants across California and eliminate the risk of illness from those animals.⁶⁰

Chapter 194 enacts severe repercussions to ensure that downed cattle are not slaughtered for human consumption.⁶¹ Now, those who violate Chapter 194 will face felony—rather than misdemeanor—prosecution.⁶² Even if the Agriculture Secretary is successful in lobbying for legislation banning the slaughter of downed cattle altogether,⁶³ Chapter 194 provides a necessary route of enforcement.⁶⁴

There is no recorded opposition to Chapter 194.⁶⁵ This is likely because of the serious repercussions in the meat industry; fifty nations dropped the U.S. as a meat supplier after the first reported case of mad-cow disease.⁶⁶ To gain a foothold in the world beef market, the cattle industry benefits if foreign suppliers know that the U.S. cattle industry will not ship tainted meat.⁶⁷ The cattle industry realizes that unless new laws are put in place, American consumers and foreign markets will not have confidence in American beef.⁶⁸

Overall, Chapter 194 reduces the risk of illness due to consumption of meat from downed cattle and aids the cattle industry by promoting a clean image of slaughterhouses in America.⁶⁹

V. CONCLUSION

Prior to Chapter 194, the law protected humans from consuming potentially dangerous meat of downed animals and protected animals from inhumane

58. Krekorian, *supra* note 16.

59. *Id.*

60. *Id.*

61. CAL. PENAL CODE § 599f(f) (amended by Chapter 194).

62. *Id.*

63. Press Release, Ed Schafer, *supra* note 27.

64. CAL. PENAL CODE § 599f(f) (amended by Chapter 194).

65. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS of AB 2098, at 5 (Apr. 1, 2008).

66. McNeil, Jr., *supra* note 34.

67. *Id.*

68. Erica Werner, *In Change, Industry Groups Back Downer Cow Ban*, USA TODAY, Apr. 22, 2008, http://www.usatoday.com/news/washington/2008-04-22-4234314486_x.htm (on file with the *McGeorge Law Review*).

69. CAL. PENAL CODE § 599f(f) (amended by Chapter 194).

treatment.⁷⁰ However, the protections were inadequate.⁷¹ Chapter 194 strengthens existing law by explicitly stating that downed animals cannot be butchered for human consumption and imposes felony charges as a deterrent to any violation.⁷² While the impetus for Chapter 194 was the largest beef recall in history,⁷³ the most significant changes involve the humane treatment of downed animals.⁷⁴ Chapter 194's supporters hope that it will protect citizens from consuming potentially dangerous meat,⁷⁵ ensure the humane treatment of animals,⁷⁶ and save the meat industry from more videos of animal brutality.⁷⁷

70. ASSEMBLY FLOOR, COMMITTEE ANALYSIS of AB 2098, at 1-2 (Apr. 23, 2008).

71. *Id.* at 3.

72. CAL. PENAL CODE § 599f(a) (amended by Chapter 194).

73. ASSEMBLY FLOOR, COMMITTEE ANALYSIS of AB 2098, at 3 (Apr. 23, 2008).

74. Nocera, *supra* note 3.

75. ASSEMBLY FLOOR, COMMITTEE ANALYSIS of AB 2098, at 3 (Apr. 23, 2008).

76. *Undercover Investigation*, *supra* note 1.

77. Nocera, *supra* note 3.