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

8199

I N S E N A T E

September 28, 2016

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the agriculture and markets law and the penal law, in relation to detecting, disrupting and dismantling violent enterprise animal cruelty and appropriately punishing individuals associated with such enterprise cruelty; and to repeal certain provisions of the agriculture and markets law relating thereto

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

Section 1. Section 350 of the agriculture and markets law is amended by adding two new subdivisions 6 and 7 to read as follows:

6. "ANIMAL FIGHTING" MEANS ANY FIGHT BETWEEN ANIMALS, OR BETWEEN ANY ANIMAL AND A PERSON OR PERSONS, FOR AMUSEMENT OR GAIN. THE TERM SHALL NOT BE CONSTRUED TO INCLUDE EXHIBITIONS OF A KIND COMMONLY FEATURED AT RODEOS.

7. "ANIMAL FIGHTING PARAPHERNALIA" MEANS 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 (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, AND (VI) ANY OTHER INSTRUMENT COMMONLY USED IN THE FURTHERANCE OF PITTING AN ANIMAL AGAINST ANOTHER ANIMAL.

S 2. Section 351 of the agriculture and markets law is REPEALED and a new section 351 is added to read as follows:

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

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S 351. PROMOTING ANIMAL FIGHTING IN THE THIRD DEGREE. A PERSON IS GUILTY OF PROMOTING ANIMAL FIGHTING IN THE THIRD DEGREE WHEN SUCH PERSON:

1. OWNS, POSSESSES, SELLS, TRANSFERS OR MANUFACTURES ANIMAL FIGHTING PARAPHERNALIA UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH PARAPHERNALIA BE USED TO ENGAGE IN OR OTHERWISE PROMOTE OR FACILITATE ANIMAL FIGHTING; OR

2. IS PRESENT AT ANY PLACE WHERE AN EXHIBITION OF ANIMAL FIGHTING IS BEING CONDUCTED AND SUCH PERSON HAS KNOWLEDGE THAT SUCH AN EXHIBITION IS BEING CONDUCTED.

PROMOTING ANIMAL FIGHTING IN THE THIRD DEGREE IS A CLASS B 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.

S 3. The agriculture and markets law is amended by adding four new sections 351-a, 351-b, 351-c and 351-d to read as follows:

S 351-A. PROMOTING ANIMAL FIGHTING IN THE SECOND DEGREE. A PERSON IS GUILTY OF PROMOTING ANIMAL FIGHTING IN THE SECOND DEGREE WHEN SUCH PERSON:

1. OWNS, POSSESSES, OR KEEPS ANY ANIMAL UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH ANIMAL ENGAGE IN, OR IN ANY WAY FACILITATE, ANIMAL FIGHTING; OR

2. COMMITS THE CRIME OF PROMOTING ANIMAL FIGHTING IN THE THIRD DEGREE IN VIOLATION OF SUBDIVISION ONE OF SECTION THREE HUNDRED FIFTY-ONE OF THIS ARTICLE AND HAS BEEN CONVICTED WITHIN THE PREVIOUS FIVE YEARS OF A VIOLATION OF THIS SECTION, SECTION THREE HUNDRED FIFTY-ONE, THREE HUNDRED FIFTY-ONE-B, THREE HUNDRED FIFTY-THREE, THREE HUNDRED FIFTY-THREE-A, THREE HUNDRED FIFTY-SIX, THREE HUNDRED FIFTY-NINE, THREE HUNDRED SIXTY-ONE, OR THREE HUNDRED SIXTY-SIX OF THIS ARTICLE; OR

3. COMMITS THE CRIME OF PROMOTING ANIMAL FIGHTING IN THE THIRD DEGREE IN VIOLATION OF SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-ONE OF THIS ARTICLE, AND:

(A) HAS BEEN CONVICTED WITHIN THE PREVIOUS FIVE YEARS OF A VIOLATION OF THIS SECTION, SECTION THREE HUNDRED FIFTY-ONE, THREE HUNDRED FIFTY-ONE-B, THREE HUNDRED FIFTY-THREE, THREE HUNDRED FIFTY-THREE-A, THREE HUNDRED FIFTY-SIX, THREE HUNDRED FIFTY-NINE, THREE HUNDRED SIXTY-ONE, OR THREE HUNDRED SIXTY-SIX OF THIS ARTICLE, OR

(B) HAS PAID AN ADMISSION FEE, MADE A WAGER, OR OTHERWISE ACTIVELY CONTRIBUTED, IN ANY MANNER, TO THE EXHIBITION OF ANIMAL FIGHTING BEING CONDUCTED.

PROMOTING ANIMAL FIGHTING IN THE SECOND DEGREE IS 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.

S 351-B. PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE. A PERSON IS GUILTY OF PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE WHEN SUCH PERSON:

1. CAUSES AN ANIMAL TO ENGAGE IN ANIMAL FIGHTING;

2. TRAINS AN ANIMAL UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH ANIMAL ENGAGE IN ANIMAL FIGHTING;

3. BREEDS, TRANSFERS, SELLS, OR OFFERS FOR SALE AN ANIMAL UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH ANIMAL ENGAGE IN ANIMAL FIGHTING;

4. PERMITS ANY ACT DESCRIBED IN SUBDIVISION ONE, TWO OR THREE OF THIS SECTION TO OCCUR ON PREMISES UNDER HIS OR HER CONTROL; OR

5. OWNS, POSSESSES, HARBORS, OR KEEPS ANY ANIMAL ON PREMISES WHERE AN EXHIBITION OF ANIMAL FIGHTING IS BEING CONDUCTED UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH ANIMAL ENGAGE IN ANIMAL FIGHTING.

PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE IS A CLASS D FELONY.

S 351-C. PROMOTING ENTERPRISE ANIMAL FIGHTING. A PERSON IS GUILTY OF PROMOTING ENTERPRISE ANIMAL FIGHTING WHEN SUCH PERSON:

1. COMMITS THE CRIME OF PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE IN VIOLATION OF SUBDIVISION ONE OF SECTION THREE HUNDRED FIFTY-ONE-B OF THIS ARTICLE AS PART OF, DURING, OR IN CONNECTION WITH A CONTINUOUS EXHIBITION OF ANIMAL FIGHTING THAT INCLUDES MORE THAN TWO ANIMALS IN SUCCESSIVE ACTS OF ANIMAL FIGHTING;

2. COMMITS THE CRIME OF PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE IN VIOLATION OF SUBDIVISION TWO OR THREE OF SECTION THREE HUNDRED FIFTY-ONE-B OF THIS ARTICLE AND IS IN POSSESSION OF MORE THAN SIX ANIMALS UNDER CIRCUMSTANCES EVINCING AN INTENT THAT SUCH ANIMALS ENGAGE IN, OR OTHERWISE FACILITATE, ANIMAL FIGHTING;

3. PERMITS AN ACT DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED FIFTY-ONE-B OF THIS ARTICLE TO OCCUR ON PREMISES UNDER HIS OR HER CONTROL, WHERE SUCH ACT IS A CONTINUOUS EXHIBITION OF ANIMAL FIGHTING THAT INCLUDES MORE THAN TWO ANIMALS IN SUCCESSIVE ACTS OF ANIMAL FIGHTING; OR

4. COMMITS THE CRIME OF PROMOTING ANIMAL FIGHTING IN THE FIRST DEGREE IN VIOLATION OF SECTION THREE HUNDRED FIFTY-ONE-B OF THIS ARTICLE AND HAS BEEN CONVICTED, WITHIN THE PREVIOUS FIVE YEARS, OF A VIOLATION OF SECTION THREE HUNDRED FIFTY-ONE, THREE HUNDRED FIFTY-ONE-A, THREE HUNDRED FIFTY-ONE-B, THREE HUNDRED FIFTY-THREE, THREE HUNDRED FIFTY-THREE-A, THREE HUNDRED FIFTY-SIX, THREE HUNDRED FIFTY-NINE, THREE HUNDRED SIXTY-ONE, OR THREE HUNDRED SIXTY-SIX OF THIS ARTICLE.

PROMOTING ENTERPRISE ANIMAL FIGHTING IN THE FIRST DEGREE IS A CLASS C FELONY.

S 351-D. AUTHORIZED DISPOSITIONS; PROMOTING ANIMAL FIGHTING. WHEN A PERSON IS CONVICTED OF AN OFFENSE DEFINED IN SUBDIVISION ONE OF SECTION THREE HUNDRED FIFTY-ONE-A OF THIS ARTICLE, IN ADDITION TO THE PENALTIES PROVIDED IN SECTION THREE HUNDRED SEVENTY-FOUR OF THIS ARTICLE AND THOSE PROVIDED IN THE OTHER LAWS OF THIS STATE, THE COURT MAY IMPOSE A FINE WHICH SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS. WHEN A PERSON IS CONVICTED OF AN OFFENSE DEFINED IN SECTION THREE HUNDRED FIFTY-ONE-B OF THIS ARTICLE, IN ADDITION TO THE PENALTIES PROVIDED IN SECTION THREE HUNDRED SEVENTY-FOUR OF THIS ARTICLE AND THOSE PROVIDED IN THE OTHER LAWS OF THIS STATE, THE COURT MAY IMPOSE A FINE WHICH SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS. WHEN A PERSON IS CONVICTED OF AN OFFENSE DEFINED IN SECTION THREE HUNDRED FIFTY-ONE-C OF THIS ARTICLE, IN ADDITION TO THE PENALTIES PROVIDED IN SECTION THREE HUNDRED SEVENTY-FOUR OF THIS ARTICLE AND THOSE PROVIDED IN THE OTHER LAWS OF THIS STATE, THE COURT MAY IMPOSE A FINE WHICH SHALL NOT EXCEED THIRTY-FIVE THOUSAND DOLLARS.

S 4. Paragraph a of subdivision 8 of section 374 of the agriculture and markets law, as amended by chapter 594 of the laws of 2003 and subdivision 8 as renumbered by chapter 479 of the laws of 2009, is amended to read as follows:

a. In addition to any other penalty provided by law, upon conviction for any violation of section three hundred fifty-one, THREE HUNDRED FIFTY-ONE-A, THREE HUNDRED FIFTY-ONE-B, THREE HUNDRED FIFTY-ONE-C, three hundred fifty-three, three hundred fifty-three-a, three hundred fifty-three-b, three hundred fifty-five, three hundred fifty-six, three hundred fifty-nine, three hundred sixty, three hundred sixty-one, three

hundred sixty-five or three hundred sixty-eight of this article, the convicted person may, after a duly held hearing pursuant to paragraph f of this subdivision, be ordered by the court to forfeit, to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, the animal or animals which are the basis of the conviction. Upon such an order of forfeiture, the convicted person shall be deemed to have relinquished all rights to the animals which are the basis of the conviction, except those granted in paragraph d of this subdivision.

S 5. Paragraph (a) of subdivision 1 of section 70.06 of the penal law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

(a) A second felony offender is a person, other than a second violent felony offender as defined in section 70.04, who stands convicted of a felony [defined in this chapter], other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in paragraph (b) of this subdivision.

S 6. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.