

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ROSENTHAL -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, MALLIOTAKIS -- 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, subdivision 5 as amended by chapter 332 of the laws  
4 of 2011 and subdivision 6 as added by chapter 144 of the laws of 2012,  
5 is amended to read as follows:

6 S 351. Prohibition of animal fighting. 1. DEFINITIONS. For purposes of  
7 this section, the term "animal fighting" shall mean any fight between  
8 cocks or other birds, or between dogs, bulls, bears or any other  
9 animals, or between any such animal and a person or persons, except in  
10 exhibitions of a kind commonly featured at rodeos.

11 2. ANIMAL FIGHTING; FIRST OFFENSE. (A) Any person who engages in any  
12 of the following conduct is guilty of a CLASS E felony FOR HIS OR HER  
13 FIRST OFFENSE punishable by imprisonment for a period not to exceed four  
14 years, or by a fine not to exceed twenty-five thousand dollars, or by  
15 both such fine and imprisonment:

16 [(a)] (I) For amusement or gain, causes any animal to engage in animal  
17 fighting; or

18 [(b)] (II) Trains any animal under circumstances evincing an intent  
19 that such animal engage in animal fighting for amusement or gain; or

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

LBD04416-01-3

1 [(c)] (III) Breeds, sells or offers for sale any animal under circum-  
2 stances evincing an intent that such animal engage in animal fighting;  
3 or

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

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

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

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

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

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

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

30 5. PENALTIES. (a) Any person who engages in the conduct specified in  
31 paragraph (b) of this subdivision is guilty of a class B misdemeanor  
32 punishable by imprisonment for a period not to exceed three months, or  
33 by a fine not to exceed five hundred dollars, or by both such fine and  
34 imprisonment. Any person who engages in the conduct specified in para-  
35 graph (b) of this subdivision after having been convicted within the  
36 previous five years of a violation of this subdivision or subdivision  
37 four of this section is guilty of a misdemeanor and is punishable by  
38 imprisonment for a period not to exceed one year, or by a fine not to  
39 exceed one thousand dollars, or by both such fine and imprisonment.

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

42 6. ANIMAL FIGHTING PARAPHERNALIA. (a) Any person who intentionally  
43 owns, possesses, sells, transfers or manufactures animal fighting  
44 paraphernalia with the intent to engage in or otherwise promote or  
45 facilitate animal fighting as defined in subdivision one of this section  
46 is guilty of a class B misdemeanor punishable by imprisonment for a  
47 period of up to ninety days, or by a fine not to exceed five hundred  
48 dollars, or by both such fine and imprisonment. Any person who engages  
49 in the conduct specified in this subdivision after having been convicted  
50 within the previous five years of a violation of this subdivision is  
51 guilty of a misdemeanor and is punishable by imprisonment for a period  
52 not to exceed one year, or by a fine not to exceed one thousand dollars,  
53 or by both such fine and imprisonment.

54 (b) For purposes of this section, animal fighting paraphernalia shall  
55 mean equipment, products, or materials of any kind that are used,  
56 intended for use, or designed for use in the training, preparation,

1 conditioning or furtherance of animal fighting. Animal fighting  
2 paraphernalia includes the following:

- 3 (i) A breaking stick, which means a device designed for insertion  
4 behind the molars of a dog for the purpose of breaking the dog's grip on  
5 another animal or object;
- 6 (ii) A cat mill, which means a device that rotates around a central  
7 support with one arm designed to secure a dog and one arm designed to  
8 secure a cat, rabbit, or other small animal beyond the grasp of the dog;
- 9 (iii) A treadmill, which means an exercise device consisting of an  
10 endless belt on which the animal walks or runs without changing places;
- 11 (iv) A springpole, which means a biting surface attached to a stretch-  
12 able device, suspended at a height sufficient to prevent a dog from  
13 reaching the biting surface while touching the ground;
- 14 (v) A fighting pit, which means a walled area, or otherwise defined  
15 area, designed to contain an animal fight;
- 16 (vi) Any other instrument commonly used in the furtherance of pitting  
17 an animal against another animal.

18 7. SECOND AND ADDITIONAL OFFENSES. (A) ANY PERSON WHO IS CONVICTED OF  
19 A VIOLATION OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION AND HAS  
20 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUCH PARAGRAPH SHALL BE  
21 GUILTY OF A CLASS D FELONY.

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

25 (C) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (A) OF  
26 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED  
27 TWO OR MORE TIMES OF A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A  
28 CLASS C FELONY.

29 (D) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (B) OF  
30 SUBDIVISION TWO OF THIS SECTION AND WHO HAS PREVIOUSLY BEEN CONVICTED  
31 TWO OR MORE TIMES OF A VIOLATION OF SUCH PARAGRAPH SHALL BE GUILTY OF A  
32 CLASS B FELONY.

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

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

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

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

47 2. ANY PERSON WHO deprives any animal of necessary sustenance, food or  
48 drink, or neglects or refuses to furnish it such sustenance or drink, or  
49 causes, procures or permits any animal to be overdriven[, ] OR over-  
50 loaded, [tortured, cruelly beaten, or unjustifiably injured, maimed,  
51 mutilated or killed, or to be deprived of necessary food or drink,] or  
52 who wilfully sets on foot, instigates, engages in, or in any way  
53 furthers any act of cruelty to any animal, or any act tending to produce  
54 such cruelty, is guilty of a class A misdemeanor [and for purposes of  
55 paragraph (b) of subdivision one of section 160.10 of the criminal

1 procedure law, shall be treated as a misdemeanor defined in the penal  
2 law].

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

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

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

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

17 5. Nothing herein contained shall be construed to prohibit or inter-  
18 fere with any properly conducted scientific tests, experiments or inves-  
19 tigation, involving the use of living animals, performed or conducted  
20 in laboratories or institutions, which are approved for these purposes  
21 by the state commissioner of health. The state commissioner of health  
22 shall prescribe the rules under which such approvals shall be granted,  
23 including therein standards regarding the care and treatment of any such  
24 animals. Such rules shall be published and copies thereof conspicuously  
25 posted in each such laboratory or institution. The state commissioner of  
26 health or his OR HER duly authorized representative shall have the power  
27 to inspect such laboratories or institutions to insure compliance with  
28 such rules and standards. Each such approval may be revoked at any time  
29 for failure to comply with such rules and in any case the approval shall  
30 be limited to a period not exceeding one year.

31 S 3. Section 353-a of the agriculture and markets law, as added by  
32 chapter 118 of the laws of 1999, is amended to read as follows:

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

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

40 [2.] 3. Nothing contained in this section shall be construed to  
41 prohibit or interfere in any way with anyone lawfully engaged in hunt-  
42 ing, trapping, or fishing, as provided in article eleven of the environ-  
43 mental conservation law, the dispatch of rabid or diseased animals, as  
44 provided in article twenty-one of the public health law, or the dispatch  
45 of animals posing a threat to human safety or other animals, where such  
46 action is otherwise legally authorized, or any properly conducted scien-  
47 tific tests, experiments, or investigations involving the use of living  
48 animals, performed or conducted in laboratories or institutions approved  
49 for such purposes by the commissioner of health pursuant to section  
50 three hundred fifty-three of this article.

51 [3.] 4. Aggravated cruelty to animals is a CLASS E felony. [A defend-  
52 ant convicted of this offense shall be sentenced pursuant to paragraph  
53 (b) of subdivision one of section 55.10 of the penal law provided,  
54 however, that any term of imprisonment imposed for violation of this  
55 section shall be a definite sentence, which may not exceed two years.]

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

4 S 4. Section 353-b of the agriculture and markets law, as added by  
5 chapter 594 of the laws of 2003, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

55 [3.] 5. Minimum standards for determining whether shelter is appropri-  
56 ate to a dog's breed, physical condition and the climate shall include:

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

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

16 [4.] 6. Inadequate shelter may be indicated by the appearance of the  
17 housing facility itself, including but not limited to, size, structural  
18 soundness, evidence of crowding within the housing facility, healthful  
19 environment in the area immediately surrounding such facility, or by the  
20 appearance or physical condition of the dog.

21 [5.] 7. Upon a finding of any violation of this section, any dog or  
22 dogs seized pursuant to the provisions of this article that have not  
23 been voluntarily surrendered by the owner or custodian or forfeited  
24 pursuant to court order shall be returned to the owner or custodian only  
25 upon proof that appropriate shelter as required by this section is being  
26 provided.

27 [6.] 8. Nothing in this section shall be construed to affect any  
28 protections afforded to dogs or other animals under any other provisions  
29 of this article.

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

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

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

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

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

54 S 6. Section 356 of the agriculture and markets law, as amended by  
55 chapter 458 of the laws of 1985, is amended to read as follows:

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

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

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

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

17 2. In case any animal shall be at any time impounded as aforesaid, and  
18 shall continue to be without necessary food and water for more than  
19 twelve successive hours, it shall be lawful for any person, from time to  
20 time, and as often as it shall be necessary, to enter into and upon any  
21 pound in which any such animal shall be so confined, and to supply it  
22 with necessary food and water, so long as it shall remain so confined;  
23 such person shall not be liable [to] FOR any action for such entry, and  
24 the reasonable cost of such food and water may be collected by him [of]  
25 OR HER FROM the owner of such animal, and [the] said animal shall not be  
26 exempt from levy and sale upon execution issued upon a judgment there-  
27 for.

28 S 7. Section 359 of the agriculture and markets law, as added by chap-  
29 ter 1047 of the laws of 1965, subdivision 1 as amended by chapter 458 of  
30 the laws of 1985 and subdivision 2 as amended by chapter 84 of the laws  
31 of 2001, is amended to read as follows:

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

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

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

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

47 2. A railway corporation, or an owner, agent, consignee, or person in  
48 charge of any horses, sheep, cattle, or swine, in the course of, or for  
49 transportation, who confines, or causes or suffers the same to be  
50 confined, in cars for a longer period than twenty-eight consecutive  
51 hours, or thirty-six consecutive hours where consent is given in the  
52 manner hereinafter provided, without unloading for rest, water and feed-  
53 ing, during five consecutive hours, unless prevented by storm or inevi-  
54 table accident, is guilty of a CLASS A misdemeanor. The consent which  
55 will extend the period from twenty-eight to thirty-six hours shall be  
56 given by the owner, or by person in custody of a particular shipment, by

1 a writing separate and apart from any printed bill of lading or other  
2 railroad form. In estimating such confinement, the time during which the  
3 animals have been confined without rest, on connecting roads from which  
4 they are received, must be computed.

5 S 8. Section 360 of the agriculture and markets law, as amended by  
6 chapter 458 of the laws of 1985, is amended to read as follows:

7 S 360. Poisoning or attempting to poison animals. 1. A person who  
8 unjustifiably administers any poisonous or noxious drug or substance to  
9 [a horse, mule or domestic cattle or unjustifiably exposes any such drug  
10 or substance with intent that the same shall be taken by horse, mule or  
11 by domestic cattle, whether such horse, mule or domestic cattle be the  
12 property of himself or another,] ANY ANIMAL is guilty of a CLASS E felo-  
13 ny. [A person who unjustifiably administers any poisonous or noxious  
14 drug or substance to an animal, other than a horse, mule or domestic  
15 cattle, or unjustifiably exposes any such drug or substance with intent  
16 that the same shall be taken by an animal other than a horse, mule or  
17 domestic cattle, whether such animal be the property of himself or  
18 another, is guilty of a misdemeanor, punishable by imprisonment for not  
19 more than one year, or by a fine of not more than one thousand dollars,  
20 or by both.]

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

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

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

30 S 9. Section 365 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 365. Clipping or cutting the ears of dogs. 1. (A) Whoever clips or  
33 cuts off or causes or procures another to clip or cut off the whole or  
34 any part of an ear of any dog unless an anaesthetic shall have been  
35 given to the dog and the operation performed by a licensed veterinarian,  
36 is guilty of a CLASS A misdemeanor, punishable by imprisonment for not  
37 more than one year, or a fine of not more than one thousand dollars, or  
38 by both.

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

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

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

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

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

1 [4.] 3. Nothing herein contained shall be construed as preventing any  
2 dog whose ear or ears shall have been clipped or cut off wholly or in  
3 part, not in violation of this section, from being imported into the  
4 state exclusively for breeding purposes.  
5 S 10. Subdivision 1 of section 160.10 of the criminal procedure law is  
6 amended by adding a new paragraph (b-1) to read as follows:  
7 (B-1) A MISDEMEANOR DEFINED IN SECTION THREE HUNDRED FIFTY-THREE OF  
8 THE AGRICULTURE AND MARKETS LAW; OR  
9 S 11. This act shall take effect on the ninetieth day after it shall  
10 have become a law.