

**Roadkill — It’s What’s for Dinner: How Eating Roadkill
May Help Reduce Automobile Accidents**

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Code Sections Affected

Fish and Game Code §§ 1023, 2000.3, 2000.6 (new), § 2000.5 (amended)
SB 395 (Archuleta); 2019 STAT. CH. 869

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I. INTRODUCTION

While driving along a highway at dusk, Brent Cole crashed into a 1,000 pound bull moose.¹ The moose flung atop his vehicle, collapsed the roof, and crushed his body.² Brent's neck snapped in two locations, paralyzing him from the shoulders down.³ Brent was a wildlife conservation officer for fifteen years prior to his paralyzing collision.⁴ Therefore, he was well aware he could hit wildlife while driving at dusk.⁵ Unfortunately, despite his awareness, he experienced the same fate many other drivers experience globally.⁶

An estimated one-to-two million wildlife-vehicle collisions occur each year in the United States.⁷ These collisions not only cost Americans an estimated \$8,000,000,000 annually, they also kill nearly 200 people each year.⁸ In California, over 20,000 wildlife-vehicle collisions occur annually.⁹ Yet, the California Highway Patrol ("CHP") and the California Department of Transportation ("Caltrans") receive less than 7,000 reports of wildlife-vehicle collisions each year, which means there is a gap in reporting.¹⁰ Californians are not the only ones paying for these animal-on-vehicle accidents.¹¹ In 2018, Caltrans spent nearly \$645,300 to remove roadkill from California roadways.¹²

1. Alexandra Christy, *Wildlife Crossings Are Win Win. The Question Is When When?*, MEDIUM (Nov. 22, 2014), <https://medium.com/@grantstories/wildlife-crossings-are-win-win-the-question-is-when-when-4a8165168da9> (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Nina-Marie Lister, *Reconciling Mobility: Redesigning the Road, Reweaving Landscape*, 5 MINDING NATURE 1, 21 (2012); Christy, *supra* note 1.

8. Lister, *supra* note 7.; Matt Vasilogambros, *Why Eating Roadkill Makes Roads Safer for People and Animals*, STATELINE ARTICLE (Mar. 6, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/06/why-eating-roadkill-makes-roads-safer-for-people-and-animals> (on file with *The University of the Pacific Law Review*); Starre Vartan, *How Wildlife Bridges Over Highways Make Animals—And People—Safer*, NATIONAL GEOGRAPHIC (Apr. 16, 2019), <https://www.nationalgeographic.com/animals/2019/04/wildlife-overpasses-underpasses-make-animals-people-safer/> (on file with *The University of the Pacific Law Review*).

9. Current Bill Status of SB 395, CALIFORNIA LEGISLATIVE INFORMATION, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB395 (last visited Apr. 29, 2019) (on file with *The University of the Pacific Law Review*).

10. See Fraser Shilling, Cameron Denney, David Waetjeh, Kathryn Harrol, Parisa Farman & Paola Perez, *Impact of Wildlife-Vehicle Conflict on California Drivers and Animals*, 12 UC DAVIS ROAD ECOLOGY CENTER (2018), available at https://roadecology.ucdavis.edu/files/content/news/CA_WVC_Hotspots_2018.pdf (on file with *The University of the Pacific Law Review*) (detailing how fewer than 7,000 wildlife-vehicle collisions get reported to Caltrans annually); see also Current Bill Statute of SB 395, *supra* note 9 (asserting that evidence suggests nearly 20,000 wildlife-vehicle collisions occur in California annually, which is far less than what is reported to Caltrans).

11. See *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, 2019 Leg., 2019–2020 Sess. 2 (Cal. 2019) (on file with *The University of the Pacific Law Review*) (describing how Caltrans spent approximately \$645,000 to discard roadkill in 2018).

12. *Id.*

Chapter 869 proposes to reduce these annual costs by permitting individuals to salvage roadkill only for human consumption purposes rather than requiring Caltrans to throw it away, while also closing the gap between the number of reported versus actually wildlife-vehicle collisions by implementing a new reporting platform.¹³ However, Chapter 869 is a band-aid solution because reporting and salvaging meat does not necessarily reduce wildlife-vehicle collisions.¹⁴ While Chapter 869 may alleviate Caltrans's burden of having to collect and dispose of roadkill, salvaging meat will not allow Brent Cole to walk again.¹⁵

II. LEGAL BACKGROUND

The days of the “hillbilly cuisine” stereotype are long gone.¹⁶ Today's society considers roadkill consumers environmentally-friendly and food-conscious.¹⁷ Places allowing people to salvage roadkill ultimately reduce food waste and help states track collision locations for future mitigation efforts.¹⁸ This legal background explores how the nation grew to protect and consume wildlife.¹⁹ Section A reviews how the United States and California progressed toward protecting wildlife.²⁰ Section B then analyzes the different roadkill laws across the nation and the different approaches to mitigating wildlife-vehicle collisions.²¹

A. The Evolution of Protecting and Consuming Wildlife in the United States and California

Hunting is part of the nation's heritage, such that “hunting has played a rich and prominent role in American culture.”²² Animals served as a source of food, clothing, and tools that were essential to Native Americans and early American

13. *Hearing on S.B. 395 Before the S. Appropriations Comm.*, 2019 Leg., 2019–2020 Sess. 2 (Cal. 2019) (on file with *The University of the Pacific Law Review*).

14. *Infra* Part IV.B–C.

15. Current Bill Status of SB 395, *supra* note 9.

16. Vasilogambros, *supra* note 8.; Ben Christopher, *Hot Off the Grille: Is California Ready to Legalize Roadkill Cuisine?*, CAPITOL PUBLIC RADIO (May 11, 2019), <http://www.capradio.org/articles/2019/05/11/hot-off-the-grille-is-california-ready-to-legalize-roadkill-cuisine/> (on file with *The University of the Pacific Law Review*).

17. Christopher, *supra* note 16.

18. Vasilogambros, *supra* note 8.; Ben Botkin, *Oregon's Law Allowing Salvage of Roadkill Proves Popular*, THE REGISTER-GUARD (Apr. 20, 2019), <https://www.registerguard.com/news/20190420/oregons-law-allowing-salvage-of-roadkill-proves-popular> (on file with *The University of the Pacific Law Review*).

19. *Infra* Part II.A–B.

20. *Infra* Part II.A.1–2.

21. *Infra* Part II.B.

22. *America, Hunting and How It All Started*, GOHUNT (July 2, 2015), <https://www.gohunt.com/read/life/america-hunting-and-how-it-all-started#gs.k6ao5a> (on file with *The University of the Pacific Law Review*).

Colonials.²³ Conversely, the United States legal system has a long history of protecting animals—dating all the way back to the mid 1600s.²⁴ Subsection 1 reviews the United States’ progression toward protecting wildlife during the later years of the 1960s and 1970s.²⁵ Subsection 2 highlights California’s similar, but more restrictive, evolution toward safeguarding federally-protected and California-native wildlife.²⁶

1. Evolution of Federal Wildlife Protections

In 1966, Congress enacted the Endangered Species Preservation Act (“ESPA”) to provide habitat protection for certain species.²⁷ A 1969 amendment to the ESPA prohibited the importation and sale of species facing worldwide extinction.²⁸ Other nations joined the United States and signed the Convention on International Trade in Endangered Species (“CITES”).²⁹ By 1973, the United States promulgated CITES as the Endangered Species Act (“ESA”).³⁰

While the ESA prohibits anyone from taking an endangered species (i.e. hunt, pursue, catch, capture, or kill) without a special permit, the ESA’s purpose is to prevent wildlife extinction.³¹ One way the government attempts to mitigate the threat of extinction is to protect wildlife habitats from destruction.³² In 1995, the timber industry tested the ESA’s regulatory power in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*.³³ In a 6–3 vote, the Supreme Court held that habitat modifications constitutes a “taking.”³⁴ Wildlife habitats provide food, shelter, and serve as a breeding site for rearing young—all of which are

23. *Id.*

24. See Janet M. Davis, *The History of Animal Protection in the United States*, THE ORGANIZATION OF AMERICAN HISTORIANS, <https://www.oah.org/tah/issues/2015/november/the-history-of-animal-protection-in-the-united-states/> (last visited Aug. 7, 2019) (on file with *The University of the Pacific Law Review*) (describing that in 1641 the Massachusetts General Court was the first to enact a animal protection law).

25. *Infra* Part II.A.1.

26. *Infra* Part II.A.2.

27. U.S. FISH AND WILDLIFE SERVICES, A HISTORY OF THE ENDANGERED SPECIES ACT OF 1973 (2011), available at <https://www.fws.gov/endangered/laws-policies/esa-history.html> (on file with *The University of the Pacific Law Review*); Habitat Conservation Planning Branch, *Choosing the Right CESA Permit*, CAL. DEP’T. OF FISH AND WILDLIFE, <https://www.wildlife.ca.gov/Conservation/CESA/Permits> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

28. U.S. FISH AND WILDLIFE SERVICES, *supra* note 27.

29. *Id.*

30. *Id.*

31. Lawrence R. Libesman & Steven A.G. Davidson, *Takings of Wildlife Under the Endangered Species Act After Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 5 U. BALT. J. ENVTL. L. 137, 138 (1995) (on file with *The University of the Pacific Law Review*); Habitat Conservation Planning Branch, *CESA to the Federal Endangered Species Act*, CAL. DEP’T OF FISH AND WILDLIFE, <https://www.wildlife.ca.gov/Conservation/CESA/FESA> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

32. Libesman, *supra* note 31.

33. *Id.* at 142.

34. *Id.* at 143.

essential to the survival of an individual species.³⁵ Thus, the Court extended protections to include habitat protection and declared the ESA grants broad protection to endangered species.³⁶ To this day, no one can take a federally-protected, endangered, and threatened species without a permit.³⁷ While a state may adopt its own respective version of the ESA, it must not be any less restrictive than the federal version.³⁸ However, California often pushes the needle further to make its laws more restrictive.³⁹

2. Evolution of California Wildlife Protections

California adopted its own version of the ESA.⁴⁰ The California Endangered Species Act (“CESA”) prohibits taking native, endangered, or threatened species without a permit.⁴¹ Californians must also obtain both a license and permit to take any animal—not just endangered or threatened wildlife.⁴² This permitting requirement also applies to dead animals—including roadkill, thanks to California’s strict hunting laws.⁴³

Under current state law, unlawfully possessing wildlife dead or alive “carries a fine of up to \$1,000 and a six-month jail term.”⁴⁴ Where the violation involves an animal with trophy-like characteristics, law enforcement may impose a fine of \$5,000 up to \$40,000 along with a one-year jail term.⁴⁵ According to the California Department of Fish and Wildlife (“CDFW”) Deputy Director, these enhanced penalties aim to more closely align the punishment with the severity of the crime.⁴⁶

35. *Id.* at 139.

36. *Babbitt v. Sweet Home Ch. Of Commun. For Great Or.*, 515 U.S. 687 (1995) (on file with *The University of the Pacific Law Review*).

37. Libesman, *supra* note 31, at 139.

38. U.S. CONST. art. VI, cl. 2; Libesman, *supra* note 31, at 169.

39. Habitat, *CESA to the Federal Endangered Species Act*, *supra* note 31.

40. Habitat Conservation Planning Branch, *Choosing the Right CESA Permit*, *supra* note 27; Habitat, *CESA to the Federal Endangered Species Act*, *supra* note 31.

41. Habitat Conservation Planning Branch, *Choosing the Right CESA Permit*, *supra* note 31; Habitat Conservation Planning Branch, *CESA to the Federal Endangered Species Act*, *supra* note 27.

42. *2018 California Big Game Hunting Digest*, CAL. DEP’T. OF FISH AND WILDLIFE, <http://www.wildlife.ca.gov/Regulations> (last visited June 20, 2019) (on file with *The University of the Pacific Law Review*).

43. Christopher, *supra* note 16.

44. Christopher, *supra* note 16.

45. See Big Game Hunting Adventures LLC, *What is Trophy Hunting*, THE BIG GAME HUNTING BLOG, <https://thebiggamehuntingblog.com/what-is-trophy-hunting/> (last visited Oct. 20, 2019) (defining trophy characteristics as an animal with a particular set of desirable characteristics, such as large horns or antlers, or a distinctive hide that hunters desire to keep to memorialize the hunt) (on file with *The University of the Pacific Law Review*); *New Laws Enhance Poaching Penalties to Better Protect Wildlife*, CAL. DEP’T. OF FISH AND WILDLIFE (Oct. 24, 2017), <https://cdfgnews.wordpress.com/2017/10/24/new-laws-enhance-poaching-penalties-to-better-protect-wildlife/> (on file with *The University of the Pacific Law Review*).

46. *New Laws Enhance Poaching Penalties to Better Protect Wildlife*, *supra* note 45.

B. Roadkill Salvaging Laws and Mitigation Efforts Across the States

Roadkill salvaging laws vary from state to state, as well as the purpose for enacting such laws.⁴⁷ Below is an exploration of the various roadkill laws across the nation, and the wildlife-vehicle collision mitigation efforts states implemented because of roadkill monitoring programs.⁴⁸ Subsection 1 reviews the roadkill laws in each state, highlighting both similarities as well as differences in the laws.⁴⁹ Subsection 2 explores the wildlife-vehicle mitigation successes that are a direct result of redesigning the roadway landscape to enable wildlife to safely cross via wildlife overpasses and underpasses.⁵⁰

1. Roadkill Salvaging Laws Across the States

More than half of the nation's states have implemented some sort of roadkill salvage program.⁵¹ Oregon utilized the roadkill salvage program to monitor animals for disease.⁵² Idaho used the program to collect data in support of "build[ing] fencing, warning signs, wildlife underpass tunnels and wildlife overpasses to protect deer, elk, and other animals."⁵³ Regardless of the program's intent, each state's roadkill salvage program possesses a unique approach.⁵⁴

Louisiana requires individuals to obtain a permit before taking a deceased animal.⁵⁵ Individuals must obtain a "donation form" from the Louisiana Department of Wildlife and Fisheries ("LDWF") to keep the carcass.⁵⁶ People who do not wish to salvage the carcass may leave it for LDWF—who donates the carcass to charity.⁵⁷ Similarly, Arizona and Arkansas require an individual to obtain a salvage permit from a Peace Officer before taking or transporting the

47. *Infra* Part II.B.1.

48. *Infra* Part II.B.1–2.

49. *Infra* Part II.B.1.

50. *Infra* Part II.B.2.

51. Vasilgambros, *supra* note 8.

52. Ula Chrobak, *These States Want You to Eat More Roadkill*, POPULAR SCIENCE (Mar. 12, 2019), <https://www.popsoci.com/legal-to-eat-roadkill/> (on file with *The University of the Pacific Law Review*).

53. Vasilgambros, *supra* note 8.

54. See Patrick May, *Roadkill on the Menu? What California Could Learn from Other States: Proposed Law Would Allow Motorists that Fatally Hit an Animal to Salvage it for Consumption*, THE MERCURY NEWS (Feb. 25, 2019), <https://www.mercurynews.com/2019/02/25/roadkill-on-the-menu-what-california-could-learn-from-other-states/> (detailing the various roadkill laws unique to each state for the states that have adopted a roadkill salvaging program) (on file with *The University of the Pacific Law Review*).

55. See *Here Are the Roadkill Laws in All 50 States*, STONE AXE BLOG (June 10, 2016), <http://www.stoneaxcherbals.com/2016/06/here-are-roadkill-laws-in-all-50-states.html> (on file with *The University of the Pacific Law Review*) ("After a collision the operator is required to contact authorities who then get in contact with the LDWF. . . [the] LDWF will then ask if they want to keep the animal. If the answer is yes, then LDWF will fill out a donation form for the person to keep the animal).

56. *Id.*

57. *Id.*

deceased animal.⁵⁸

States like Alabama, Illinois, and Virginia restrict roadkill salvaging based on each state's respective hunting season.⁵⁹ Alaska considers roadkill the property of the state.⁶⁰ Therefore, only Alaskan authorities may collect the roadkill, which they then donate to local charities.⁶¹ North Carolina and Wisconsin authorize persons not involved in the wildlife-vehicle collision to salvage roadkill, but the individual must first obtain a permit.⁶² Wyoming prohibits salvaging roadkill for human consumption but authorizes salvaging the carcass for other purposes.⁶³

Oregon, New Jersey, and Pennsylvania prohibit individuals keeping antlers if the individual obtained the antlers during a wildlife-vehicle collision.⁶⁴ These states require the collector to surrender antlers to the appropriate authorities.⁶⁵ Authorities in Oregon then sell the surrendered antlers to collectors.⁶⁶ Virginia requires a peace officer to confirm a person did not intentionally hit the animal before giving permission to salvage the carcass.⁶⁷ Illinois restricts roadkill salvaging to state residents who are not delinquent in child support payments.⁶⁸ As each state adopts its own unique roadkill laws, the trend toward permitting roadkill salvaging for human consumption continues to grow.⁶⁹

2. Roadkill Mitigation Efforts Across the States

According to the Federal Highways Administration, the number of wildlife-vehicle collisions increased 50% from 2000–2015.⁷⁰ However, studies show that wildlife crossings—when combined with fencing—are 86–99% effective at preventing these collisions.⁷¹ Idaho used its roadkill salvage program for collecting data to support collision mitigation efforts.⁷² The state identified the I-

58. See ARIZ. REV. STAT. ANN. § 17-319 (2019) (informing the public that the driver must first obtain a salvage permit from a peace officer before salvaging the animal); see also *Here Are the Roadkill Laws in All 50 States*, *supra* note 55 (describing how a only the driver can request a salvage permit, but the driver must request a permit from a peace officer in order to salvage roadkill).

59. *Here Are the Roadkill Laws in All 50 States*, *supra* note 55.

60. ALASKA STAT. ANN. § 5 A.A.C. 92.220(b) (West 2019); *Here Are the Roadkill Laws in All 50 States*, *supra* note 55.

61. Chrobak, *supra* note 52.; *Here Are the Roadkill Laws in All 50 States*, *supra* note 55.

62. *Here Are the Roadkill Laws in All 50 States*, *supra* note 55.

63. *Id.*

64. *Id.*; May, *supra* note 54.

65. *Here Are the Roadkill Laws in All 50 States*, *supra* note 55.; May, *supra* note 54.

66. May, *supra* note 54.

67. VA. CODE ANN. § 29.1-539 (West 2019).

68. 17 ILL. COMP. STAT. § 750.10 (West 2019).

69. Vasilogambros, *supra* note 8.

70. Christy, *supra* note 1.

71. *Id.*

72. Vasilogambros, *supra* note 8.

15 corridor as a hotspot location for wildlife-vehicle collisions.⁷³ In just one July weekend, three animal-on-vehicle accidents occurred, injuring four people and killing two moose.⁷⁴ As a result, the state constructed fencing along the interstate and saw a reduction in the number of wildlife-vehicle collisions.⁷⁵

Wyoming reduced the number of deer-vehicle collisions by 81% after installing culvert underpasses in the southwestern region of the state.⁷⁶ Colorado reduced wildlife-vehicle collisions by 90% along Colorado State Highway 9 after installing five wildlife underpasses and two wildlife overpasses.⁷⁷ Finally, Canada's Banff National Park saw the number of yearly elk-vehicle collisions plummet from 100 to an average of six after implementing wildlife crossings.⁷⁸

III. CHAPTER 869

California wastes tens of thousands of pounds of meat each year as a result of wildlife-vehicle collisions.⁷⁹ Following similar roadkill laws in other states, Chapter 869 requires the Fish and Game Commission ("FGC") to implement a pilot program for salvaging roadkill.⁸⁰ The program's ultimate goal would be to reduce wasted wild game meat.⁸¹ The program permits a person to salvage the game meat for human consumption, regardless of whether that person struck or collided with the animal.⁸² If the collision does not immediately kill the animal, a person may kill the animal in a "safe, legal, and humane manner" before salvaging the carcass.⁸³

Any person salvaging an animal must obtain a free salvage permit through a

73. David Ashby, *Death Trap: The Worst Roads in S.E. Idaho for Car vs. Wildlife Collisions*, IDAHO STATE JOURNAL (Feb. 3, 2015), available at https://www.idahostatejournal.com/members/death-trap-the-worst-roads-in-s-e-idaho-for/article_8641b00a-ab78-11e4-89ff-437f6e29f66d.html (on file with *The University of the Pacific Law Review*).

74. *Id.*

75. *Id.*

76. See National Park Service, *Wildlife Crossing Toolkit*, USDA FOREST SERVICE, <https://www.fs.fed.us/wildlifecrossings/glossary/glossary-terms.php> (defining a culvert as a "passageway under a road, trail, or other obstruction" that "allows wildlife to cross under moving traffic") (last visited Aug. 9, 2019) (on file with *The University of the Pacific Law Review*); Christy, *supra* note 1.

77. See National Park Service, *supra* note 76 (defining a wildlife overpass as a structure covered in vegetation that allows wildlife to cross over a roadway, and defining a wildlife underpass as a structure that allows animals to pass underneath the roadway traffic); Shannon M. Hoffman, *Animals Are Using Colorado's Wildlife Crossings, Reducing Collisions, CDOT Says*, THE DENVER POST (Feb. 3, 2018), <https://www.denverpost.com/2018/02/03/animal-wildlife-crossings/> (on file with *The University of the Pacific Law Review*).

78. Christy, *supra* note 1.

79. Current Bill Status of SB 395, *supra* note 9.

80. ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE, COMMITTEE ANALYSIS OF SB 395, at 5 (July 2, 2019); Current Bill Status of SB 395, *supra* note 9.

81. Current Bill Status of SB 395, *supra* note 9.

82. *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 3.; May, *supra* note 54.

83. *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 3. . .

web-based portal within 24 hours of collecting the animal's carcass.⁸⁴ Only deer, elk, pronghorn antelope, and wild pigs are salvageable.⁸⁵ All other wildlife injured or killed in a vehicle collision are not salvageable, especially animals listed on the California Endangered Species List.⁸⁶ The permitting process requires a person to report the date, time, and location of the collision, as well as the type of animal taken and general information about the incident.⁸⁷ FGC compiles the data to identify hotspots where wildlife-vehicle collisions are more prone to occur.⁸⁸ The Legislature can then use the data to identify whether wildlife crossings or other preventative strategies are appropriate.⁸⁹

Chapter 869 is California's first attempt at legalizing roadkill salvaging.⁹⁰ It amended both existing state law and Fish and Game regulations to permit individuals to salvage roadkill.⁹¹ While Chapter 869 aims to salvage valuable meat, it serves a dual purpose.⁹² According to Senator Bob Archuleta, the legislator who sponsored Chapter 869, salvaging roadkill may help save lives and prevent accidents by generating better data for where wildlife-vehicle collisions occur.⁹³ He believes state officials might consider strategically constructing wildlife overpasses in collision-prone areas.⁹⁴ When stressing the importance of the bill, Senator Archuleta explained, "it's easy to joke about roadkill, [but] it really is a serious issue and [we need more data] to create safe corridors for both motorists and wildlife."⁹⁵ Therefore, Chapter 869 aims to reduce meat waste and wildlife-vehicle collisions.⁹⁶

84. Current Bill Status of SB 395, *supra* note 9.

85. *Id.*

86. *Id.*

87. *Id.*

88. See *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 5 (detailing that this new program will collect animal-vehicle collision data through a web-based reporting program that will then be used to supplement existing data from the UC Davis researches).

89. *Id.* Sess. 9.

90. Current Bill Status of SB 395, *supra* note 9; Andrew Sheeler, *You Kill It, You Grill It? New California Bill Would Let Drivers Legally Eat Roadkill*, THE SACRAMENTO BEE (Feb. 21, 2019), <https://www.sacbee.com/news/politics-government/capitol-alert/article226570774.html> (on file with *The University of the Pacific Law Review*).

91. May, *supra* note 54.

92. Marco della Cava & Lindsay Schnell, *Forget Burgers, Roadkill Could be on the Menu in California*, USA TODAY (May 25, 2019), available at <https://www.usatoday.com/story/news/nation/2019/05/25/california-waste-not-want-not-bill-would-make-eating-roadkill-legal/3759698002/> (on file with *The University of the Pacific Law Review*).

93. *Id.*

94. *Id.*

95. *Id.*

96. Current Bill Status of SB 395, *supra* note 9; della Cava, *supra* note 92.

IV. ANALYSIS

Chapter 869 is a band-aid solution to mitigating wildlife-vehicle collisions.⁹⁷ Chapter 869 may reduce meat waste by allowing people to salvage roadkill, but the new law will likely not reduce the number of collisions.⁹⁸ Chapter 869 may alleviate some of the state's financial burden by decreasing Caltrans's responsibility of disposing roadkill and permitting people to salvage roadkill.⁹⁹ However, the new law will likely not prevent drivers from avoiding costs associated with wildlife-vehicle collisions.¹⁰⁰ This analysis explores the concerns surrounding the new law, and whether the law will really achieve its aims.¹⁰¹

Section A discusses whether the roadkill salvage program will encourage poaching.¹⁰² Section B examines whether the program will mitigate meat waste.¹⁰³ Section C analyzes whether the program's proposed data collection requirements will improve human safety by reducing wildlife-vehicle collisions.¹⁰⁴

A. Fears Chapter 869 Will Lead to Poaching

Although wildlife conservationists and hunting advocates support Chapter 869, there is concern the program will encourage poaching.¹⁰⁵ The California Fish and Game Wardens Association expressed concern that individuals will misuse the roadkill salvage permit program to obtain a permit for a non-vehicle-related killing.¹⁰⁶ Similarly, Judie Mancuso—founder of the animal rights group Social Compassion in Legislation—believes Chapter 869 will lead to poaching.¹⁰⁷ Her group opposes the new law, asserting the Legislature's time is better spent considering wildlife-vehicle avoidance tactics than on a salvage permit program.¹⁰⁸

However, Chapter 869 authorizes the FGC to consult with Caltrans, the CHP, and other relevant stakeholders to ensure the program does not facilitate poaching.¹⁰⁹ As a result, Senator Archuleta is not concerned the program will

97. *Infra* Part IV.B–C.

98. *Infra* Part IV.B–C.

99. *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 9.

100. *Infra* Part IV.C.

101. *Infra* Part IV.A–C.

102. *Infra* Part IV.A.

103. *Infra* Part IV.B.

104. *Infra* Part IV.C.

105. *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 9; Christopher, *supra* note 16; della Cava, *supra* note 92.

106. *Hearing on S.B. 395 Before the S. Nat. Resources Comm.*, *supra* note 11, Sess. 9.

107. della Cava, *supra* note 92.

108. *Id.*

109. Current Bill Status of SB 395, *supra* note 9.

encourage poaching.¹¹⁰ He stresses that game wardens and highway patrol can tell whether a car inadvertently struck an animal, or if evidence suggests a poaching incident.¹¹¹ Otherwise, a fine should deter poaching activity because people who falsely report animal-vehicle collisions violate the law and face a fine of up to \$1,000 and a six-month jail term.¹¹² Therefore, it is not likely the roadkill salvage program will encourage new poaching activities.¹¹³

B. Will Salvaging Roadkill Actually Reduce Meat Waste?

One in every eight Californians are food insecure because they lack consistent access to food due to insufficient money or other resources.¹¹⁴ However, Californians throw away an estimated twelve billion pounds of food each year, which results to roughly a family of four squanders nearly \$1,500 worth in food every year.¹¹⁵ California urges its residents to take action.¹¹⁶ They must prevent food waste so that the state can achieve its goal of reducing 50% of the state's organic food waste by 2020.¹¹⁷

The popularity of other state programs inspired Senator Archuleta to propose Chapter 869 as a way to reduce wasting tens of thousands of pounds of roadkill meat each year.¹¹⁸ Oregon launched its roadkill salvage program at the beginning of 2019 and sold 200 permits by March 31.¹¹⁹ Similarly, Washington issued 1,600 roadkill salvaging permits within its first year of legalizing the program in 2016.¹²⁰ Idaho has issued 4,800 permits since 2018.¹²¹ The hope is for

110. della Cava, *supra* note 92.

111. *Id.*

112. *Id.*; Christopher, *supra* note 16.

113. *Supra* Section IV.A.

114. See *Definitions of Food Security*, UNITED STATE DEPARTMENT OF AGRICULTURE, <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx> (defining food insecurity as someone who lacks consistent access to food resources because he or she does not possess sufficient monetary funds) (on file with *The University of the Pacific Law Review*); Press Release by Heather Jones, CalRecycle, CalRecycle Joins Food Waste Prevention Week Efforts (Mar. 5, 2018), available at <https://www.calrecycle.ca.gov/newsroom/2018/03march/06> (on file with *The University of the Pacific Law Review*).

115. Press Release by Heather Jones, *supra* note 114.

116. *Id.*

117. *Id.*

118. Current Bill Status of SB 395, *supra* note 9; May, *supra* note 54.

119. *Roadkill Salvage Permits*, OR. DEPT OF FISH AND GAME (Jan. 2, 2019), available at <https://myodfw.com/articles/roadkill-salvage-permits> (on file with *The University of the Pacific Law Review*); Botkin, *supra* note 18.

120. Karin Brulliard, *Roadkill: In a Growing Number of States, It's What's for Dinner*, THE WASHINGTON POST (Jan. 5, 2019), https://www.washingtonpost.com/science/2019/01/05/roadkill-growing-number-states-its-whats-dinner/?noredirect=on&utm_term=.868c523ac753 (on file with *The University of the Pacific Law Review*).

121. Eric Barker, *Idaho's Roadkill Salvage Law Seen as Delicious Success*, THE SPOKESMAN REVIEW (Mar. 2, 2016), <http://www.spokesman.com/stories/2016/mar/02/idahos-roadkill-salvage-law-seen-as-delicious-succ/> (on file with *The University of the Pacific Law Review*).

California's roadkill salvage program to be just as popular and therefore, reducing the number of roadside carcasses.¹²²

While the majority of the public is likely to drive past a dead animal lying on the side of the road, Chapter 869 at least enables Californians the opportunity to salvage a carcass.¹²³ Furthermore, there are many hunters in the state who possess the know-how and willingness to salvage a carcass, rather than leaving the carcass for state officials to collect.¹²⁴ If Chapter 869 proves as popular as other states' roadkill salvage programs, the state will see a reduction in the amount of wasted viable meat.¹²⁵

C. Will Data Prevent Wildlife-Vehicle Collisions?

A conflict exists between human and wildlife needs as evidenced by the prevalence of roadkill on our nation's roads.¹²⁶ Humans require safe but efficient travel from one location to the next.¹²⁷ "Yet wild animals need connected landscaped: they must cross our roads in search of food, mates, and shelter."¹²⁸ These needs clash when interconnected highways disrupt the landscape, fragmenting wildlife territory.¹²⁹ As a result, vehicles strike and kill many wildlife in their quest for survival.¹³⁰

Unlike in other states, Chapter 869 does not restrict the roadkill salvage program to only California residents who are not delinquent in child support payments.¹³¹ Nor does the program require individuals to surrender the animal's head or antlers.¹³² Furthermore, those wishing to salvage the carcass can do so before obtaining a permit.¹³³ However, California will track collision location data for future mitigation projects.¹³⁴ While a goal of Chapter 869 is to collect wildlife-vehicle collision data through a web-based portal, such data already exists, so the program may prove redundant.¹³⁵

122. May, *supra* note 54.

123. della Cava, *supra* note 92.

124. *Id.*

125. See *supra* Section IV.B (describing how the popularity of roadkill salvaging programs in other states is likely to be mirrored in California, and therefore, the state will see a reduction in meat waste, even if the reflection is minimal).

126. Lister, *supra* note 7, at 20.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. See Current Bill Status of SB 395, *supra* note 9 (outlining the proposed law which does not include a provision limiting the roadkill salvage program to California residents only).

132. See *id.* (detailing the proposed law which does not include a provision requiring the animal's antler to be surrendered when salvaged).

133. See *id.*, *supra* note 9 (detailing the proposed law which allows a person to obtain a roadkill salvage permit up to twenty-four hours after collecting the carcass).

134. Current Bill Status of SB 395, *supra* note 9.

135. *Id.*; See Shilling, *supra* note 10 (detailing a report of all reported wildlife-vehicle collisions).

The University of California Davis (“UCD”) Road Ecology Center releases an annual report that details hotspot collision locations in California.¹³⁶ According to Fraser Schilling, the UCD Road Ecology Center’s co-director, the state already has the necessary data to prevent wildlife-vehicle collisions.¹³⁷ The Center compiles a report from the data it receives from Caltrans and CHP.¹³⁸ The report identifies Interstate 280 in the Bay Area as the number one wildlife-vehicle collision location.¹³⁹ Another Bay Area hotspot location is where Interstate 580 travels west of Interstate 680.¹⁴⁰ Another collision-prone area is along Highway 50 between El Dorado Hills and Pollock Pines, as well as Interstate 80 near Auburn.¹⁴¹ In the Lake Tahoe area, State Route 89 is an active roadkill area, as well as Route 49 in the northern foothills.¹⁴² In Southern California, Route 94 in San Diego County is a hotspot location, as well as “Route 126 in Ventura and U.S. 101 near Lompoc and San Luis Obispo.”¹⁴³

Caltrans created a Wildlife Crossings Guidance Manual outlining the necessary steps to identify and assess wildlife crossings for the state of California.¹⁴⁴ The manual includes best practices for mitigating wildlife-vehicle collisions, such as modifying driver behavior, installing fencing along roadways, and building new wildlife crossings.¹⁴⁵ Therefore, while the state has both the necessary data and the know-how to implement an effective wildlife crossing, it does not have the funding.¹⁴⁶ This is why wildlife crossings are slower to catch on.¹⁴⁷ Currently, philanthropic donors spearhead the funding for wildlife crossings, ensuring wildlife find safe passage across the nation’s highways.¹⁴⁸ While Chapter 869’s roadkill salvage permit is currently free, a creative combination of private and governmental funding can “nudge things forward” to

throughout California).

136. See *id.* (detailing a report of all reported wildlife-vehicle collisions throughout California); Kat Kerlin, *Roadkill Hot Spots on California’s Highways Identified in Report*, UC DAVIS NEWS (June 29, 2016), <https://www.ucdavis.edu/news/roadkill-hot-spots-californias-highways-identified-report/> (on file with *The University of the Pacific Law Review*).

137. Kerlin, *supra* note 136.

138. Shilling, *supra* note 10.; Kerlin, *supra* note 136.

139. Kerlin, *supra* note 136.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Wildlife Crossing Guidance Manual*, CALIFORNIA DEPARTMENT OF TRANSPORTATION (2009), available at https://roadecology.ucdavis.edu/files/content/projects/CA_Wildlife%20Crossings%20Guidance_Manual.pdf (on file with *The University of the Pacific Law Review*).

145. *Id.*

146. See *id.* (detailing best practice strategies for implementing wildlife crossings in California); Tate Williams, *The Funders Helping Wildlife Find Safe Passage Across Highways*, INSIDE PHILANTHROPY (Oct. 27, 2016), <https://www.insidephilanthropy.com/home/2016/10/26/private-funds-helping-wildlife-find-safe-passage-across-highways> (on file with *The University of the Pacific Law Review*).

147. Williams, *supra* note 146.

148. *Id.*

implement mitigation strategies.¹⁴⁹ Other states have proven these mitigation strategies are effective at reducing wildlife-vehicle collisions, so the state does not need another study to prove it.¹⁵⁰

V. CONCLUSION

California joined many other states by enacting Chapter 869.¹⁵¹ Chapter 869 garnered bipartisan support, with little opposition, as it worked its way through the Legislature—which is indicative of the law’s popularity.¹⁵² While opponents expressed concern that the roadkill salvage permit program will encourage poaching, current poaching laws remain in effect to discourage poaching.¹⁵³ Therefore, it is not likely the program will lead to poaching more so than any other hunting activity.¹⁵⁴

Chapter 869 may reduce meat waste by permitting individuals to salvage roadkill from the state’s roadways—even if the reduction is minimal.¹⁵⁵ Allowing even one individual to salvage roadkill will result in one less dead animal on the side of the road and one less Caltrans must discard.¹⁵⁶

However, Chapter 869 will not likely reduce wildlife-vehicle collisions because it does not add or change what the state already possesses.¹⁵⁷ Chapter 869 says it will compile wildlife-vehicle collision data, but this data already exists and is available to California legislators.¹⁵⁸ The report describes each hotspot collision location across the state; therefore, Chapter 869 is not likely to provide any new revelations.¹⁵⁹ As Brent Cole put it, “We don’t need a study. We need fencing.”¹⁶⁰ However, fencing cannot occur without funding—which the state is lacking.¹⁶¹ Therefore, the time and money the Legislature has spent enacting Chapter 869’s data collection website might be better spent on funding

149. ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE, *supra* note 80, at 5; Williams, *supra* note 146..

150. Christy, *supra* note 1.

151. See Vasilogambros, *supra* note 8 (describing how California is considering adopting a roadkill salvage law while many other states already have done so).

152. ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE, *supra* note 80, at 5.

153. Christopher, *supra* note 16.

154. See della Cava, *supra* note 92 (describing Senator Archuleta dismissing any idea the new program will encourage poaching because the existing criminal penalties are designed to discourage poaching behavior).

155. *Supra* Section IV.B.

156. See *Hearing on 395 Before the S. Appropriations Comm.*, *supra* note 13 (describing how Caltrans spent approximately \$645,000 in 2018 to clean up roadkill, but having to clean up just one less carcass can save them money).

157. *Supra* Section IV.C.

158. See Shilling, *supra* note 10 (detailing a report of all wildlife-vehicle hotspot collision locations in California); Kerlin, *supra* note 136.

159. Kerlin, *supra* note 136.

160. Christy, *supra* note 1.

161. Williams, *supra* note 146.

wildlife crossings.¹⁶²

162. *Supra* Section IV.C.