

7761

2009-2010 Regular Sessions

I N A S S E M B L Y

April 23, 2009

Introduced by M. of A. BRADLEY -- 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

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

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1 [(d)] (IV) Permits any act described in [paragraph (a), (b) or (c)]
2 SUBPARAGRAPH (I), (II) OR (III) of this [subdivision] PARAGRAPH to occur
3 on premises under his OR HER control; or

4 [(e)] (V) Owns, possesses or keeps any animal trained to engage in
5 animal fighting on premises where an exhibition of animal fighting is
6 being conducted under circumstances evincing an intent that such animal
7 engage in animal fighting.

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

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

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

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

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

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

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

38 6. SECOND AND ADDITIONAL OFFENSES. (A) ANY PERSON WHO IS CONVICTED OF
39 A VIOLATION OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION AND HAS
40 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUCH PARAGRAPH SHALL BE
41 GUILTY OF A CLASS D FELONY.

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

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

49 (D) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (B) OF
50 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED
51 TWO OR MORE TIMES OF A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A
52 CLASS B FELONY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 S 355. Abandonment of animals. 1. A person being the owner or posses-
2 sor, or having charge or custody of an animal, who abandons such animal,
3 or leaves it to die in a street, road or public place, or who allows
4 such animal, if it [become] BECOMES disabled, to lie in a public street,
5 road or public place more than three hours after he OR SHE receives
6 notice that it is left disabled, is guilty of a CLASS A misdemeanor,
7 punishable by imprisonment for not more than one year, or by a fine of
8 not more than one thousand dollars, or by both.

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

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

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

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

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

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

32 (B) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBDIVISION ONE OF THIS
33 SECTION AND SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY OR
34 DEATH OF THE ANIMAL SHALL BE GUILTY OF A CLASS E FELONY.

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

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

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

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

1 S 359. Carrying AN animal in a cruel manner. 1. (A) A person who
2 carries or causes to be carried in or upon any vessel or vehicle or
3 otherwise, any animal in a cruel or inhuman manner, or so as to produce
4 torture, is guilty of a CLASS A misdemeanor, punishable by imprisonment
5 for not more than one year, or by a fine of not more than one thousand
6 dollars, or by both.

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

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

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

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

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

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

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

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

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

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

1 S 365. Clipping or cutting the ears of dogs. 1. (A) Whoever clips or
2 cuts off or causes or procures another to clip or cut off the whole or
3 any part of an ear of any dog unless an anaesthetic shall have been
4 given to the dog and the operation performed by a licensed veterinarian,
5 is guilty of a CLASS A misdemeanor, punishable by imprisonment for not
6 more than one year, or a fine of not more than one thousand dollars, or
7 by both.

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

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

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

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

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

25 [4.] 3. Nothing herein contained shall be construed as preventing any
26 dog whose ear or ears shall have been clipped or cut off wholly or in
27 part, not in violation of this section, from being imported into the
28 state exclusively for breeding purposes.

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