

Article 26

of the Agriculture and Markets Law
relating to

CRUELTY TO ANIMALS

NEW YORK CONSOLIDATED LAWS

2019

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Article 26

Animals

Agriculture & Markets (AGM)

SECTION 350

Definitions

Agriculture & Markets (AGM)

1. "Animal," as used in this article, includes every living creature except a human being;
2. "Torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.
3. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog or cat, seized or surrendered.
4. "Farm animal", as used in this article, means any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals, as defined in section 11-1907 of the environmental conservation law, which are raised for commercial or subsistence purposes. Fur-bearing animal shall not include dogs or cats.
5. "Companion animal" or "pet" means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this section.

SECTION 351

Prohibition of animal fighting

Agriculture & Markets (AGM)

1. 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. Any person who engages in any of the following conduct is guilty of a felony 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) For amusement or gain, causes any animal to engage in animal fighting; or
 - (b) Trains any animal under circumstances evincing an intent that such animal engage in animal

fighting for amusement or gain; or

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

(d) Permits any act described in paragraph (a), (b) or (c) of this subdivision to occur on premises under his control; or

(e) 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.

3. (a) Any person who engages in conduct specified in paragraph (b) 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 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. (a) Any person who engages in conduct specified in paragraph (b) hereof 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 having paid an admission fee or having made a wager at any place where an exhibition of animal fighting is being conducted.

5. (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. (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.

SECTION 353

Overdriving, torturing and injuring animals; failure to provide proper sustenance Agriculture & Markets (AGM)

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 or to another, or 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, 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.

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 duly authorized represen-

tative 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.

SECTION 353-A

Aggravated cruelty to animals

Agriculture & Markets (AGM)

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. 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. 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. Aggravated cruelty to animals is a 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.

SECTION 353-B

Appropriate shelter for dogs left outdoors

Agriculture & Markets (AGM)

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 subdivi-

sion three 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 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. 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) 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 shall prevent the seizure of a dog for a violation of this section pursuant to the authority granted in this article.

3. 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. 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. 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. Nothing in this section shall be construed to affect any protections afforded to dogs or other

animals under any other provisions of this article.

SECTION 353-C

Electrocution of fur-bearing animals prohibited

Agriculture & Markets (AGM)

1. Notwithstanding any other provision of law, no person shall intentionally kill, or stun to facilitate the killing of, a fur-bearing animal by means of an electrical current. For the purpose of this section, “fur-bearing animal” means arctic fox, red fox, silver fox, chinchilla, mink, pine marten, muskrat, and those fur-bearing animals included within the provisions of section 11-1907 of the environmental conservation law.

2. A violation of subdivision one of this section is a class A misdemeanor.

SECTION 353-D

Confinement of companion animals in vehicles: extreme temperatures

Agriculture & Markets (AGM)

1. A person shall not confine a companion animal in a motor vehicle in extreme heat or cold without proper ventilation or other protection from such extreme temperatures where such confinement places the companion animal in imminent danger of death or serious physical injury due to exposure to such extreme heat or cold.

2. Where the operator of such a vehicle cannot be promptly located, a police officer, peace officer, peace officer acting as an agent of a duly incorporated humane society, emergency medical services personnel, paid firefighter, or volunteer firefighter who in the performance of such volunteer firefighter’s duties are directed to respond to a call for assistance for such animal may take necessary steps to remove the animal or animals from the vehicle.

3. Police officers, peace officers, peace officers acting as agents of a duly incorporated humane society, emergency medical services personnel, paid firefighters, or volunteer firefighters who in the performance of such volunteer firefighters’ duties or emergency medical services personnel are directed to respond to a call for assistance for such animal removing an animal or animals from a vehicle pursuant to this section shall place a written notice on or in the vehicle, bearing the name of the officer or agent, and the department or agency and address and other contact information, if available, where the animal or animals will be taken.

4. An animal or animals removed from a vehicle pursuant to this section shall, after receipt of any necessary emergency veterinary treatment, be delivered to the duly incorporated humane society or society for the prevention of cruelty to animals, or designated agent thereof, in the jurisdiction where the animal or animals were seized.

5. Any person who knowingly violates the provisions of subdivision one of this section 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 hun-

dred and fifty dollars for a second and subsequent offenses.

6. Officers, emergency medical services personnel and firefighters shall not be held criminally or civilly liable for actions taken reasonably and in good faith in carrying out the provisions of this section.

7. Nothing contained in this section shall be construed to affect any other protections afforded to companion animals under any other provisions of this article.

SECTION 353-E

Companion animal grooming facilities; prohibited practices

Agriculture & Markets (AGM)

1. As used in this section:

(a) “Cage and box dryer” means a product that is attached to or near a cage or box for the purpose of drying or aiding in the drying of a companion animal contained in a cage or box, and which is capable of functioning without a person manually holding a dryer.

(b) “Companion animal grooming facility” means an establishment where a companion animal may be bathed, brushed, clipped or styled for a fee.

2. No person shall use a cage or box dryer which contains a heating element with the heating element turned on for the purpose of drying or aiding in the drying of a companion animal.

3. Any violation of this section shall be punishable by a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for each violation.

4. Nothing contained in this section shall limit or abrogate any claim or cause of action any person may have under common law or by statute. The provisions of this section shall be in addition to any such common law and statutory remedies.

SECTION 353-F

Companion animal piercing and tattooing prohibited

Agriculture & Markets (AGM)

1. No person shall pierce or cause to have pierced a companion animal unless such piercing provides a medical benefit to the companion animal. Such piercing shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian. Nothing in this section shall be construed to apply to ear tags on rabbits and cavyes.

2. No person shall tattoo or cause to have tattooed a companion animal unless such tattoo:

(a) is done in conjunction with a medical procedure for the benefit of the companion animal and to indicate that such medical procedure has been done, provided that such tattoo is not for design

purposes; or

(b) is done for the purpose of identification of the companion animal and not for design purposes, and such tattoo includes only such numbers and/or letters allotted by a corporation that, in the regular course of its business, maintains an animal tattoo identification registry.

3. For the purposes of this section, “tattoo” shall mean a mark on the body made with indelible ink or pigments injected beneath the outer layer of the skin.

4. Tattooing done in conjunction with a medical procedure for the benefit of a companion animal that indicates that such medical procedure has been done shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian.

5. Any person who knowingly violates the provisions of this section shall be guilty of a violation punishable pursuant to the penal law.

SECTION 354

Sale of baby chicks and baby rabbits

Agriculture & Markets (AGM)

1. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits unless such person provides proper brooder facilities where appropriate for the care of such baby chicks, ducklings or other fowl or baby rabbits during the time they are in the possession of such person. For the purposes of this section, a baby rabbit shall be a rabbit of less than two months of age.

2. No person shall sell, offer for sale, barter or display living baby chicks, ducklings or other fowl or baby rabbits which have been dyed, colored or otherwise treated so as to impart to them an artificial color.

2-a. No provision of subdivision two shall be interpreted or applied to prevent or restrict teachers and qualified instructors of youth under the guidance and supervision of the New York state cooperative extension service from using eggs for non-profit educational purposes or from observing fowl hatched from such eggs for non-profit educational purposes.

3. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits under two months of age in any quantity less than six.

4. A violation of the provisions of this section is a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

SECTION 355

Abandonment of animals

Agriculture & Markets (AGM)

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 disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, 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.

SECTION 356

Failure to provide proper food and drink to impounded animal

Agriculture & Markets (AGM)

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 misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both. 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 any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

SECTION 357

Selling or offering to sell or exposing diseased animal

Agriculture & Markets (AGM)

A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, 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.

SECTION 358

Selling disabled horses

Agriculture & Markets (AGM)

It shall be unlawful for any person holding an auctioneer's license knowingly to receive or offer for sale or to sell at public auction, other than at a sheriff's or judicial sale under a court order, any horse which by reason of debility, disease or lameness, or for any other cause, could not be

worked in this state without violating the law against cruelty to animals. Any person violating any provision of this section shall be punishable by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

SECTION 358-A

Live animals as prizes prohibited

Agriculture & Markets (AGM)

1. For the purposes of this section “livestock” shall mean any domesticated sheep, goat, horse, cattle or swine.
2. No person shall give or offer to give away as a prize, or exchange or offer to exchange for nominal consideration, any live animal other than purebred livestock or fish in any game, drawing, contest, sweepstakes or other promotion, except when any live animal is given away by individuals or organizations operating in conjunction with a cooperative extension education program or agricultural vocational program sanctioned by the state education department.
3. The commissioner shall promulgate rules and regulations which provide guidelines, conditions and requirements when any live animal is given away under the exceptions provided for in subdivision two of this section.
4. Any person who violates the provisions of this section shall be subject to civil penalty of not more than two hundred fifty dollars or in lieu thereof shall be guilty of a violation punishable solely by a fine of not more than two hundred fifty dollars.

SECTION 359

Carrying animal in a cruel manner

Agriculture & Markets (AGM)

1. 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 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 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 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.

SECTION 359-A
Transportation of horses
Agriculture & Markets (AGM)

1. Every vehicle utilized for the transportation of more than six horses shall meet the following requirements:

a. The interiors of compartments containing horses shall be constructed of smooth materials, containing no sharp objects or protrusions which are hazardous;

b. The floors shall be of such construction or covered with abrasive material so as to prevent horses from skidding or sliding;

c. There shall be sufficient apertures to insure adequate ventilation;

d. There shall be sufficient insulation or coverings to maintain an adequate temperature in the compartment containing horses;

e. Partitions of sturdy construction shall be placed a maximum of ten feet apart in vehicles which do not have stalls;

f. Doorways shall be of sufficient height to allow safe ingress and egress of each horse contained in the compartment;

g. Each compartment containing horses shall be of such height so as to allow sufficient clearance above the poll and withers of each horse in the compartment;

h. Ramps sufficient for loading and unloading horses shall be provided if the vertical distance from the floor of the compartment containing horses to the ground is greater than fifteen inches; and

i. There shall be at least two doorways for ingress and egress, which shall not be on the same side.

2. Every vehicle utilized for the transportation of more than six horses over a highway shall have no more than one tier.

3. a. Transporting a horse in violation of this section shall be a violation punishable by a fine of not more than two hundred fifty dollars.

b. Any subsequent violation of this section on a date following a conviction under the provisions of this section shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

4. The commissioner shall promulgate rules and regulations, including size specifications, and establish guidelines in order to facilitate compliance with the provisions of this section.

5. a. The term “horse” as used throughout this section shall apply to the entire family of equidae.

b. The term “vehicle” as used throughout this section shall apply to every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

6. The court in which a conviction under the provisions of this section is obtained, shall, within thirty days of such conviction, transmit a copy of the record of conviction to the department which shall maintain a record of such conviction for the purpose of identifying subsequent violations of this section.

SECTION 360

Poisoning or attempting to poison animals

Agriculture & Markets (AGM)

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, is guilty of a 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.

SECTION 361

Interference with or injury to certain domestic animals

Agriculture & Markets (AGM)

A person who wilfully or unjustifiably interferes with, injures, destroys or tampers with or who willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse, mule, dog or any other domestic animal used for the purposes of racing, breeding or competitive exhibition of skill, breed or stamina, is interfered with, injured, destroyed or tampered with, or any act tending to produce such interference, injury, destruction or tampering, whether such horse, mule, dog or other domestic animal be the property of himself or another, is guilty of a felony.

SECTION 362

Throwing substance injurious to animals in public place

Agriculture & Markets (AGM)

A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal is guilty of a misdemeanor, punishable by im-

prisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

SECTION 363

Unauthorized possession of dogs presumptive evidence of larceny

Agriculture & Markets (AGM)

Unauthorized possession of dogs presumptive evidence of larceny. The unauthorized possession of a dog or dogs, by any person not the true owner, for a period exceeding ten days, without notifying either the owner, the local police authorities, or the superintendent of the state police at Albany, New York, of such possession, shall be presumptive evidence of larceny.

SECTION 364

Running horses on highway

Agriculture & Markets (AGM)

A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes or permits them to run, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

SECTION 365

Clipping or cutting the ears of dogs

Agriculture & Markets (AGM)

1. 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 misdemeanor, punishable by imprisonment for not more than one year, or a fine of not more than one thousand dollars, or by both.
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 applies for such license has been cut off wholly or in part.
4. 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.

SECTION 366

Companion animal stealing

Agriculture & Markets (AGM)

It shall be unlawful for any person:

1. To remove or cause to be removed the collar, identification tag or any other identification by which the owner may be ascertained from any dog, cat or any other companion animal as defined in subdivision five of section three hundred fifty of this chapter, or to entice any identified dog, cat or other such companion animal into or out of any house or enclosure for the purpose of removing its collar, tag or any other identification, except with the owner's permission;
2. To entice, seize or molest any companion animal, while it is being held or led by any person or while it is properly muzzled or wearing a collar with an identification tag attached, except where such action is incidental to the enforcement of some law or regulation;
3. To transport any companion animal, not lawfully in his possession, for the purpose of killing or selling such companion animal.

Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not to exceed six months, or by both.

SECTION 366-A

Removing, seizing or transporting dogs for research purposes

Agriculture & Markets (AGM)

It shall be unlawful for any person:

1. To remove, seize or transport or cause to remove, seize or transport any dog which belongs to or is licensed to another for the purpose of sale, barter or to give away said dog to a laboratory, hospital, research institute, medical school or any agency or organization engaged in research activity, without the express written permission of the owner or licensee.
2. Any person who violates the provision of this section, upon conviction thereof, shall be guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or by both.

SECTION 367

Leaving state to avoid provisions of this article

Agriculture & Markets (AGM)

A person who leaves this state with intent to elude any of the provisions of this article or to commit any act out of this state which is prohibited by them or who, being a resident of this state, does any act without this state, pursuant to such intent, which would be punishable under such

provisions, if committed within this state, is punishable in the same manner as if such act had been committed within this state.

SECTION 368

Operating upon tails of horses unlawful

Agriculture & Markets (AGM)

1. Any person who cuts the bone, tissues, muscles or tendons of the tail of any horse, mare or gelding, or otherwise operates upon it in any manner for the purpose or with the effect of docking, setting, or otherwise altering the natural carriage of the tail, or who knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or who assists in or is voluntarily present at such cutting, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars or by both. If a horse is found with the bone, tissues, muscles or tendons of its tail cut as aforesaid and with the wound resulting therefrom unhealed, upon the premises or in the charge and custody of any person, such fact shall be prima facie evidence of a violation of this section by the owner or user of such premises or the person having such charge or custody, respectively.

2. Any person who shows or exhibits at any horse show or other like exhibition in this state a horse, mare or gelding, the tail of which has been cut or operated upon in the manner referred to in section one hereof, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both; provided that the provisions of this section shall not apply with respect to an animal the tail of which has been so cut or operated upon, if the owner thereof furnishes to the manager or other official having charge of the horse show or exhibition at which such animal is shown or exhibited an affidavit by the owner, or a licensed veterinarian, in a form approved by the state department of agriculture and markets, stating either that the tail of such horse was so cut prior to June first, nineteen hundred sixty-four, or that it was so cut in a state wherein such cutting was not then specifically prohibited by the laws thereof. Said affidavit shall, to the best of affiant's knowledge, information and belief, identify the animal with respect to sex, age, markings, sire and dam, and state either that the cutting was done prior to June first, nineteen hundred sixty-four, or the time and place of such cutting and the name and address of the person by whom performed. The affidavit shall be subject to inspection at all reasonable times by any peace officer, acting pursuant to his special duties, or police officer of this state, or by a designated representative of the commissioner. In lieu of furnishing such affidavit to the manager or other official having charge of such horse show or exhibition, the owner of such horse may specify on the entry blank for the horse show or exhibition the name and address of a central registry office designated by the state department of agriculture and markets where such an affidavit has already been filed and is available for inspection.

SECTION 369

Interference with officers

Agriculture & Markets (AGM)

Any person who shall interfere with or obstruct any constable or police officer or any officer or agent of any duly incorporated society for the prevention of cruelty to animals in the discharge of his duty to enforce the laws relating to animals shall be 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.

SECTION 370

Protection of the public from attack by wild animals and reptiles

Agriculture & Markets (AGM)

Any person owning, possessing or harboring a wild animal or reptile capable of inflicting bodily harm upon a human being, who shall fail to exercise due care in safeguarding the public from attack by such wild animal or reptile, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both. "Wild animal" within the meaning of this section, shall not include a dog or cat or other domestic animal.

Previous attacks upon a human being by such wild animal or reptile, or knowledge of the vicious propensities of such wild animal or reptile, on the part of the possessor or harborer thereof, shall not be required to be proven by the people upon a prosecution hereunder; and neither the fact that such wild animal or reptile has not previously attacked a human being, nor lack of knowledge of the vicious propensities of such wild animal or reptile on the part of the owner, possessor or harborer thereof shall constitute a defense to a prosecution hereunder.

SECTION 371

Powers of peace officers

Agriculture & Markets (AGM)

A constable or police officer must, and any agent or officer of any duly incorporated society for the prevention of cruelty to animals may issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, summon or arrest, and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of article twenty-six of the agriculture and markets law. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in presenting the law and facts before such court, tribunal or magistrate in any proceeding taken.

SECTION 372

Issuance of warrants upon complaint

Agriculture & Markets (AGM)

Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws,

and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.

SECTION 373

Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept Agriculture & Markets (AGM)

1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place.

1-a. Any police officer in Lewis county may lawfully take possession of any lost, strayed, homeless or abandoned domestic animal, as defined in section one hundred eight of this chapter, found in any street, road or other public place.

2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which for more than twelve successive hours has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant.

3. Any such police officer or agent or officer may also lawfully take possession of any unwanted animal from the person in possession or custody thereof.

4. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place or custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon.

5. Nothing herein contained shall restrict the rights and powers derived from section one hundred seventeen of this chapter relating to seizure of unlicensed dogs and the disposition to be made of animals so seized or taken, nor those derived from any other general or special law relating to the seizure or other taking of dogs and other animals by a society for the prevention of cruelty to animals.

6. a. If any animal is seized and impounded pursuant to the provisions of this section, section three hundred fifty-three-d of this article or section three hundred seventy-five of this article for any violation of this article, upon arraignment of charges, or within a reasonable time thereafter,

the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes of this section as the “impounding organization”, may file a petition with the court in which criminal charges have been filed requesting that the person from whom an animal is seized or the owner of the animal be ordered to post a security. The district attorney prosecuting the charges may file and obtain the requested relief on behalf of the impounding organization if requested to do so by the impounding organization. The security shall be in an amount sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal pending disposition of the charges. Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of the facts and circumstances of the case including, but not limited to the recommendation of the impounding organization having custody and care of the seized animal and the cost of caring for the animal. If a security has been posted in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal.

b. (1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney if the district attorney has not filed the petition on behalf of the petitioner. The petitioner shall also serve a true copy of the petition on any interested person. For purposes of this subdivision, interested person shall mean an individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity who the court determines may have a pecuniary interest in the animal which is the subject of the petition. The petitioner or the district attorney acting on behalf of the petitioner, shall have the burden of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of this article. The court may waive for good cause shown the posting of security.

(2) If the court orders the posting of a security, the security shall be posted with the clerk of the court within five business days of the hearing provided for in subparagraph one of this paragraph. The court may order the immediate forfeiture of the seized animal to the impounding organization if the person ordered to post the security fails to do so. Any animal forfeited shall be made available for adoption or euthanized subject to subdivision seven-a of section one hundred seven-teen of this chapter or section three hundred seventy-four of this article.

(3) In the case of an animal other than a companion animal or pet, if a person ordered to post security fails to do so, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four, three hundred fifty-seven and three hundred seventy-four of this article, order the animal which was the basis of the order to be sold, provided that all interested persons shall first be provided the opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to such conditions as the court deems appropriate to assure proper care and treatment of the animal. The court may reimburse the person ordered to post security and

any interested persons any money earned by the sale of the animal less any costs including, but not limited to, veterinary and custodial care. Any animal determined by the court to be maimed, diseased, disabled or infirm so as to be unfit for sale or any useful purpose shall be forfeited to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and be available for adoption or shall be euthanized subject to section three hundred seventy-four of this article.

(4) Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in the animal or in the proceeds from the sale of such animal.

c. In no event shall the security prevent the impounding organization having custody and care of the animal from disposing of the animal pursuant to section three hundred seventy-four of this article prior to the expiration of the thirty day period covered by the security if the court makes a determination of the charges against the person from whom the animal was seized prior thereto. Upon receipt of a petition from the impounding organization, the court may order the person from whom the animal was seized or the owner of the animal to post an additional security with the clerk of the court to secure payment of reasonable expenses for an additional period of time pending a determination by the court of the charges against the person from whom the animal was seized. The person who posted the security shall be entitled to a refund of the security in whole or part for any expenses not incurred by such impounding organization upon adjudication of the charges. The person who posted the security shall be entitled to a full refund of the security, including reimbursement by the impounding organization of any amount allowed by the court to be expended, and the return of the animal seized and impounded upon acquittal or dismissal of the charges, except where the dismissal is based upon an adjournment in contemplation of dismissal pursuant to section 215.30 of the criminal procedure law. The court order directing such refund and reimbursement shall provide for payment to be made within a reasonable time from the acquittal or dismissal of charges.

7. Notwithstanding any other provision of this section to the contrary, the court may order a person charged with any violation of this article to provide necessary food, water, shelter and care for any animal which is the basis of the charge, without the removal of the animal from its existing location, until the charges against the person are adjudicated. Until a final determination of the charges is made, any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, may be authorized by an order of the court to make regular visits to where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter and care. Nothing shall prevent any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, from applying for a warrant pursuant to this section to seize any animal being held by the person charged pending the adjudication of the charges if it is determined that the animal is not receiving the necessary food, water, shelter or care.

SECTION 374

Humane destruction or other disposition of animals lost, strayed, homeless, abandoned or improperly confined or kept

Agriculture & Markets (AGM)

1. Any agent or officer of any duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, any dog control officer, or any police officer, may lawfully cause to be humanely destroyed (by means provided for in paragraph a of subdivision three of this section) any animal found abandoned and not properly cared for, or any lost, strayed, homeless or unwanted animal, if upon examination a licensed veterinarian shall certify in writing, or if two reputable citizens called upon by such agent, officer or police officer to view the same in his or her presence find that the animal is so maimed, diseased, disabled, or infirm so as to be unfit for any useful purpose and that humane euthanasia is warranted; or after such agent, officer or police officer has obtained in writing from the owner of such animal his or her consent to such destruction.

2. In the absence of such findings or certification, a duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, or any pound maintained by or under contract or agreement with any county, city, town or village may after five days make available for adoption or have humanely destroyed in accordance with the provisions of this section and subject to subdivisions six, eight and nine of section one hundred seventeen of this chapter, any animal of which possession is taken as provided for in the preceding section, unless the same is earlier redeemed by its owner. Notwithstanding the redemption periods set forth above in this subdivision, any municipality may establish the duration of such periods by local law or ordinance for any cat whose owner cannot be identified by a collar, tag, microchip, tattoo or other identifying mark, provided that no such period shall be less than three days, and provided further that such cat be made available solely for the purposes of adoption and released to an adoptive owner following an examination by a duly-licensed veterinarian, the details of which shall be provided to the adoptive owner.

3. a. Except as provided in subdivision four of this section, euthanasia of animals pursuant to this section shall be accomplished solely by means of injection of sodium pentobarbital or sodium pentobarbital solution administered by a certified euthanasia technician, a licensed veterinarian or a licensed veterinary technician. Euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution shall be performed only upon animals that are heavily sedated, anesthetized, or comatose. However, only a licensed veterinarian may perform euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution upon animals that are not heavily sedated, anesthetized or comatose and only when such licensed veterinarian determines that such intracardiac injection is the most humane option available. Whenever a cardiac injection of sodium pentobarbital or sodium pentobarbital solution is administered by a licensed veterinarian upon an animal that is not heavily sedated, anesthetized or comatose, such veterinarian must document, in writing, the administration of such injection and the reason for its administration. Such documentation shall be retained for at least three years. Under no circumstances shall intracardiac injection be performed on animals that are not heavily sedated, anesthetized or comatose where such animals are under the care of any duly incorporated society for the preven-

tion of cruelty to animals, animal shelter, humane society or pound.

b. No animal shall be left unattended between the time that the euthanasia procedure begins and the time when death is confirmed. The body of a euthanized animal shall not be disposed of in any manner until death is confirmed by a licensed veterinarian, a certified euthanasia technician or a licensed veterinary technician. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

The department of health shall promulgate regulations deemed necessary for implementation of the provisions of this subdivision, including regulations governing the training and certification of certified euthanasia technicians.

4. a. Any method of euthanasia other than that provided for in subdivision three of this section is prohibited except that euthanasia of an animal by gunshot is permissible as an emergency measure for an animal that is posing an imminent threat of serious physical injury to a person or to another animal as provided in section one hundred twenty-one-a of this chapter and where the use of a humane method of euthanasia prescribed in this section is rendered impossible or where a severely injured animal is suffering and cannot otherwise be aided.

b. Within ninety days of the effective date of this subdivision, any chamber used to induce hypoxia by means of a lethal gas shall be dismantled, rendered inoperable and beyond repair, and removed from the premises. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

5. No person shall release any dog or cat from the custody or control of any pound, shelter, society for the prevention of cruelty to animals, humane society, dog protective association, dog control officer, peace officer or any agent thereof, for any purpose except adoption or redemption by its owner, provided, however, that after the time for redemption has expired, release may be made to another such pound, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated animal protective association for the sole purpose of placing such animal in an adoptive home when such action is reasonably believed to improve the opportunity for adoption. Notwithstanding the penalties set forth in paragraph b of subdivision three of this section and paragraph b of subdivision four of this section, any violation of this subdivision, subdivision two, three or four of this section, shall constitute a misdemeanor and shall be punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

6. In lieu of such destruction, redemption or other disposition pursuant to this section, such pound, shelter, or society may in its discretion lawfully and without liability deliver such animal for adoption to an individual other than the owner after the time for redemption has expired.

7. Prior to such destruction or other disposition, the owner of the animal may redeem the same upon proving title to the satisfaction of such society and paying such society such amount, approved by a magistrate, as may have been reasonably expended by such society in connection with the care and maintenance thereof.

8. a. In addition to any other penalty provided by law, upon conviction for any violation of section three hundred fifty-one, 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.

b. Pursuant to the provisions of subdivisions two, three, four and five of this section, no animal in the custody of a duly incorporated society for the prevention of cruelty to animals, a duly incorporated humane society, duly incorporated animal protective association, pound or its authorized agents thereof, shall be sold, transferred or otherwise made available to any person for the purpose of research, experimentation or testing. No authorized agent of a duly incorporated society for the prevention of cruelty to animals, nor of a duly incorporated humane society, duly incorporated animal protective association or pound shall use any animal placed in its custody by the duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society for the purpose of research, experimentation or testing.

c. The court may additionally order that the convicted person or any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, shall not own, harbor, or have custody or control of any other animals, other than farm animals, for a period of time which the court deems reasonable.

d. In the case of farm animals, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four and three hundred fifty-seven of this article, order the farm animals which were the basis of the conviction to be sold. In no case shall farm animals which are the basis of the conviction be redeemed by the convicted person who is the subject of the order of forfeiture or by any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act. The court shall reimburse the convicted person and any duly determined interested persons, pursuant to paragraph f of this subdivision, any money earned by the sale of the farm animals less any costs including, but not limited to, veterinary and custodial care, and any fines or penalties imposed by the court. The court may order that the subject animals be provided with appropriate care and treatment pending the hearing and the disposition of the charges. Any farm animal ordered forfeited but not sold shall be remanded to the custody and charge of a duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society or its authorized agent thereof and disposed of pursuant to paragraph e of this subdivision.

e. A duly incorporated society for the prevention of cruelty to animals or a duly incorporated

humane society in charge of animals forfeited pursuant to paragraph a of this subdivision may, in its discretion, lawfully and without liability, adopt them to individuals other than the convicted person or person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely dispose of them according to the provisions of subdivisions two, three, four and five of this section.

f. (1) Prior to an order of forfeiture of farm animals, a hearing shall be held within thirty days of conviction, to determine the pecuniary interests of any other person in the farm animals which were the basis of the conviction. Written notice shall be served at least five days prior to the hearing upon all interested persons. In addition, notice shall be made by publication in a local newspaper at least seven days prior to the hearing. For the purposes of this subdivision, interested persons shall mean any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity who the court determines may have a pecuniary interest in the farm animals which are the subject of the forfeiture action.

(2) All interested persons shall be provided an opportunity at the hearing to redeem their interest as determined by the court in the subject farm animals and to purchase the interest of the convicted person. The convicted person shall be entitled to be reimbursed his interest in the farm animals, less any costs, fines or penalties imposed by the court, as specified under paragraph d of this subdivision. In no case shall the court award custody or control of the animals to any interested person who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act.

g. Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any farm animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in farm animals or in the proceeds from the sale of such farm animals.

SECTION 375

Officer may take possession of animals or implements used in fights among animals

Agriculture & Markets (AGM)

Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He shall state to the person in charge thereof, at the time of such taking, his name and residence, and also, the time and place at which the application provided for by the next section will be made.

SECTION 376

Disposition of animals or implements used in fights among animals

Agriculture & Markets (AGM)

The officer, after taking possession of such animals, or implements, or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against

the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken, together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements, or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the district attorney of the county. The officer or person so named and designated in such order, shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, such court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

SECTION 377

Disposal of dead animals

Agriculture & Markets (AGM)

(1) The carcasses of large domestic animals, including but not limited to horses, cows, sheep, swine, goats and mules, which have died otherwise than by slaughter, shall be buried at least three feet below the surface of the ground or otherwise disposed of in a sanitary manner by the owner of such animals, whether the carcasses are located on the premises of such owner or elsewhere. Such disposal shall be completed within seventy-two hours after the owner is directed to do so by any peace officer, acting pursuant to his special duties, police officer, or by a designated representative of the commissioner.

(2) Notwithstanding section forty-one of this chapter, any violation of this section shall constitute a violation. This section shall not apply to animal carcasses used for experimental or teaching purposes.

SECTION 377-A

Spaying and neutering of dogs and cats

Agriculture & Markets (AGM)

1. The legislature finds that the uncontrolled breeding of dogs and cats in the state results in an overabundance of puppies and kittens. More puppies and kittens are produced than responsible homes for them can be provided. This leads to many of such animals becoming stray and suffering privation and death, being impounded and destroyed at great expense to the community and constituting a public nuisance and health hazard. It is therefore declared to be the public policy of New York state that every feasible humane means of reducing the production of unwanted pup-

pies and kittens be encouraged.

2. No animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals shall release any dog or cat for adoption to any person unless prior thereto:

(a) the dog or cat has been spayed or neutered; or

(b) the person intending to adopt the dog or cat shall have executed a written agreement with the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, to have the dog or cat spayed or neutered within thirty days from the adoption date, or in the case of a dog or cat which has not yet reached sexual maturity, within thirty days of the dog or cat reaching six months of age. The person intending to adopt the dog or cat shall deposit with the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, an amount of not less than thirty-five dollars. Not more than every two years, the commissioner, after holding a public hearing, may raise the amount to be deposited to reflect rising costs; or

(c) the person intending to adopt the dog or cat shall have executed a written agreement with the animal shelter, pound, dog control officer, humane society, dog or cat protective association or society for the prevention of cruelty to animals to have the dog or cat spayed or neutered within thirty days from the adoption date, or in the case of a dog or cat which has not yet reached sexual maturity, within thirty days of the dog or cat reaching six months of age. The person intending to adopt the dog or cat shall have paid an adoption fee which includes the cost of the spay or neuter procedure. The written agreement shall require that the animal shelter, pound, dog control officer, humane society, dog or cat protective association or society for the prevention of cruelty to animals from which the dog or cat is adopted bear the cost of the spay or neuter procedure.

3. For the purposes of this section, the age of the animal at the time of adoption shall be determined by the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals that releases the animal for adoption and such age shall be clearly written on the written agreement by the animal shelter, pound, dog control officer, humane society, dog or cat protective association, or duly incorporated society for the prevention of cruelty to animals, prior to the agreement being executed by the person adopting the animal.

4. Any deposit collected pursuant to paragraph (b) of subdivision two of this section that is not claimed within ninety days of its collection, or if the deposit is for an animal under six months of age, within sixty days after the animal has reached six months of age, shall be deposited in the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

Deposits collected pursuant to paragraph (b) of subdivision two of this section shall be refunded to the adopter upon presentation to the animal shelter, pound, dog control officer, humane soci-

ety, dog and cat protective association, or duly incorporated society for the prevention of cruelty to animals of written documentation from a licensed veterinarian that the dog or cat has been spayed or neutered, provided that the animal has been spayed or neutered within the time specified in the written agreement, or that because of old age or other health reasons, as certified by a licensed veterinarian examining the dog or cat, spaying or neutering would endanger the animal's life.

5. Nothing contained in this section shall prevent any town, city, village or county in New York state from enacting a local law or ordinance requiring that animal shelters, pounds, dog control officers, humane societies, dog or cat protective associations and duly incorporated societies for the prevention of cruelty to animals within such town, city, village or county spay or neuter dogs and cats prior to releasing such animals for adoption, provided that such local law or ordinance may require spaying or neutering at an age earlier, but in no event later than that required in this section, except where because of advanced age or other health reasons, as certified by a licensed veterinarian who has examined the dog or cat, spaying or neutering would endanger the life of the animal. A town, city, village or county in New York state that enacts such a local law or ordinance shall be exempt from the provisions of this section.

SECTION 378

Unlawful tampering with animal research

Agriculture & Markets (AGM)

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Infectious agents" shall be limited to those organisms that cause serious physical injury or death to humans.

(b) "Animal" means any warm or cold-blooded animal or insect which is being used in food or fiber production, agriculture, research, testing, or education, however, shall not include any animal held primarily as a pet.

(c) "Facility" means any building, structure, laboratory, vehicle, pasture, paddock, pond, impoundment or premises where any scientific research, test, experiment, production, education, or investigation involving the use of any animal is carried out, conducted or attempted or where records or documents relating to an animal or animal research, tests, experiments, production, education or investigation are maintained.

(d) "Release" means to intentionally set free from any facility any animal without any right, title, or claim thereto.

(e) "Abandonment" means the intentional relinquishment or forsaking of possession or control of any animal released from a facility.

(f) "Person" means any individual, firm, organization, partnership, association or corporation.

(g) "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof which is stored, tested, studied or examined in any facility, and which is not, and not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.

(h) "Notice" means to provide information in such detail to make a reasonable person aware of the presence in a facility of infectious agents or secret scientific material.

2. Notice. Any person who, after notice has been given by:

(a) actual notice in writing or orally to the person; or

(b) prominently posting written notice upon or immediately adjacent to the facility; or

(c) notice that is announced upon entry to the facility by any person:

(i) knowingly or intentionally releases an animal from a facility or causes the abandonment of an animal knowing that such animal was exposed to infectious agents prior to such release or abandonment and was capable of transmitting such infectious agents to humans; or

(ii) with intent to do so, causes loss or damage to secret scientific material, and having no right to do so nor any reasonable ground to believe that he has such right, causes loss of or damage to any secret scientific material in an amount in excess of two hundred fifty dollars at a facility, shall be guilty of unlawful tampering with animal research. Unlawful tampering with animal research is a class E felony punishable in accordance with the penal law.

3. Private right of action. Any person who violates any provision of this section shall be liable in any court of competent jurisdiction, including small claims court, in an amount equal to:

(a) Damages sustained as a result of such violation or fifty dollars, whichever is greater, for each violation;

(b) Such additional punitive damages as the court may allow;

(c) Attorney's fees and costs; and

(d) Cost of duplicating any experiment which was damaged by the unlawful tampering with animal research, if applicable.

In any action brought by any person to enforce this section, the court may, subject to its jurisdiction, issue an injunction to restrain or prevent any violation of this section or any continuance of any such violation.

SECTION 379

Prohibition of the selling of fur, hair, skin or flesh of a dog or cat

Agriculture & Markets (AGM)

1. It shall be unlawful for any person, firm, partnership or corporation to knowingly import, sell, offer for sale, manufacture, distribute, transport or otherwise market or trade in the fur, hair, skin or flesh of a domesticated dog (*canis familiaris*) or domesticated cat (*felis catus* or *domesticus*), whether domestically raised or imported from another country, or any product or item containing or comprised of the fur, hair, skin or flesh of a dog or cat. As used in this section the term “domesticated dog or cat” shall not mean or include coyote (*canis latrans*), fox (*vulpes vulpes*, *vulpes cinereoargenteus*), lynx (*felis lynx*) or bobcat (*felis rufus*).

2. Manufacturers or suppliers shall provide certification to each retailer that any fur, hair, skin or flesh contained in such items is not derived from domesticated dog or domesticated cat.

3. The commissioner shall establish a standard for the certification required by the provisions of subdivision two of this section on the effective date of this section.

4. A violation of this section shall be punishable by a civil penalty of up to one thousand dollars for an individual and up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be punishable by a civil penalty of up to twenty-five thousand dollars.

5. Any civil penalties collected pursuant to this section of law are payable to the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

6. (a) No provision of this section shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations involving the use of dog or cat fur or flesh, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

(b) No provision of this section shall be construed to prohibit any person, firm, partnership or corporation from importing, selling, offering for sale, manufacturing, distributing, transporting, or otherwise marketing or trading in the fur, hair, skin, or flesh of a domesticated dog or cat for the purposes of conducting scientific tests, experiments or investigations that are to be performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

SECTION 380**

Use of elephants in entertainment acts

Agriculture & Markets (AGM)

1. No person shall use or cause to be used elephants in any type of entertainment act.

2. Any person that violates the provisions of this section, or any rule or regulation promulgated pursuant thereto, may be assessed, by the commissioner, a civil penalty not to exceed one thou-

sand dollars for each such violation.

3. The provisions of this section shall not apply to:

(a) institutions accredited by the Association of Zoos and Aquariums; and

(b) wildlife sanctuaries as defined in subdivision thirty-two of section 11-0103 of the environmental conservation law.

4. As used in this section:

(a) “Elephant” means the three species of the family Elephantidae:

(i) *Loxodonta africana* and *Loxodonta cyclotis*, also known as the African elephant; and

(ii) *Elephas maximus*, also known as the Asian elephant or Indian elephant.

(b) “Entertainment act” means any exhibition, act, circus, trade show, carnival, ride, parade, race, performance or similar undertaking which is primarily undertaken for the entertainment or amusement of a live audience.

(c) “Person” means an individual, partnership, limited liability company, corporation, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative of any such entity.

** N.B. There are 2 § 380’s

SECTION 380[2]**

Examination of seized animals or animals taken possession of Agriculture & Markets (AGM)

1. Consistent with the provisions of section one hundred seventeen of this chapter and sections three hundred seventy-three and three hundred seventy-four of this article, no later than twenty-four hours, or as soon as practicable, after a companion animal that is a dog or a cat has been seized or taken possession of, except for such animals that have been surrendered by the owner, by any dog control officer, animal control officer or peace officer acting pursuant to his or her special duties, or police officer in the employ of or under contract with a municipality, or any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, pound or shelter that is operated by or under contract to a municipality, such officer, society, pound or shelter shall take steps to:

(a) Check such animal for all forms of identification, including, but not limited to, tags, micro-chips, tattoos or licenses; and

(b) If practicable and if the necessary technology and equipment are available, for the purposes

of this paragraph, make available to the public on the internet on a website or social media maintained by or otherwise made available to such officer, society, pound or shelter by the municipal or county government in which such officer, society, pound or shelter is located, a photograph, and a general description of the animal to assist the owner or owners in finding the animal, including the breed or breeds, if known. Information about the animal may be withheld if deemed appropriate to facilitate finding the owner or otherwise protect the safety of the animal. The notice required by this paragraph may be made by means other than the internet if use of the internet is impracticable.

2. No later than twenty-four hours or as soon as practicable after the seizure or taking possession of such animal potentially identifiable by a form of identification, including a license, tag, tattoo or microchip, or records or reports that are readily available of animals reported to be lost, reasonable efforts shall be made to identify and provide actual notice to the owner of the animal by any means reasonably calculated to provide actual notice to the owner.

** N.B. There are 2 § 380's

SECTION 381

Prohibition of the declawing of cats

Agriculture & Markets (AGM)

1. No person shall perform an onychectomy (declawing), partial or complete phalangectomy or tendonectomy procedure by any means on a cat within the state of New York, except when necessary for a therapeutic purpose. Therapeutic purpose means the necessity to address the physical medical condition of the cat, such as an existing or recurring illness, infection, disease, injury or abnormal condition in the claw that compromises the cat's health. Therapeutic purpose does not include cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the cat.

2. Any person who performs an onychectomy, partial or complete phalangectomy or tendonectomy procedure on any cat within the state of New York in violation of the provisions of subdivision one of this section shall be punishable by a civil penalty not to exceed one thousand dollars.