

9779

I N A S S E M B L Y

January 26, 2010

Introduced by M. of A. ROSENTHAL -- read once and referred to the  
Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to reclassifying certain criminal acts relating to the abuse of animals; and to amend the criminal procedure law, in relation to making conforming technical changes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 351 of the agriculture and markets law, as added by  
2 chapter 150 of the laws of 1984, subdivision 2 as amended by chapter 190  
3 of the laws of 2004 and subdivision 5 as added by chapter 308 of the  
4 laws of 2008, is amended to read as follows:  
5 S 351. Prohibition of animal fighting. 1. DEFINITIONS. For purposes of  
6 this section, the term "animal fighting" shall mean any fight between  
7 cocks or other birds, or between dogs, bulls, bears or any other  
8 animals, or between any such animal and a person or persons, except in  
9 exhibitions of a kind commonly featured at rodeos.  
10 2. ANIMAL FIGHTING; FIRST OFFENSE. (A) Any person who engages in any  
11 of the following conduct is guilty of a CLASS E felony FOR HIS OR HER  
12 FIRST OFFENSE punishable by imprisonment for a period not to exceed four  
13 years, or by a fine not to exceed twenty-five thousand dollars, or by  
14 both such fine and imprisonment:  
15 [(a)] (I) For amusement or gain, causes any animal to engage in animal  
16 fighting; or  
17 [(b)] (II) Trains any animal under circumstances evincing an intent  
18 that such animal engage in animal fighting for amusement or gain; or  
19 [(c)] (III) Breeds, sells or offers for sale any animal under circum-  
20 stances evincing an intent that such animal engage in animal fighting;  
21 or  
22 [(d)] (IV) Permits any act described in [paragraph (a), (b) or (c)]  
23 SUBPARAGRAPH (I), (II) OR (III) of this [subdivision] PARAGRAPH to occur  
24 on premises under his OR HER control; or  
25 [(e)] (V) Owns, possesses or keeps any animal trained to engage in  
26 animal fighting on premises where an exhibition of animal fighting is

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 being conducted under circumstances evincing an intent that such animal  
2 engage in animal fighting.

3 (B) IF ANY OF THE CONDUCT SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVI-  
4 SION RESULTS IN PHYSICAL INJURY, SERIOUS PHYSICAL INJURY, OR THE DEATH  
5 OF THE ANIMAL, THE PERSON WHO ENGAGES IN SUCH CONDUCT SHALL BE GUILTY OF  
6 A CLASS D FELONY.

7 3. POSSESSION OF FIGHTING ANIMAL; FIRST OFFENSE. (a) Any person who  
8 engages in conduct specified in paragraph (b) of this subdivision is  
9 guilty of a CLASS A misdemeanor and is punishable by imprisonment for a  
10 period not to exceed one year, or by a fine not to exceed fifteen thou-  
11 sand dollars, or by both such fine and imprisonment.

12 (b) The owning, possessing or keeping of any animal under circum-  
13 stances evincing an intent that such animal engage in animal fighting.

14 4. ATTENDING OR WAGERING ON ANIMAL FIGHTS; FIRST OFFENSE. (a) Any  
15 person who engages in conduct specified in paragraph (b) [hereof] OF  
16 THIS SUBDIVISION is guilty of a CLASS A misdemeanor and is punishable by  
17 imprisonment for a period not to exceed one year, or by a fine not to  
18 exceed one thousand dollars, or by both such fine and imprisonment.

19 (b) The knowing presence as a spectator having paid an admission fee  
20 or having made a wager at any place where an exhibition of animal fight-  
21 ing is being conducted.

22 5. (a) Any person who engages in the conduct specified in paragraph  
23 (b) of this subdivision is guilty of a violation punishable by a fine  
24 not to exceed five hundred dollars. Any person who engages in the  
25 conduct specified in paragraph (b) of this subdivision after having been  
26 convicted within the previous five years of a violation of this subdivi-  
27 sion or subdivision four of this section is guilty of a misdemeanor and  
28 is punishable by imprisonment for a period not to exceed one year, or by  
29 a fine not to [exceeded] EXCEED one thousand dollars, or by both by such  
30 fine and imprisonment.

31 (b) The knowing presence as a spectator at any place where an exhibi-  
32 tion of animal fighting is being conducted.

33 6. SECOND AND ADDITIONAL OFFENSES. (A) ANY PERSON WHO IS CONVICTED OF  
34 A VIOLATION OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION AND HAS  
35 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUCH PARAGRAPH SHALL BE  
36 GUILTY OF A CLASS D FELONY.

37 (B) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (B) OF  
38 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF  
39 A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS C FELONY.

40 (C) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (A) OF  
41 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED  
42 TWO OR MORE TIMES OF A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A  
43 CLASS C FELONY.

44 (D) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (B) OF  
45 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED  
46 TWO OR MORE TIMES OF A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A  
47 CLASS B FELONY.

48 (E) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION THREE OF  
49 THIS SECTION AND HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUCH  
50 SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

51 (F) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION FOUR OF  
52 THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF  
53 SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

54 S 2. Section 353 of the agriculture and markets law, as amended by  
55 chapter 458 of the laws of 1985, the opening paragraph as amended by  
56 chapter 523 of the laws of 2005, is amended to read as follows:

1 S 353. Overdriving, torturing and injuring animals; failure to provide  
2 proper sustenance. 1. A person who [overdrives, overloads,] tortures or  
3 cruelly beats or unjustifiably injures, maims, mutilates or kills any  
4 animal, whether wild or tame, and whether belonging to himself, HERSELF,  
5 or to another[, or] SHALL BE GUILTY OF A CLASS E FELONY.

6 2. ANY PERSON WHO deprives any animal of necessary sustenance, food or  
7 drink, or neglects or refuses to furnish it such sustenance or drink, or  
8 causes, procures or permits any animal to be overdriven[, ] OR over-  
9 loaded, [tortured, cruelly beaten, or unjustifiably injured, maimed,  
10 mutilated or killed, or to be deprived of necessary food or drink,] or  
11 who wilfully sets on foot, instigates, engages in, or in any way  
12 furthers any act of cruelty to any animal, or any act tending to produce  
13 such cruelty, is guilty of a class A misdemeanor [and for purposes of  
14 paragraph (b) of subdivision one of section 160.10 of the criminal  
15 procedure law, shall be treated as a misdemeanor defined in the penal  
16 law].

17 3. ANY PERSON WHO DEPRIVES ANY ANIMAL OF NECESSARY SUSTENANCE, FOOD OR  
18 DRINK, OR NEGLECTS OR REFUSES TO FURNISH IT SUCH SUSTENANCE OR DRINK, OR  
19 CAUSES, PROCURES OR PERMITS ANY ANIMAL TO BE OVERDRIVEN OR OVERLOADED,  
20 AND SUCH ACT RESULTS IN THE SERIOUS PHYSICAL INJURY OR DEATH OF THE  
21 ANIMAL SHALL BE GUILTY OF A CLASS E FELONY.

22 4. (A) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION ONE  
23 OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF  
24 SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

25 (B) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION TWO OF  
26 THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF  
27 SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

28 (C) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION THREE OF  
29 THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF  
30 SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

31 5. Nothing herein contained shall be construed to prohibit or inter-  
32 fere with any properly conducted scientific tests, experiments or inves-  
33 tigations, involving the use of living animals, performed or conducted  
34 in laboratories or institutions, which are approved for these purposes  
35 by the state commissioner of health. The state commissioner of health  
36 shall prescribe the rules under which such approvals shall be granted,  
37 including therein standards regarding the care and treatment of any such  
38 animals. Such rules shall be published and copies thereof conspicuously  
39 posted in each such laboratory or institution. The state commissioner of  
40 health or his OR HER duly authorized representative shall have the power  
41 to inspect such laboratories or institutions to insure compliance with  
42 such rules and standards. Each such approval may be revoked at any time  
43 for failure to comply with such rules and in any case the approval shall  
44 be limited to a period not exceeding one year.

45 S 3. Subdivision 1 of section 160.10 of the criminal procedure law is  
46 amended by adding a new paragraph (b-1) to read as follows:

47 (B-1) A MISDEMEANOR DEFINED IN SECTION THREE HUNDRED FIFTY-THREE OF  
48 THE AGRICULTURE AND MARKETS LAW; OR

49 S 4. Section 353-a of the agriculture and markets law, as added by  
50 chapter 118 of the laws of 1999, is amended to read as follows:

51 S 353-a. Aggravated cruelty to animals. 1. A person is guilty of  
52 aggravated cruelty to animals when, with no justifiable purpose, he or  
53 she intentionally kills or intentionally causes serious physical injury  
54 to a companion animal with aggravated cruelty.

1 2. For purposes of this section, "aggravated cruelty" shall mean  
2 conduct which: (i) is intended to cause extreme physical pain; or (ii)  
3 is done or carried out in an especially depraved or sadistic manner.

4 [2.] 3. Nothing contained in this section shall be construed to  
5 prohibit or interfere in any way with anyone lawfully engaged in hunt-  
6 ing, trapping, or fishing, as provided in article eleven of the environ-  
7 mental conservation law, the dispatch of rabid or diseased animals, as  
8 provided in article twenty-one of the public health law, or the dispatch  
9 of animals posing a threat to human safety or other animals, where such  
10 action is otherwise legally authorized, or any properly conducted scien-  
11 tific tests, experiments, or investigations involving the use of living  
12 animals, performed or conducted in laboratories or institutions approved  
13 for such purposes by the commissioner of health pursuant to section  
14 three hundred fifty-three of this article.

15 [3.] 4. Aggravated cruelty to animals is a CLASS E felony. [A defend-  
16 ant convicted of this offense shall be sentenced pursuant to paragraph  
17 (b) of subdivision one of section 55.10 of the penal law provided,  
18 however, that any term of imprisonment imposed for violation of this  
19 section shall be a definite sentence, which may not exceed two years.]

20 5. ANY PERSON WHO IS CONVICTED OF A VIOLATION OF SUBDIVISION ONE OF  
21 THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION UNDER  
22 THIS SECTION SHALL BE GUILTY OF A CLASS D FELONY.

23 S 5. Section 353-b of the agriculture and markets law, as added by  
24 chapter 594 of the laws of 2003, is amended to read as follows:

25 S 353-b. Appropriate shelter for dogs left outdoors. 1. For purposes  
26 of this section:

27 (a) "Physical condition" shall include any special medical needs of a  
28 dog due to disease, illness, injury, age or breed about which the owner  
29 or person with custody or control of the dog should reasonably be aware.

30 (b) "Inclement weather" shall mean weather conditions that are likely  
31 to adversely affect the health or safety of the dog, including but not  
32 limited to rain, sleet, ice, snow, wind, or extreme heat and cold.

33 (c) "Dogs that are left outdoors" shall mean dogs that are outdoors in  
34 inclement weather without ready access to, or the ability to enter, a  
35 house, apartment building, office building, or any other permanent  
36 structure that complies with the standards enumerated in paragraph (b)  
37 of subdivision [three] FIVE of this section.

38 2. (a) Any person who owns or has custody or control of a dog that is  
39 left outdoors shall provide it with shelter appropriate to its breed,  
40 physical condition and the climate. Any person who knowingly violates  
41 the provisions of this [section] SUBDIVISION shall be guilty of a  
42 [violation, punishable by a fine of not less than fifty dollars nor more  
43 than one hundred dollars for a first offense, and a fine of not less  
44 than one hundred dollars nor more than two hundred fifty dollars for a  
45 second and subsequent offenses.] CLASS B MISDEMEANOR.

46 (B) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
47 SUBDIVISION WHERE SUCH VIOLATION RESULTS IN THE PHYSICAL INJURY TO THE  
48 ANIMAL SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

49 (C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
50 SUBDIVISION WHERE SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY  
51 OR DEATH OF THE ANIMAL SHALL BE GUILTY OF A CLASS E FELONY.

52 (D) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
53 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THE  
54 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

1 (E) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (B) OF THIS  
2 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THE  
3 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS E FELONY.

4 (F) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (C) OF THIS  
5 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THE  
6 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS D FELONY.

7 3. Beginning seventy-two hours after a charge of violating this  
8 section, each day that a defendant fails to correct the deficiencies in  
9 the dog shelter for a dog that he or she owns or that is in his or her  
10 custody or control and that is left outdoors, so as to bring it into  
11 compliance with the provisions of this section shall constitute a sepa-  
12 rate offense.

13 [(b)] 4. The court may, in its discretion, reduce the amount of any  
14 fine imposed for a violation of this section by the amount which the  
15 defendant proves he or she has spent providing a dog shelter or repair-  
16 ing an existing dog shelter so that it complies with the requirements of  
17 this section. Nothing in this [paragraph] SUBDIVISION shall prevent the  
18 seizure of a dog for a violation of this section pursuant to the author-  
19 ity granted in this article.

20 [3.] 5. Minimum standards for determining whether shelter is appropri-  
21 ate to a dog's breed, physical condition and the climate shall include:

22 (a) For dogs that are restrained in any manner outdoors, shade by  
23 natural or artificial means to protect the dog from direct sunlight at  
24 all times when exposure to sunlight is likely to threaten the health of  
25 the dog.

26 (b) For all dogs that are left outdoors in inclement weather, a hous-  
27 ing facility, which must: (1) have a waterproof roof; (2) be struc-  
28 turally sound with insulation appropriate to local climatic conditions  
29 and sufficient to protect the dog from inclement weather; (3) be  
30 constructed to allow each dog adequate freedom of movement to make  
31 normal postural adjustments, including the ability to stand up, turn  
32 around and lie down with its limbs outstretched; and (4) allow for  
33 effective removal of excretions, other waste material[;], dirt and  
34 trash. The housing facility and the area immediately surrounding it  
35 shall be regularly cleaned to maintain a healthy and sanitary environ-  
36 ment and to minimize health hazards.

37 [4.] 6. Inadequate shelter may be indicated by the appearance of the  
38 housing facility itself, including but not limited to, size, structural  
39 soundness, evidence of crowding within the housing facility, healthful  
40 environment in the area immediately surrounding such facility, or by the  
41 appearance or physical condition of the dog.

42 [5.] 7. Upon a finding of any violation of this section, any dog or  
43 dogs seized pursuant to the provisions of this article that have not  
44 been voluntarily surrendered by the owner or custodian or forfeited  
45 pursuant to court order shall be returned to the owner or custodian only  
46 upon proof that appropriate shelter as required by this section is being  
47 provided.

48 [6.] 8. Nothing in this section shall be construed to affect any  
49 protections afforded to dogs or other animals under any other provisions  
50 of this article.

51 S 6. Section 355 of the agriculture and markets law, as amended by  
52 chapter 458 of the laws of 1985, is amended to read as follows:

53 S 355. Abandonment of animals. 1. A person being the owner or posses-  
54 sor, or having charge or custody of an animal, who abandons such animal,  
55 or leaves it to die in a street, road or public place, or who allows  
56 such animal, if it [become] BECOMES disabled, to lie in a public street,

1 road or public place more than three hours after he OR SHE receives  
2 notice that it is left disabled, is guilty of a CLASS A misdemeanor,  
3 punishable by imprisonment for not more than one year, or by a fine of  
4 not more than one thousand dollars, or by both.

5 2. (A) A PERSON BEING THE OWNER OR POSSESSOR, OR HAVING CHARGE OR  
6 CUSTODY OF AN ANIMAL, WHO ABANDONS SUCH ANIMAL, OR LEAVES IT TO DIE IN A  
7 STREET, ROAD OR PUBLIC PLACE, OR WHO ALLOWS SUCH ANIMAL, IF IT BECOMES  
8 DISABLED, TO LIE IN A PUBLIC STREET, ROAD OR PUBLIC PLACE MORE THAN  
9 THREE HOURS AFTER HE OR SHE RECEIVES NOTICE THAT IT IS LEFT DISABLED,  
10 AND

11 (B) SUCH ACT OR FAILURE TO ACT RESULTS IN THE SERIOUS PHYSICAL INJURY  
12 OR DEATH OF THE ANIMAL, IS GUILTY OF A CLASS E FELONY.

13 3. (A) ANY PERSON WHO IS CONVICTED OF VIOLATING THE PROVISIONS OF  
14 SUBDIVISION ONE OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF  
15 A VIOLATION OF SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

16 (B) ANY PERSON WHO IS CONVICTED OF VIOLATING THE PROVISIONS OF SUBDI-  
17 VISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A  
18 VIOLATION OF SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

19 S 7. Section 356 of the agriculture and markets law, as amended by  
20 chapter 458 of the laws of 1985, is amended to read as follows:

21 S 356. Failure to provide proper food and drink to AN impounded  
22 animal. 1. (A) A person who, having impounded or confined any animal,  
23 refuses or neglects to supply to such animal during its confinement a  
24 sufficient supply of good and wholesome air, food, shelter and water, is  
25 guilty of a CLASS A misdemeanor, punishable by imprisonment for not more  
26 than one year, or by a fine of not more than one thousand dollars, or by  
27 both.

28 (B) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
29 SUBDIVISION AND SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY OR  
30 DEATH OF THE ANIMAL SHALL BE GUILTY OF A CLASS E FELONY.

31 (C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
32 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
33 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS E FELONY.

34 (D) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (B) OF THIS  
35 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
36 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS D FELONY.

37 2. In case any animal shall be at any time impounded as aforesaid, and  
38 shall continue to be without necessary food and water for more than  
39 twelve successive hours, it shall be lawful for any person, from time to  
40 time, and as often as it shall be necessary, to enter into and upon any  
41 pound in which any such animal shall be so confined, and to supply it  
42 with necessary food and water, so long as it shall remain so confined;  
43 such person shall not be liable [to] FOR any action for such entry, and  
44 the reasonable cost of such food and water may be collected by him [of]  
45 OR HER FROM the owner of such animal, and [the] said animal shall not be  
46 exempt from levy and sale upon execution issued upon a judgment there-  
47 for.

48 S 8. Section 359 of the agriculture and markets law, as added by chap-  
49 ter 1047 of the laws of 1965, subdivision 1 as amended by chapter 458 of  
50 the laws of 1985 and subdivision 2 as amended by chapter 84 of the laws  
51 of 2001, is amended to read as follows:

52 S 359. Carrying AN animal in a cruel manner. 1. (A) A person who  
53 carries or causes to be carried in or upon any vessel or vehicle or  
54 otherwise, any animal in a cruel or inhuman manner, or so as to produce  
55 torture, is guilty of a CLASS A misdemeanor, punishable by imprisonment

1 for not more than one year, or by a fine of not more than one thousand  
2 dollars, or by both.

3 (B) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
4 SUBDIVISION AND SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY OR  
5 DEATH OF THE ANIMAL SHALL BE GUILTY OF A CLASS E FELONY.

6 (C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
7 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
8 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS E FELONY.

9 (D) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (B) OF THIS  
10 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
11 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS D FELONY.

12 2. A railway corporation, or an owner, agent, consignee, or person in  
13 charge of any horses, sheep, cattle, or swine, in the course of, or for  
14 transportation, who confines, or causes or suffers the same to be  
15 confined, in cars for a longer period than twenty-eight consecutive  
16 hours, or thirty-six consecutive hours where consent is given in the  
17 manner hereinafter provided, without unloading for rest, water and feed-  
18 ing, during five consecutive hours, unless prevented by storm or inevi-  
19 table accident, is guilty of a CLASS A misdemeanor. The consent which  
20 will extend the period from twenty-eight to thirty-six hours shall be  
21 given by the owner, or by person in custody of a particular shipment, by  
22 a writing separate and apart from any printed bill of lading or other  
23 railroad form. In estimating such confinement, the time during which the  
24 animals have been confined without rest, on connecting roads from which  
25 they are received, must be computed.

26 S 9. Section 360 of the agriculture and markets law, as amended by  
27 chapter 458 of the laws of 1985, is amended to read as follows:

28 S 360. Poisoning or attempting to poison animals. 1. A person who  
29 unjustifiably administers any poisonous or noxious drug or substance to  
30 [a horse, mule or domestic cattle or unjustifiably exposes any such drug  
31 or substance with intent that the same shall be taken by horse, mule or  
32 by domestic cattle, whether such horse, mule or domestic cattle be the  
33 property of himself or another,] ANY ANIMAL is guilty of a CLASS E felo-  
34 ny. [A person who unjustifiably administers any poisonous or noxious  
35 drug or substance to an animal, other than a horse, mule or domestic  
36 cattle, or unjustifiably exposes any such drug or substance with intent  
37 that the same shall be taken by an animal other than a horse, mule or  
38 domestic cattle, whether such animal be the property of himself or  
39 another, is guilty of a misdemeanor, punishable by imprisonment for not  
40 more than one year, or by a fine of not more than one thousand dollars,  
41 or by both.]

42 2. ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS  
43 SECTION AND SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY OR  
44 DEATH OF THE ANIMAL SHALL BE GUILTY OF A CLASS D FELONY.

45 3. ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS  
46 SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
47 PROVISIONS OF SUCH SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

48 4. ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION TWO OF THIS  
49 SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF A FELONY UNDER SUCH  
50 SUBDIVISION SHALL BE GUILTY OF A CLASS C FELONY.

51 S 10. Section 365 of the agriculture and markets law, as amended by  
52 chapter 458 of the laws of 1985, is amended to read as follows:

53 S 365. Clipping or cutting the ears of dogs. 1. (A) Whoever clips or  
54 cuts off or causes or procures another to clip or cut off the whole or  
55 any part of an ear of any dog unless an anaesthetic shall have been  
56 given to the dog and the operation performed by a licensed veterinarian,

1 is guilty of a CLASS A misdemeanor, punishable by imprisonment for not  
2 more than one year, or a fine of not more than one thousand dollars, or  
3 by both.

4 (B) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
5 SUBDIVISION AND SUCH VIOLATION RESULTS IN THE MAIMING OR TORTURING OF  
6 THE ANIMAL THAT CAUSES SERIOUS PHYSICAL INJURY TO THE ANIMAL SHALL BE  
7 GUILTY OF A CLASS E FELONY.

8 (C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS  
9 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
10 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS E FELONY.

11 (D) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (B) OF THIS  
12 SUBDIVISION AND WHO HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE  
13 PROVISIONS OF SUCH PARAGRAPH SHALL BE GUILTY OF A CLASS D FELONY.

14 2. [The provisions of this section shall not apply to any dog or  
15 person who is the owner or possessor of any dog whose ear or a part  
16 thereof has been clipped or cut off prior to September first, nineteen  
17 hundred twenty-nine.

18 3.] Each applicant for a dog license must state on such application  
19 whether any ear of the dog for which he OR SHE applies for such license  
20 has been cut off wholly or in part.

21 [4.] 3. Nothing herein contained shall be construed as preventing any  
22 dog whose ear or ears shall have been clipped or cut off wholly or in  
23 part, not in violation of this section, from being imported into the  
24 state exclusively for breeding purposes.

25 S 11. This act shall take effect on the ninetieth day after it shall  
26 have become a law.