

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals and the Law #1-A

May 22, 2014

S. 4347

A. 238

By: Senator Boyle

By: M. of A. Rosenthal

Senate Committee: Agriculture

Assembly Committee: Agriculture

Effective Date: 90 days after it shall have become a law

AN ACT to amend the agriculture and markets law, in relation to aggravated cruelty to animals.

SECTION AND LAW REFERRED TO: Subdivision 1 of section 353-a of the Agriculture and Markets Law is amended to include wildlife within the pre-existing provisions defining aggravated cruelty to animals. Section 353-a addresses intentional acts of extreme cruelty and it presently covers only companion animals. Subdivision 2 of section 353-a of the Agriculture and Markets Law is amended to clarify that nothing in this legislation would prohibit or interfere with activities deemed to be sound agricultural practices pursuant to section 308 of the Agriculture and Markets Law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

S.4347/A.238 amends the Agriculture and Markets Law to add wildlife, as defined in section 11-0103(6) of the Environmental Conservation Law, to the animals encompassed within the provisions prohibiting aggravated cruelty to animals. This legislation specifically excludes insects. At present, the aggravated cruelty law provides that a person is guilty of aggravated cruelty to animals when he or she intentionally kills or causes serious injury to a companion animal (as defined by section 350 of the Agriculture and Markets Law), by engaging in conduct which is intended to cause extreme physical pain or is carried out in an especially depraved or sadistic manner. Violation of the existing aggravated cruelty law is a felony, and that part of the law is not changed by this bill.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

The exclusion of wildlife from the present law means that heinous acts of cruelty perpetrated against wild animals are punishable under only the general cruelty to animals statute, the violation of which is a misdemeanor. As the law is presently written, the very same egregious acts of torture of, for instance, a rabbit or a mouse would be treated differently depending upon whether the victim were living with a family as a pet, in which case the felony aggravated cruelty statute would apply, or existing as a wild animal, in which instance the misdemeanor animal cruelty statute would apply.

The sponsors of this legislation note that since the aggravated animal cruelty statute became effective in 1999, there have been many egregious instances reported where wild animals have been captured and subjected to torture. These acts of animal torture are no less depraved because they are perpetrated upon wild animals, and this legislation would simply put the punishment for such acts on the same footing as if they had been perpetrated against a companion animal. Given that penal laws generally focus upon the conduct being proscribed, rather than upon the nature of the victim, it is logical to treat the same heinous acts of cruelty against animals the same, whether the victim falls within the statutory definition of a companion animal or is outside that definition.

It is important to note that the existing animal cruelty statute would remain largely unchanged. There would be no change to the stringent standard required to establish that an act of aggravated cruelty to animals had been committed, specifically that the actor had engaged in conduct which was intended to cause extreme physical pain or was especially depraved or sadistic. There also would be no change to existing provisions of the aggravated cruelty law which provide that: lawful hunting or fishing; dispatching of rabid or diseased animals that pose a threat to human or other animals' safety, or other animals, when such action is legally authorized; or properly conducted scientific tests or experiments involving the use of live animals, will not fall within the definition of cruelty to animals.

Additionally, this legislation specifies that it shall not be construed to prohibit or interfere with activities deemed to be sound agricultural practices pursuant to section 308 of the Agricultural and Markets Law.

Finally, this law would have no fiscal implications.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation.

Chair of the Committee: Amy L. Chaitoff, Esq.