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# **A STATE-BY-STATE GUIDE TO “AG-GAG” LEGISLATION**

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May 2023

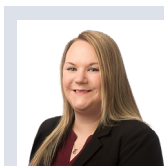
## OVERVIEW

Since the 1990s, legislatures have grappled with how to safeguard the animal production industry against smear campaigns by individuals or animal welfare activist groups who gain access to private property through deception. After all, trespass is a crime—in one form or another—in every state. It follows that when access to property is gained through deception or fraud, criminal penalties should apply, no matter the purported good intentions of the trespasser. It has become commonplace for animal rights organizations to conduct undercover private investigations of animal agriculture facilities to uncover incidents of animal abuse. “Investigators” frequently gain access by applying for employment without disclosing their true motives—and in some instances blatantly lie about their affiliations when asked. They sometimes wear hidden cameras—frequently in violation of posted notices forbidding recording on the property—and the resulting footage is then carefully (and misleadingly) edited and sent to media outlets, causing irreparable reputational and economic damage. In an economic climate where labor shortages are at critical levels, the harm to the producers can lead to closure of businesses if left unaddressed. Furthermore, if such subterfuge and trespass on farms are condoned or ignored, there are potential implications for food safety. Today’s animal rights activists could provide actors whose motives are less well-intentioned with the legal precedent and tactics to pose serious biosecurity hazards in the form of food terrorism, a frightening notion as the world already grapples with rising food insecurity and growing inequity.

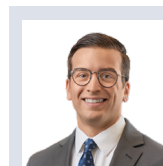
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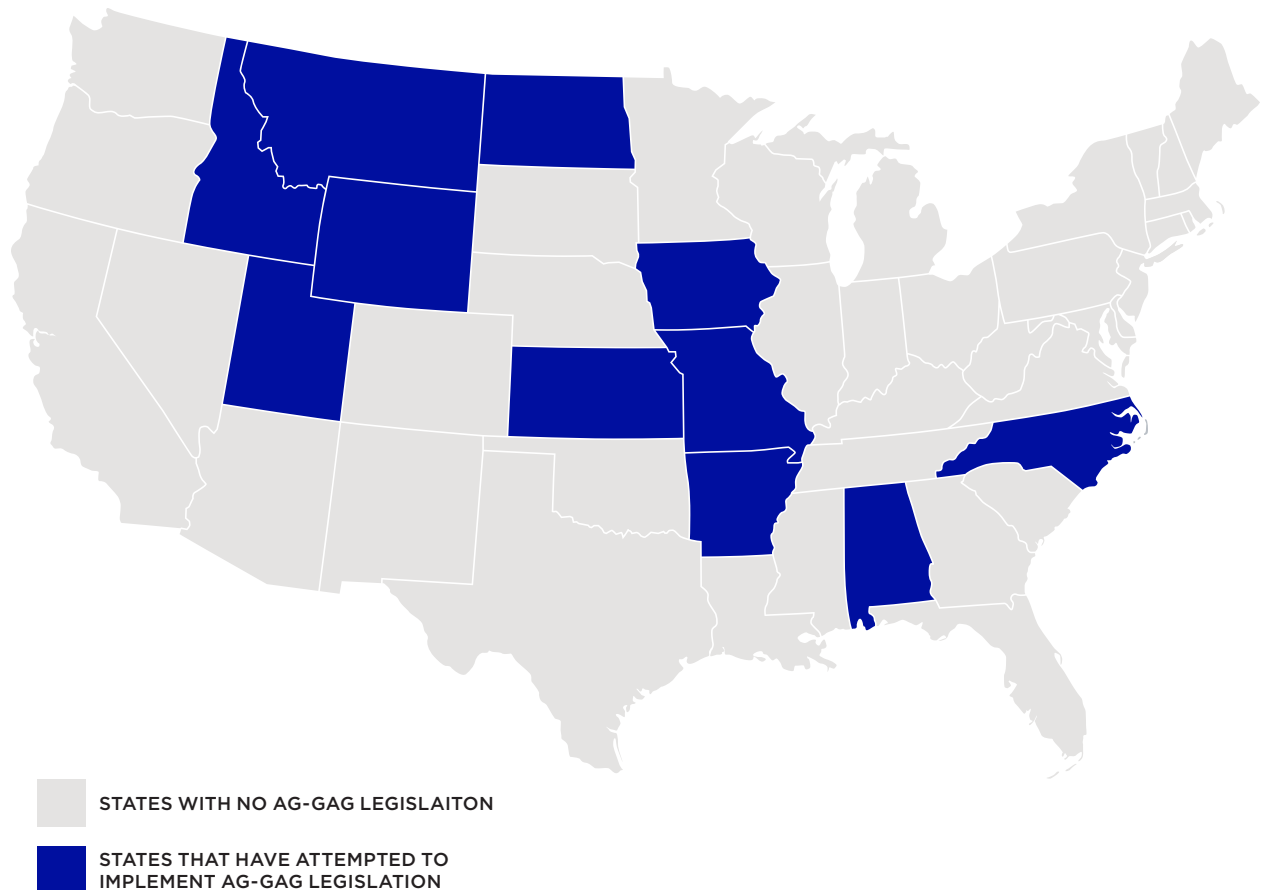
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# STATE LAW ATTEMPTS TO SAFEGUARD FOOD SYSTEMS INDUSTRY

Several states have made recent attempts to provide the animal production industry protection against unlawful interference by enacting so-called "Ag-Gag" laws. These laws vary in substance but generally prohibit and criminalize gaining access to an agricultural production facility by false pretenses. Animal rights groups are deterred from conducting undercover investigations to avoid criminal prosecution. A recent wave of litigation is challenging these laws as unconstitutional, claiming the laws violate the First Amendment's guarantee of free speech.

## STATUS OF AG-GAG STATE LEGISLATION

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The Tenth Circuit overturned three parts of the Kansas “Ag-Gag” law, a decision which the U.S. Supreme Court declined to review on April 25, 2022. There is currently no pending legislation aimed to cure the constitutional deficiencies of the overturned Kansas law. The Eighth Circuit found a prior version of Iowa’s “Ag-Gag” law ([Iowa Code § 717A.3A](#)) as partially unconstitutional. In a win for the industry, the court upheld as constitutional the “Access Provision” of that law, which prohibited using intentionally false statements to trespass on to private property. The Iowa legislature has since amended its law ([Iowa Code § 717A.3B](#)), which has been deemed unconstitutional by the U.S. District Court for the Southern District of Iowa, but is pending appeal to the Eighth Circuit. Also pending appeal to the Eighth Circuit is a finding that Iowa’s Trespass-Surveillance statute, ([Iowa Code § 727.8A](#)), which created a new crime to video or audio record on trespassed property, is unconstitutional. On appeal, Iowa has argued that the law must survive First Amendment scrutiny as a regulation on conduct, not speech.

As animal welfare legislation is evolving and animal welfare litigation is on the rise, Husch Blackwell’s Food Systems team continues to monitor the status of “Ag-Gag” legislation for participants in the animal health and production industry. The following table provides the current status of “Ag-Gag” legislation on a state-by-state basis across the U.S. (updated May 2023).

STATE	CITATION	DETAILS	CURRENT STATUS
Alabama	<a href="#">Ala. Code 1975 § 13A-11-153</a>	Illegal to “obtain access” to a facility “by false pretenses.” Illegal to obtain or possess records or data by deception or theft.	Active, not currently being challenged.
Arkansas	<a href="#">Ark. Code § 16-118-113</a>	Civil penalties for accesses non-public/commercial property and recording images or sound that damage the owner.	Active, not currently being challenged.  Challenge filed in the United States District Court for the Eastern District of Arkansas dismissed on March 31, 2023 for failure to state a claim upon which relief could be granted. See <i>Animal Legal Defense Fund et al v. Vaught et al</i> , 4:19-CV-00442.

STATE	CITATION	DETAILS	CURRENT STATUS
Idaho	<a href="#">Idaho §18-7042</a>	Illegal to enter a facility or obtain employment there under misrepresentation. Illegal to obtain records or record audio or video without express consent.	Partially Unconstitutional.  The Ninth Circuit upheld Idaho’s criminalization of misrepresentations to obtain records and secure employment in § 18-7042(1)(b)-(c).
Iowa	<a href="#">Iowa Code § 717A.3A:</a> Agricultural production facility fraud	Illegal to “obtain access” to a facility “by false pretenses.” Illegal to obtain employment based on false representations while intending to commit an act not authorized by the employer.	Partially Unconstitutional.  As described in a <a href="#">prior blog post</a> , the Eighth Circuit upheld § 717A.3A(1)(a), the “Access Provision,” and struck down § 717A.3A(1)(b), the “Employment Provision,” in <a href="#">Animal Legal Defense Fund v. Reynolds</a> , 8 F.4th 781 (8th Cir. 2021).
Iowa	<a href="#">Iowa Code § 717A.3B:</a> Agricultural production facility fraud	Illegal to enter a facility or gain employment under “false pretenses” while intending to harm the owner or its operations.	Unconstitutional.  On March 14, 2022, the United States District Court for the Southern District of Iowa granted summary judgment for the Animal Legal Defense Fund, striking down § 717A.3B as unconstitutional. See <i>Animal Legal Def. Fund v. Reynolds</i> , No. 4:19-CV-00124-SMR-HCA, 2022 WL 777231 (S.D. Iowa Mar. 14, 2022)  The decision is currently pending appeal in the Eighth Circuit (Case No. 22-1830).

STATE	CITATION	DETAILS	CURRENT STATUS
Iowa	<a href="#">Iowa Code § 716.7A:</a> Food operation trespass	Illegal to enter or remain on the property of a food operation without consent. Establishes “food operation trespass.”	Active, not currently being challenged.
Iowa	<a href="#">Iowa Code § 727.8A:</a> Cameras or electronic surveillance devices — trespass	The law creates a new crime for a person who (i) “commit[s] a trespass as defined in section 716.7” and (ii) “knowingly places or uses a camera or electronic surveillance device that transmits or records images or data while the device is on the trespassed property.”	Unconstitutional  On September 26, 2022, the United States District Court for the Southern District of Iowa granted summary judgment for the Animal Legal Defense Fund striking down § 727.8A as unconstitutional. See <i>Animal Legal Defense Fund et al v. Reynolds et al.</i> , 421CV00231SMRHCA, 2022 WL 4998999 (S.D. Iowa Sept. 26, 2022)  The decision is currently pending appeal in the Eighth Circuit. (Case No. 22-3464). The parties have filed briefs alongside a number of amicus curiae.
Iowa	Proposed Legislation - House Files 572	Proposed law creates a new crime for a person who uses, for an extended period of time, a remotely piloted aircraft with surveillance equipment over a homestead or a secure farmstead.	Passed Iowa House. Awaiting vote in Iowa Senate.

STATE	CITATION	DETAILS	CURRENT STATUS
Kansas	<a href="#">Kan. Stat. Ann. § 47-1827</a>	Illegal to enter a facility without consent of owner and with intent to damage the enterprise of the facility “to take pictures by photograph, video camera or by any other means.”	Unconstitutional.  As described in a <a href="#">prior blog post</a> , the Tenth Circuit overturned three parts of the “Ag-Gag” law in <a href="#">Animal Legal Def. Fund v. Kelly, 9 F.4th 1219 (10th Cir. 2021)</a> .  On April 25, 2022, the United States Supreme Court denied a request to review the decision of the Tenth Circuit.
Missouri	<a href="#">Missouri § 578.405</a>	Criminalizes obtaining access to an animal facility by false pretenses for the purposes of performing acts not authorized by the facility.	Active, not currently being challenged.
Missouri	<a href="#">Missouri § 261.099</a>	Illegal to “inspect” animal facilities; prohibits testimony on conditions or events on the grounds in criminal prosecutions.	Active, not currently being challenged.
Montana	<a href="#">MCA § 81-30-103</a>	Illegal to enter a facility without consent of owner and with intent to damage the enterprise of the facility “to take pictures by photograph, video camera, or any other means with the intent to commit criminal defamation.”	Active, not currently being challenged.

STATE	CITATION	DETAILS	CURRENT STATUS
North Carolina	<a href="#">N.C. Gen. Stat. § 99A-2</a>	Illegal to access non-public property and exceed one's authority, including an employee knowingly placing a camera or recording device on the property.	Unconstitutional as it relates to newsgathering activities only.  <i>People for the Ethical Treatment of Animals, Inc. v. N. Carolina Farm Bureau Fed'n, Inc.</i> , 60 F.4th 815, 841 (4th Cir. 2023).
North Dakota	<a href="#">ND §12.1-21.1-02</a>	Illegal to enter an animal facility and "use or attempt to use a camera, video recorder, or other video or audio recording equipment."	Active, not currently being challenged.
Utah	<a href="#">Utah Code § 76-6-112</a>	Illegal to record images or sounds of an "agricultural operation" without the owner's consent; illegal to gain employment with intent to do so.	Unconstitutional.  The United States District Court for the District of Utah held § 76-6-112 is unconstitutional. See <i>Animal Legal Def. Fund v. Herbert</i> , 263 F. Supp. 3d 1193 (D. Utah 2017).  The decision was not appealed.
Wyoming	<a href="#">Wyo. Code § 6-3-414</a> (criminal); <a href="#">Wyo. Code § 40-27-101</a> (civil)	Illegal to cross private lands and collect data (e.g., photographs or samples) to give to federal or state regulators.	Unconstitutional.  The United States District Court for the District of Wyoming held both the criminal and civil statutes were unconstitutional. See <i>W. Watersheds Project v. Michael</i> , 353 F. Supp. 3d 1176 (D. Wyo. 2018).  The decision was not appealed.