



Memorandum in Opposition

COMMITTEE ON ANIMALS AND THE LAW

Animals # 19

March 11, 2022

S. 5439

By: Senator Brisport

A. 703

By: Assemblymember Rosenthal

Senate Committee: Consumer Protection

Assembly Committee: Economic Development

Effective Date: Immediately; beginning 24 months
after the effective date

AN ACT to amend the general business law, in relation to the prohibition on the sale and manufacture of fur products.

LAW & SECTION REFERRED TO: New section § 399-bbbb of the General Business Law.

THE COMMITTEE ON ANIMALS AND THE LAW OPPOSES THIS LEGISLATION

Each year, more than 100 million foxes, rabbits, mink and other animals are bred and killed for their pelts on “fur farms” in the United States and around the world.¹ Animal welfare lobbies and humane organizations have long awaited a bill that would end the exploitive killing of these animals.

In keeping with its mission to monitor and provide comment on important, relevant legislation associated with animal welfare, the Committee on Animals and the Law opposes the proposed bill. The Committee’s opposition calls critical attention to a potential, albeit unintended, harmful consequence of the proposed legislation inviting the exact opposite of the sponsor’s intent and the bill’s purpose.

The proposed Gen Bus L. Section § 399-bbbb establishes much needed prohibitions on the commercial sale, procurement, manufacturing, retail display, giving, donating, trade or other distributions of a new or used fur product within New York State. Penalties for violations begin at \$500.00 and increase up to \$1000.00 for each infraction, with potential liability for attorney’s fees. Clear definitions of fur and fur products are provided within the statute, which includes pragmatic exceptions for leather products with hair, fiber and fleece removed during processing, cowhides with hair attached, and lambskin or sheepskin products. Excluded from the bill’s reach are used furs held by individuals not normally engaged in the fur business, non-profit organizations, manufactures of used fur products, thrift stores and pawn shops.

The bill also includes another exemption set forth in subdivision 5. The Committee strongly opposes the language within that subdivision which states:

¹The Humane Society International, “The Fur Trade,” <https://www.hsi.org/news-media/fur-trade/>

“... the manufacture and sale of fur products shall not be prohibited when such manufacture and sale is for the exclusive distribution to and use by persons who purchase such products in order to conform to or comply with a religious or cultural practice.” Use of the undefined terms, “*religious*” and “*cultural practice*” is a real concern because without a definition of those terms, the exemption can virtually eliminate the value of the bill’s prohibitions. Webster’s online dictionary defines “culture” as constituting “*the beliefs, customs, arts, etc., of a particular society, group, place, or time,*”² and includes the following context, “*Today’s youth culture*”³, indicating the broad scope of its meaning. Should fur wearing become an appealing trend to a younger or future generation, the proposed statute might conceivably apply to such “culture,” and thus the “cultural” exception.

The expressed concern is not exaggerated. A recent newspaper article discussed a documented ten percent rise in fur sales in New York City⁴ wherein some local furriers attributed the increase to demand from “younger women, 25 to 35,” years of age.⁵ Conceivably, a mere societal fashion trend would merit a “cultural” exception to the bill’s prohibitions. As such, the bill’s vagueness with respect to “cultural practices,” creates a context wherein the exception belies the rule and may justify new markets for animal fur via some new cultural trend. In 2020, the United States imported more than 100 million dollars’ worth of fur apparel from around the world and exported over three million dollars’ worth of such products.⁶ This significant import and export of fur throughout the United States also fuels the Committee’s concern, particularly because New York City remains “the largest fur retailer market in the United States.”⁷

Permitted exemptions for religious, cultural and subsistence traditions are written into various federal endangered species and environmental protection laws, and linked to specific indigenous societies, but these exceptions are narrowly drawn. For instance, the Bald and Golden Eagle Protection Act⁸ states, “Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for...the religious purposes of Indian tribes...”. Similarly, the Endangered Species Act contains exceptions, one of which states, “[T]he provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

- (A) Any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or
 - (B) any non-native permanent resident of an Alaskan native village;
- if such taking is primarily for subsistence purposes. . . .”⁹

This statute also is very significant because it specifically and narrowly defines the terms “subsistence” and “authentic native articles of handcrafts and clothing.”¹⁰

² “Culture.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/culture>. Accessed 2 Feb. 2022.

³ *Id.*

⁴ Melanie Gray, “Fur sales are booming in NYC this winter,” (December 26, 2020), *New York Post*, <https://nypost.com/2020/12/26/fur-sales-are-booming-in-nyc-this-winter/> (last visited 2/2/2022)

⁵ *Id.*

⁶ Statista, “Value of fur apparel imports to the United States from 2013 to 2020” <https://www.statista.com/statistics/1081756/fur-apparel-import-value-us/> (last visited 2/2/22).

⁷ FUR NYC, “Get the Facts; Fur is a vibrant industry.”

<https://furnyc.org/about/#:~:text=New%20York%20is%20the%20largest,in%20the%20last%20few%20years>. (last visited 2/2/22).

⁸ 16 U.S.C. § 668a

⁹ 16 U.S.C §1539 (e)(1).

¹⁰ 16 U.S.C. §1539 (e)(3). Another example is the exception to the moratorium on taking and importing marine mammals and products for, “Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean,” again on the condition that such taking is for “subsistence purposes” or “done for purposes of creating and selling authentic native articles of handcrafts and clothing. . . .” 16 U.S.C. § 1371(B)(1). This statute also specifically defines “subsistence purposes” and “done for purposes of creating and selling authentic

New York State similarly extends special hunting privileges not available to the general public to certain Native American tribes as extensions of Native American Treaty rights.¹¹ However, unlike the proposed bill, the laws that allow cultural and religious exemptions do so on a permit basis under the oversight of the prevailing governmental authority to avoid exploitation of the protected species or resource.¹²

Setting a welcome precedent, in 2019, California became the first state to ban the commercial sale of fur, with notable, narrow exceptions drawn for fur products used for religious purposes, and for “A fur product used for traditional tribal, cultural, or spiritual purposes by a member of a federally recognized Native American tribe or a non-federally recognized California Native American tribe listed on the California Tribal Consultation List maintained by the Native American Heritage Commission.”¹³ Massachusetts¹⁴, Oregon¹⁵, Rhode Island¹⁶, and Hawaii¹⁷ have similar legislation under consideration which contains narrow exceptions echoing those contained in the California statute.

As events have unfolded during the past two years of the COVID-19 pandemic, the public health benefits of banning the commercial enterprise in fur products have been well documented. Given rampant zoonotic transmission, more than 17 million mink were killed across Denmark in 2020 to contain the potential spread of disease after the virus was identified on many of the farms.¹⁸

[native articles of handicrafts and clothing.](#)” 16 U.S.C. § 1371(B)(1).

¹¹ New York State Department of Environmental Conservation, New York Hunting & Trapping Guide 2021-2022 Official Guide to Laws and Regulations, p.13, “Native American: Free hunting, fishing and trapping licenses are available to members of the Shinnecock and Poospatuck tribes and members of the Six Nations residing on reservations wholly or partially in New York State” available at https://www.dec.ny.gov/docs/wildlife_pdf/huntguide.pdf (last visited 2/2/22.).

¹² See e.g., 16 U.S.C. § 668a (“Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for ...for the religious purposes of Indian tribes, . . .”) see also, 16 U.S. C. § 1371 (b)(3) (“Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. ...”)

¹³ CA Fish & G Code §2023(A)(5)(c)(3), effective January 1, 2023. This statute also does not apply to “Any activity expressly authorized by federal law.”, *Id.*, §2023(A)(5)(c)(4).

¹⁴ An Act Prohibiting the Sale of Fur Products, MA S. 623/H. 965, §)3(b)(2) 192nd General Court of the Commonwealth of Massachusetts), (“The prohibitions outlined in this Section do not apply to the sale, offer for sale, displaying for sale, trade, or distribution of... a fur product used for traditional tribal, cultural, or spiritual purposes by a member of a federally recognized or state-recognized Native American tribe”).

¹⁵ OR, HB 2676 (2021 Regular Session 4), Subsection (3) of this section does not apply to the sale, offer for sale, display for sale, trade or other distribution for consideration of... (3)(c), “A fur product used or intended to be used for a traditional tribal, cultural or spiritual purpose by a member of a federally recognized Indian tribe or other Indian tribe.”

¹⁶ Trade in Animal Fur Act, RI, HB 5188 (Regular Session 2021), 11-70-3(2) (Exempts “[a] fur product required for use in the practice of a religion.”)

¹⁷ Relating to Animal Fur Products, Hawaii SB 2753, HB 1689 §3 (b) (30th Legislature 2020) (“[P]rohibition in subsection (a) shall not apply to the sale, offer for sale, display for sale, trade, gift, or other distribution of:

* * *

(2) A fur product required for use in the practice of a religion;

(3) A fur product used for traditional tribal, cultural, or spiritual purposes by a member of a federally recognized Native American tribe; or

(4) A fur product where the activity is expressly authorized by federal law.)

¹⁸ Kesslen, Ben, “Here's why Denmark culled 17 million minks and now plans to dig up their buried bodies.” NBC News (12/1/2020)

<https://www.nbcnews.com/news/animal-news/here-s-why-denmark-culled-17-million-minks-now-plans-n1249610> (last visited 2/4/22).

In Utah, about 8000 mink died from COVID-19 during 2020,¹⁹ and over 5000 mink were killed on Wisconsin mink farms to curtail spread of the virus.²⁰

As a role model for other states, a ban on the procurement, manufacture and sale of fur in New York State will significantly influence the reduction of the exploitive killing of animals for their pelts in America, with concomitant, critical benefits for public health. However, a ban with undefined and potentially far-reaching exceptions will undermine its best intentions, establishing harmful precedents with decidedly negative consequences. The Committee on Animals and the Law recommends that the bill be amended to narrow the existing unlimited exception relating to religious or cultural practices and to tailor it to be consistent with existing state and federal law, as discussed above.

For the foregoing reasons, the Committee on Animals and the Law **OPPOSES** the passage and enactment of this legislation in its present form.

¹⁹ Aleccia, JoNel, “Thousands of Minks Dead as COVID Outbreak Escalates on Utah Farms” Keiser Family Foundation, Keiser, Keiser Family Network (10/2/2020)
<https://khn.org/news/thousands-of-minks-dead-as-covid-outbreak-escalates-on-utah-farms/> (last visited 2/4/22).

²⁰ Simmons, Dan, “Mink farmers are skipping to the front of the vaccine line — for an important reason,” Washington Post, Business, (2/19/2021)
<https://www.washingtonpost.com/business/2021/02/19/mink-farmers-vaccine-essential-workers-wisconsin/>