



NEW YORK  
CITY BAR

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**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**S. 456**

**Sen. Avella**

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

**THIS LEGISLATION IS APPROVED**

**SUMMARY OF THE PROPOSED LAW**

Senate Bill S456-2013 would amend the opening paragraph of section 353 of New York's Agriculture and Markets Law to add the act of force feeding a bird, by hand or machine, for the purpose of fatty enlargement of such bird's liver to the list of acts which constitute cruelty to an animal. All acts covered by section 353 – New York's anti-cruelty statute - constitute a class A misdemeanor under paragraph (b) of subdivision one of section 160.10 of the New York Criminal Procedure Law. The memo accompanying the bill states that there would be no fiscal implications for state and local governments to effect the proposed amendment.

The bill follows Senate and Assembly bills which have attempted to accomplish this amendment, dating back to 2003-2004. The New York City Bar Association has previously issued its support in favor of a ban on force feeding of birds under a former bill - S.3330-A (Sen. Bonacic) / A.6212-A (AM McEneny) of 2005 - but opposed the 11-year implementation period under that bill as being unreasonably long. The current version of the bill would take effect on November 1<sup>st</sup> of the year immediately following enactment and this Committee supports the proposed effective date under S.456.

**JUSTIFICATION**

Background - The Practice of Force Feeding Birds

The practice of force feeding animals for non-medical reasons is the sole method employed in the production of pate de foie gras.<sup>1</sup> The product traditionally is made using geese, but is now more commonly used with ducks.<sup>2</sup> It involves a process whereby the bird is

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<sup>1</sup> S.456, 236<sup>th</sup> Session (N.Y. 2013) Introducer's Memorandum in Support.

<sup>2</sup> American Veterinary Medical Association, *Welfare Implications of Foie Gras Production*, September 24, 2007.

prevented from feeding freely, is force-fed several times each day with a higher-energy food in a quantity that greatly exceeds the quantity necessary for its physiological needs. A metal tube is inserted down the bird's esophagus, through which food is compressed into its stomach. The process causes a degenerative and painful disease of the bird's liver – hepatic lipodosis - and its enlargement eight or more times its natural size.<sup>3</sup> In addition, certain opponents of the procedure note that the insertion and removal of the feeding tube scratches the throat and the esophagus, causing irritations and wounds and thus expose the bird to risks of painful and mortal infections<sup>4</sup> There are multiple other adverse physiologic impacts on these birds<sup>5</sup> and a rupture of the animal's internal organs can lead to infection and subsequently death.<sup>6</sup>

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.<sup>7</sup>

The scientific community has recognized that the practice of force-feeding as currently practiced “is detrimental to the welfare of the birds”<sup>8</sup> and this has also been recognized in the judicial system.<sup>9</sup>

### Foie Gras Production Constitutes Animal Cruelty

New York is the only state in the United States where birds are still force-fed. In 2004, California, the only other state in which the process was recently employed, outlawed the sale of

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<sup>3</sup> See <http://aldf.org/article.php?id=2169> (last visited May 22, 2013).

<sup>4</sup> See [http://en.wikipedia.org/wiki/Foie\\_gras\\_controversy](http://en.wikipedia.org/wiki/Foie_gras_controversy) (last visited June 12, 2013).

<sup>5</sup> *Supra* note 3. Other physiological effects include these: abnormal brain function caused by the passage of toxic substances from the liver to the blood can result in seizures and nervous system impairment; the liver grows so large it crowds other organs causing labored breathing; liver tissue becomes discolored, pale and brittle; the liver is extremely heavy and causes painful stress, injury and swelling on the birds' feet and legs; wings form sores and injuries that can cause lameness as birds are often forced to use their wings to help support their enormous, unbalanced weight; and worn, tattered and feces-fouled feathers occur since birds are unable to preen normally.

<sup>6</sup> NYCBAR Report on S.3330-A/A.6212-A, at [http://www.nycbar.org/pdf/report/foie\\_gras\\_report.pdf](http://www.nycbar.org/pdf/report/foie_gras_report.pdf) (last visited June 12, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> Council of Europe, *Report of the Scientific Committee on Animal Health and Animal Welfare: Welfare Aspects of the Production of Foie Gras in Ducks and Geese*, adopted December 16, 1998, Sec. 8.2. The Scientific Committee on Animal Health and Animal Welfare is now known as the European Food Safety Authority's Panel on Animal Health and Welfare and it provides scientific opinions and expertise to support the European Commission, European Parliament, and European Union Member States in the development of policies and legislation. <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Foie-Gras-Bird-Welfare.pdf> (last visited June 12, 2013).

<sup>9</sup> Foie Gras Verdict, Supreme Court of Israel, August 2003, 8 (English translation by CHAI) (“Israel Verdict”).

any product in the state that is the result of force feeding birds for the purpose of enlarging the bird's liver beyond normal size.<sup>10</sup> The ban became effective July 1, 2012.<sup>11</sup> In the intervening time period, no alternative, humane method was suggested for a duck to consume grain to increase the size of its liver through natural processes. It is proper that the proposed legislation provides for a prompt effective date inasmuch as any delay would not lead to the evolution of a humane alternative to produce this product.

More than a dozen countries have banned production and force-feeding has been deemed a violation of national animal welfare laws – Argentina, Denmark, Finland, Germany, Israel, Italy, Norway, Poland, the United Kingdom<sup>12</sup>, Austria, the Czech Republic, and Luxembourg.<sup>13</sup> In 2003, the Supreme Court of Israel banned force-feeding under its Animal Protection Law and determined that regulations that allowed this practice were not valid. The Court recognized that its decision would put the Israeli foie gras industry – then the fourth largest in the world<sup>14</sup> – out of business, but ruled that, after balancing the interests, the ‘needs of agriculture’ do not always override the interest of animal protection and the long-time accepted agricultural practice could not stand against the application of Israel’s law which prohibited animal torture, cruelty or abuse. Although some Israeli farmers continued to force feed their animals, the Israel Supreme Court instructed the State in February 2006 to enforce the law and when, in 2007 some farmers were found not to have ceased the practice, the government pressed charges against the violators.<sup>15</sup>

Not only is the practice of force-feeding birds inherently cruel, but the personnel who perform these functions in New York have been documented to be abusive and cruel with the birds. A June 2013 undercover investigation of New York’s Hudson Valley Foie Gras facility by an animal welfare organization documented workers “violently shoving metal pipes down duck’s

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<sup>10</sup> CA HEALTH & SAFETY CODE sec. 25980-25984.1.

<sup>11</sup> *Id.* The delayed effectiveness was intended to enable agriculture producers to evolve and perfect a humane way for a duck to consume grain to increase the size of its liver through natural processes, as stated in Gov. Schwarzenegger’s signing message for Stats. 2004, c. 904 (S.B. 1520). There is no current alternative to force feeding that produces an equivalent product and any alternative that directly induces fattiness or interrupts normal satiety signals would still leave concerns associated with the resulting obesity. American Veterinary Medical Association, *Welfare Implications of Foie Gras Production*, September 24, 2007, 3.

<sup>12</sup> *An HSUS Report: The Welfare of Animals in the Foie Gras Industry* (March 2012), at <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Foie-Gras-Bird-Welfare.pdf> (last visited May 23, 2013)

<sup>13</sup> *Supra* note 9, 32.

<sup>14</sup> *Towards A Holistic Approach in Animal Law: The Foie Gras Case, Trends and Transformations*, 3, available at <http://www.lawsociety.com.au/cs/groups/public/documents/internetyounglawyers/2007second.pdf> (last visited June 12, 2013).

<sup>15</sup> *Geese and Ducks: Foie Gras & Meat*, at [http://www.chai.org.il/en/compassion/foiegras/food\\_foiegras.htm](http://www.chai.org.il/en/compassion/foiegras/food_foiegras.htm) (last visited May 23, 2013)

throats,” birds with open, bleeding wounds, and fully conscious ducks being shackled upside down and having their throats cut open.<sup>16</sup>

Presently there is no law that 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 USC §2132(g)) and, with regard to slaughter specifically, poultry is excepted from the federal Humane Methods of Slaughter Act of 1958 (7 USC, §§1901-1907) which requires the proper treatment and humane handling of all food animals slaughtered in USDA-inspected slaughter plants though the Secretary of Agriculture could elect to add poultry to the list of “other livestock” under section 4,<sup>17</sup> but has to date declined to do this. A New York court could interpret New York’s existing anti-cruelty statute-Section 353 of the Agr. & Mkts L. - as barring force-feeding and it is this Committee’s position that Section 353 already covers the practices associated with foie gras production albeit not expressly. The statute, however, 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. Protection is needed for birds from the cruel, violent and life-threatening practice of force feeding. This bill would add express language to amend Section 353 necessary to ensure that protection.

#### Other Bases for Banning Foie Gras Production

We note that there may be other court-determined legal bases for banning foie gras production, in addition to the extensive animal welfare considerations discussed herein, but cases in New York and California which may clarify these additional bases are pending as of the date of this report. These cases involve allegations that (1) foie gras is an adulterated product which has been improperly allowed to enter the human food supply, as “the product of a diseased animal”, putting consumer health at risk<sup>18</sup> and (2) foie producers are engaging in false

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<sup>16</sup>*Undercover Investigation Reveals Horrific Animal Torture At Amazon.com Foie Gras Supplier*, San Francisco Business Times, June 12, 2013, available at [http://www.bizjournals.com/sanfrancisco/prnewswire/press\\_releases/California/2013/06/12/LA30683](http://www.bizjournals.com/sanfrancisco/prnewswire/press_releases/California/2013/06/12/LA30683) (last visited June 12, 2013).

<sup>17</sup>See <http://www.animallaw.info/articles/ddushmsa.htm#IVC>, citing *Levine v. Conner*, 540 F.Supp.2d at 1119 (citing 104 Cong. Rec. S15, 376 (daily ed. July 29, 1958)) (last visited June 12, 2013). The article further explains that the USDA issued a Federal Register Notice entitled “Treatment of Live Poultry Before Slaughter.” 70 Fed.Reg. 56,624 (Sept. 28, 2005) (“Notice”) to make it clear that the Act does not require the humane handling and slaughtering of poultry. The Notice pointed to “the Poultry Products Inspection Act (PPIA) (21 U.S.C. §§ 451 et seq.) as promoting humane slaughter, stating that poultry must be handled “in a manner that is consistent with good commercial practices, which means they should be treated humanely.” Notice at 56,624. However, PPIA contains no specific requirement to treat poultry humanely. PPIA also exempts people slaughtering, processing, or transporting their own poultry for their own use, 21 U.S.C.A. § 464(c)(1)(A), and people slaughtering poultry according to recognized religious dietary laws. *Id.* at § 464(a)(3).”

<sup>18</sup> In February 2013, the Animal Legal Defense Fund (ALDF) appealed its suit against the NY Department of Agriculture and Markets for permitting foie gras, “the product of a diseased animal”, to enter the human food supply and put consumer health at risk. ALDF asserts that Agri & Mkts Law Sec. 200 was violated by the Department. The lower court’s dismissal of the claim was not on the merits but on the procedural ground of standing. The similar dismissal of the United States Humane Society case against the New York Department was also on procedural – standing – grounds. *Humane Soc. of U.S., Inc. v. Brennan*, 63 A.D. 3d 1419, 881 N.Y.S. 2d 533 (3d Dept., 2009).

advertising under the federal Lanham Act and California's False Advertising and Unfair Competition Laws by claiming foie gras to be "the Humane Choice".<sup>19</sup>

In addition, recent studies have recognized human food safety concerns with foie gras. These relate to the potential transmission of amyloidosis (a disease that occurs when substances called amyloid proteins build up in organs) akin to the infectious nature of prion-related illnesses. The amyloidogenic potential of foie gras was detailed in a report presented at the proceedings of the National Academy of Sciences as far back as 2007, the authors of which cautioned that "it would seem prudent for children and adults with rheumatoid arthritis or other diseases who are at risk for this disorder to avoid foods that may be contaminated with AA fibrils", of which foie gras is an example, and "it may be hazardous for individuals who are prone to develop other types of amyloid-associated disorders, *e.g.*, Alzheimer's disease or type II diabetes, to consume such products."<sup>20</sup> Amyloidosis diseases are disabling or life threatening and, for non-hereditary forms of the disease, there is no cure.<sup>21</sup>

## CONCLUSION

For all the reasons set forth above, the Committee supports the proposed legislation.

June 2013

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<sup>19</sup> In California, the ALDF and its co-plaintiff brought suit against New York-based producer Hudson Valley Foie Gras (HVFG) in U.S. District Court of Northern California. On April 12, 2013, the Court upheld the standing of the co-plaintiff, a New York competitor of HVFG, which produces a plant-derived foie gras alternative to HVFG's product, "Faux Gras".

<sup>20</sup> A. Solomon, T. Richey, C. Murphy, et al. 2007, *Amyloidogenic potential of foie gras*, Proceedings of the National Academy of Sciences of the United States of America 104: 10998-1001, available at <http://www.pnas.org/content/104/26/10998.full?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=foie+gras&searchid=1&FIRSTINDEX=0&resourcetype=HWCIT>. See also Michael Greger, *Amyloid fibrils: potential food safety implications*, Int. J. Food Safety and Public Health, Vol.1, No. 2, 2008, 103-115, available at [http://birdflubook.com/resources/Greger\\_IJFSNPH\\_1\\_2\\_103.pdf](http://birdflubook.com/resources/Greger_IJFSNPH_1_2_103.pdf) (last visited June 12, 2013).

<sup>21</sup> See <http://www.amyloidosis.org/index.html> (last visited June 12, 2013).