

COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

REPORT ON LEGISLATION

S. 3330-A
A. 6212-A

Senator Bonacic
M. of A. McEneny

An act to amend the agriculture and markets law, in relation to making it unlawful to force feed birds under certain circumstances.

THIS BILL IS DISAPPROVED UNLESS MODIFIED

This Committee strongly approves of the intent of this bill, but the unreasonably long implementation period of 11 years is untenable.

This bill seeks to end the inhumane practice of force-feeding ducks and geese to enlarge their livers. As the bill explains, force-feeding “is the sole method employed in the production of pate de foie gras.”

Force-feeding birds for non-medical reasons is widely recognized as cruel and inhumane. The bill describes force-feeding as the insertion of a long pipe into the bird’s esophagus three times a day. “Compressed air is forced through the pipe to ensure the animal is fed an excessive amount,” causing the bird’s liver “to expand up to eight to twelve times its normal size. Often this force feeding of the animal causes the rupture of the animal’s internal organs leading to infection and subsequently the animal’s death.”

When the Humane Society of the United States sent a veterinarian to investigate a New York State foie gras producer in 1992, necropsies revealed that the force-fed birds had chronic heart disorders, ruptured liver cell membranes, cirrhosis, traumatic esophagitis, and lesions in their gizzards and intestines. The Humane Society found dead birds with food still filling their esophagi and spilling out of their nostrils.

(http://www.hsus.org/farm_animals/factory_farms/foie_gras.html)

New York is the only state in the Union where birds are still force-fed, other than California. California prospectively banned forced-feeding on September 29, 2004. (Cal. Health & Safety Code § 25980 et seq.)

Many countries have also banned force-feeding, including Denmark, Italy, Luxembourg, Turkey, Germany, Poland, and the Czech Republic. The European Union banned force-feeding in 1999.

Many other countries' courts have ruled that force-feeding violated their statutes banning animal cruelty, including the United Kingdom, Sweden, Switzerland, and Holland. In 2003 the Supreme Court of Israel ruled that force-feeding violated a statute that provided, "A person will not torture an animal, will not be cruel toward it, or abuse it in any way." The Court recognized that its decision would put the Israeli foie gras industry – the fourth largest in the world – out of business, but ruled that economic hardship could not justify the torture of animals. (English translation at http://62.90.71.124/files_eng/01/320/092/s14/01092320.s14.pdf)

No law currently on the books specifically protects ducks and geese from cruel and abusive agricultural practices in New York State. On the federal level, the Animal Welfare Act of 1970 exempts animals raised for food. (7 U.S.C. § 2132(g).) On the state level, there is also no statute protecting animals on farms. Right now force-feeding birds is apparently legal in New York State.

A New York court could interpret New York's anti-cruelty statute, Agriculture and Markets Law Section 353, as barring force-feeding. But Section 353 is a criminal statute, and prosecutors have discretion to decide whether to use it to prosecute foie gras producers and, up to now, have not done so. The proposed bill would create a perverse result by taking away prosecutors' discretion to prosecute force-feeding operations under Section 353 until 2016, effectively creating a new immunity for foie gras producers under the guise of ending the practice. Removing the unreasonably long phase-in period from this bill would avoid this perverse result.

For these reasons, this bill is recommended for passage with a revision to change the effective date to no longer than 18 months following enactment.