S T A T E O F N E W Y O R K

592

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:

Section 1. Section 351 of the agriculture and markets law, as added by chapter 150 of the laws of 1984, subdivision 2 as amended by chapter 190 of the laws of 2004, subdivision 5 as amended by chapter 332 of the laws of 2011 and subdivision 6 as added by chapter 144 of the laws of 2012, is amended to read as follows:

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

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

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

[(b)] (II) Trains any animal under circumstances evincing an intent 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.

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[(c)] (III) Breeds, sells or offers for sale any animal under circumstances evincing an intent that such animal engage in animal fighting; or

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

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

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

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

(b) The owning, possessing or keeping of any animal under circumstances evincing an intent that such animal engage in animal fighting.

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

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

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

(b) The knowing presence as a spectator at any place where an exhibition of animal fighting is being conducted.

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

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

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

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing places;

(iv) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(v) A fighting pit, which means a walled area, or otherwise defined area, designed to contain an animal fight;

(vi) Any other instrument commonly used in the furtherance of pitting an animal against another animal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2.] 3. Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, as provided in article eleven of the environmental conservation law, the dispatch of rabid or diseased animals, as provided in article twenty-one of the public health law, or the dispatch of animals posing a threat to human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by the commissioner of health pursuant to section three hundred fifty-three of this article.

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

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

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

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

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

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

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

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

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

(C) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION WHERE SUCH VIOLATION RESULTS IN THE SERIOUS PHYSICAL INJURY 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 5. Section 355 of the agriculture and markets law, as amended by chapter 458 of the laws of 1985, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 360. Poisoning or attempting to poison animals. 1. A person who unjustifiably administers any poisonous or noxious drug or substance to [a horse, mule or domestic cattle or unjustifiably exposes any such drug or substance with intent that the same shall be taken by horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the property of himself or another,] ANY ANIMAL is guilty of a CLASS E felony. [A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.]

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

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

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

S 9. Section 365 of the agriculture and markets law, as amended by chapter 458 of the laws of 1985, is amended to read as follows:

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

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

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

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

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

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

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

S 10. Subdivision 1 of section 160.10 of the criminal procedure law is amended by adding a new paragraph (b-1) to read as follows:

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

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