

**Introduced by Senator Calderon
(Coauthors: Senators Evans, Gaines, and Strickland)**

February 16, 2011

An act to amend Sections 310, 597.5, 597b, 597c, 597h, 597i, 597j, and 598.1 of the Penal Code, relating to cruelty to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, Calderon. Cruelty to animals: fighting.

(1) Existing law provides that any minor under 16 years of age who visits or attends any prizefight, cockfight, or place where any prizefight, or cockfight, is advertised to take place, and any owner, lessee, or proprietor, or the agent of any owner, lessee, or proprietor of any place where any prizefight or cockfight is advertised or represented to take place who admits any minor to a place where any prizefight or cockfight is advertised or represented to take place or who admits, sells, or gives to any minor a ticket or other paper by which that minor may be admitted to a place where a prizefight or cockfight is advertised to take place, is guilty of a misdemeanor, and is punishable by a fine not exceeding \$100 or by imprisonment in the county jail for not more than 25 days.

This bill would increase the fine in the case of cockfighting to an amount not to exceed \$500.

(2) Existing law provides that any person who does any specified acts pertaining to dogfighting is guilty of a felony and is punishable by imprisonment in the state prison for 16 months, or 2 or 3 years, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.

This bill would provide that the punishment would be 16 months, or 2 or 3 years, or by a fine of not less than \$10,000 nor more than \$50,000,

or by both that fine and imprisonment, except in unusual circumstances where the interests of justice would be better served by imposition of a lesser sentence.

(3) Existing law provides that any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as specified, with the intent to be present at that exhibition, fighting, or injuring, is guilty of an offense punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that imprisonment and fine.

This bill would additionally provide that any fine imposed be a minimum of \$1,000.

~~(3)~~

(4) Existing law provides that specified acts involving animal fighting are a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine.

This bill would additionally provide that any fine imposed be a minimum of \$1,000.

~~(4)~~

(5) Existing law provides that any person who is knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or who is knowingly present at that exhibition or is knowingly present where preparations are being made for specified prohibited acts involving animal fighting, is guilty of a misdemeanor.

This bill would specify that any fine imposed for that misdemeanor would be a minimum of \$500.

~~(5)~~

(6) Existing law provides that it shall be unlawful for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing that animal to be pursued by a dog or dogs, and that any person violating any of those provisions is guilty of a misdemeanor.

This bill would provide that any fine imposed for that misdemeanor be in the amount of \$2,500.

~~(6)~~

(7) Existing law makes it an offense for anyone to manufacture, buy, sell, barter, exchange, or have in his or her possession any of the

implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a gamecock or other fighting bird, and provides that a violation of this provision is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine and upon conviction thereof shall, in addition to any judgment or sentence imposed by the court, forfeit possession or ownership of those implements.

This bill would provide that any fine imposed for that misdemeanor would be a minimum of \$1,000.

(7)

(8) Existing law provides that any person who owns, possesses, keeps, or trains any bird or other animal, except a dog, with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting, as specified, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$5,000, or by both that imprisonment and fine. Existing law provides that a second or subsequent conviction is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year or by a fine not to exceed \$25,000, or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.

This bill would provide that any fine imposed for a first conviction for that misdemeanor be a minimum of \$1,000, and that for a second or subsequent conviction that any fine imposed would be a minimum of \$10,000.

(8)

(9) Existing law provides that the prosecuting agency in a criminal proceeding in which the defendant has been charged with the commission of any of certain crimes pertaining to dogfighting may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided, and that if the prosecuting agency has filed a petition for forfeiture and the defendant is convicted of any of those crimes, specified assets would be subject to forfeiture, as specified. The prosecuting agency for purposes of these provisions includes the Attorney General.

This bill would extend those provisions to criminal proceedings involving cockfighting.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 310 of the Penal Code is amended to
2 read:

3 310. (a) Any minor under 16 years of age who visits or attends
4 any prizefight or place where any prizefight is advertised to take
5 place, and any owner, lessee, or proprietor, or the agent of any
6 owner, lessee, or proprietor of any place where any prizefight is
7 advertised or represented to take place who admits any minor to
8 a place where any prizefight is advertised or represented to take
9 place or who admits, sells, or gives to any minor a ticket or other
10 paper by which that minor may be admitted to a place where a
11 prizefight is advertised to take place, is guilty of a misdemeanor,
12 and is punishable by a fine not exceeding one hundred dollars
13 (\$100) or by imprisonment in the county jail for not more than 25
14 days.

15 (b) Any minor under 16 years of age who visits or attends any
16 cockfight or place where any cockfight is advertised to take place,
17 and any owner, lessee, or proprietor, or the agent of any owner,
18 lessee, or proprietor of any place where any cockfight is advertised
19 or represented to take place who admits any minor to a place where
20 any cockfight is advertised or represented to take place or who
21 admits, sells, or gives to any minor a ticket or other paper by which
22 that minor may be admitted to a place where a cockfight is
23 advertised to take place, is guilty of a misdemeanor, and is
24 punishable by a fine not exceeding five hundred dollars (\$500) or
25 by imprisonment in the county jail for not more than 25 days.

26 SEC. 2. Section 597.5 of the Penal Code is amended to read:

27 597.5. (a) Any person who does any of the following is guilty
28 of a felony and is punishable by imprisonment in the state prison
29 for 16 months, or two or three years, or by a fine of not less than
30 ten thousand dollars (\$10,000), nor more than fifty thousand dollars
31 (\$50,000), or by both that fine and imprisonment, except in unusual
32 circumstances where the interests of justice would be better served
33 by imposition of a lesser sentence:

1 (1) Owns, possesses, keeps, or trains any dog, with the intent
2 that the dog shall be engaged in an exhibition of fighting with
3 another dog.

4 (2) For amusement or gain, causes any dog to fight with another
5 dog, or causes any dogs to injure each other.

6 (3) Permits any act in violation of paragraph (1) or (2) to be
7 done on any premises under his or her charge or control, or aids
8 or abets that act.

9 (b) Any person who is knowingly present, as a spectator, at any
10 place, building, or tenement where preparations are being made
11 for an exhibition of the fighting of dogs, with the intent to be
12 present at those preparations, or is knowingly present at that
13 exhibition or at any other fighting or injuring as described in
14 paragraph (2) of subdivision (a), with the intent to be present at
15 that exhibition, fighting, or injuring, is guilty of an offense
16 punishable by imprisonment in a county jail not to exceed one
17 year, or by a fine ~~not to exceed~~ *of not less than one thousand*
18 *dollars (\$1,000), nor more than five thousand dollars (\$5,000),* or
19 by both that imprisonment and fine.

20 (c) Nothing in this section shall prohibit any of the following:

21 (1) The use of dogs in the management of livestock, as defined
22 by Section 14205 of the Food and Agricultural Code, by the owner
23 of the livestock or his or her employees or agents or other persons
24 in lawful custody thereof.

25 (2) The use of dogs in hunting as permitted by the Fish and
26 Game Code, including, but not limited to, Sections 4002 and 4756,
27 and by the rules and regulations of the Fish and Game Commission.

28 (3) The training of dogs or the use of equipment in the training
29 of dogs for any purpose not prohibited by law.

30 SEC. 3. Section 597b of the Penal Code is amended to read:

31 597b. (a) Except as provided in subdivisions (b) and (c), any
32 person who, for amusement or gain, causes any bull, bear, or other
33 animal, not including any dog, to fight with like kind of animal or
34 creature, or causes any animal, including any dog, to fight with a
35 different kind of animal or creature, or with any human being, or
36 who, for amusement or gain, worries or injures any bull, bear, dog,
37 or other animal, or causes any bull, bear, or other animal, not
38 including any dog, to worry or injure each other, or any person
39 who permits the same to be done on any premises under his or her
40 charge or control, or any person who aids or abets the fighting or

1 worrying of an animal or creature, is guilty of a misdemeanor
2 punishable by imprisonment in a county jail for a period not to
3 exceed one year, by a fine of not less than one thousand dollars
4 (\$1,000), nor more than five thousand dollars (\$5,000), or by both
5 that imprisonment and fine.

6 (b) Any person who, for amusement or gain, causes any cock
7 to fight with another cock or with a different kind of animal or
8 creature or with any human being; or who, for amusement or gain,
9 worries or injures any cock, or causes any cock to worry or injure
10 another animal; and any person who permits the same to be done
11 on any premises under his or her charge or control, and any person
12 who aids or abets the fighting or worrying of any cock is guilty of
13 a misdemeanor punishable by imprisonment in a county jail for a
14 period not to exceed one year, or by a fine of not less than one
15 thousand dollars (\$1,000), nor more than five thousand dollars
16 (\$5,000), or by both that imprisonment and fine.

17 (c) A second or subsequent conviction of this section is a
18 misdemeanor or a felony punishable by imprisonment in a county
19 jail for a period not to exceed one year or the state prison for 16
20 months, two, or three years, by a fine not to exceed twenty-five
21 thousand dollars (\$25,000), or by both that imprisonment and fine,
22 except in unusual circumstances in which the interests of justice
23 would be better served by the imposition of a lesser sentence.

24 (d) For the purposes of this section, aiding and abetting a
25 violation of this section shall consist of something more than
26 merely being present or a spectator at a place where a violation is
27 occurring.

28 SEC. 4. Section 597c of the Penal Code is amended to read:

29 597c. Any person who is knowingly present as a spectator at
30 any place, building, or tenement for an exhibition of animal
31 fighting, or who is knowingly present at that exhibition or is
32 knowingly present where preparations are being made for the acts
33 described in subdivision (a) or (b) of Section 597b, is guilty of a
34 misdemeanor punishable by imprisonment in a county jail not to
35 exceed six months, or by a fine of not less than five hundred dollars
36 (\$500), nor more than one thousand dollars (\$1,000), or by both
37 that imprisonment and fine.

38 SEC. 5. Section 597h of the Penal Code is amended to read:

39 597h. (a) It shall be unlawful for any person to tie or attach
40 or fasten any live animal to any machine or device propelled by

1 any power for the purpose of causing ~~such~~ *that* animal to be
2 pursued by a dog or dogs.

3 (b) Any person violating any of the provisions of this section
4 shall be guilty of a misdemeanor punishable by a fine of two
5 thousand five hundred dollars (\$2,500) or by imprisonment in a
6 county jail not exceeding six months, or by both that imprisonment
7 and fine.

8 SEC. 6. Section 597i of the Penal Code is amended to read:

9 597i. (a) It shall be unlawful for anyone to manufacture, buy,
10 sell, barter, exchange, or have in his or her possession any of the
11 implements commonly known as gaffs or slashers, or any other
12 sharp implement designed to be attached in place of the natural
13 spur of a gamecock or other fighting bird.

14 (b) Any person who violates any of the provisions of this section
15 is guilty of a misdemeanor punishable by imprisonment in a county
16 jail for a period not to exceed one year, by a fine of not less than
17 one thousand dollars (\$1,000) nor more than five thousand dollars
18 (\$5,000), or by both that imprisonment and fine and upon
19 conviction thereof shall, in addition to any judgment or sentence
20 imposed by the court, forfeit possession or ownership of those
21 implements.

22 SEC. 7. Section 597j of the Penal Code is amended to read:

23 597j. (a) Any person who owns, possesses, keeps, or trains
24 any bird or other animal with the intent that it be used or engaged
25 by himself or herself, by his or her vendee, or by any other person
26 in an exhibition of fighting as described in Section 597b is guilty
27 of a misdemeanor punishable by imprisonment in a county jail for
28 a period not to exceed one year, by a fine of not less than one
29 thousand dollars (\$1,000), nor more than five thousand dollars
30 (\$5,000), or by both that imprisonment and fine.

31 (b) This section shall not apply to an exhibition of fighting of
32 a dog with another dog.

33 (c) A second or subsequent conviction of this section is a
34 misdemeanor punishable by imprisonment in a county jail for a
35 period not to exceed one year or by a fine of not less than ten
36 thousand dollars (\$10,000), nor more than twenty-five thousand
37 dollars (\$25,000), or by both that imprisonment and fine, except
38 in unusual circumstances in which the interests of justice would
39 be better served by the imposition of a lesser sentence.

40 SEC. 8. Section 598.1 of the Penal Code is amended to read:

1 598.1. (a) The prosecuting agency in a criminal proceeding
2 in which the defendant has been charged with the commission of
3 any of the crimes listed in subdivision (a) of Section 597.5 or
4 subdivision (b) of Section 597b may, in conjunction with the
5 criminal proceeding, file a petition for forfeiture as provided in
6 subdivision (c). If the prosecuting agency has filed a petition for
7 forfeiture pursuant to subdivision (c) and the defendant is convicted
8 of any of the crimes described in subdivision (a) of Section 597.5
9 or subdivision (b) of Section 597b, the assets listed in subdivision
10 (b) shall be subject to forfeiture upon proof of the elements of
11 subdivision (b) and in accordance with this section.

12 (b) (1) Any property interest, whether tangible or intangible,
13 that was acquired through the commission of any of the crimes
14 listed in subdivision (a) of Section 597.5 or subdivision (b) of
15 Section 597b shall be subject to forfeiture, including both personal
16 and real property, profits, proceeds, and the instrumentalities
17 acquired, accumulated, or used by cockfighting or dogfighting
18 participants, organizers, transporters of animals and equipment,
19 breeders and trainers of fighting birds or fighting dogs, and persons
20 who steal or illegally obtain dogs or other animals for fighting,
21 including bait and sparring animals.

22 (2) Notwithstanding paragraph (1), the following property shall
23 not be subject to forfeiture under this section:

24 (A) Property solely owned by a bona fide purchaser for value,
25 who was without knowledge that the property was intended to be
26 used for a purpose which would subject it to forfeiture under this
27 section, or is subject to forfeiture under this section.

28 (B) Property used as a family residence and owned by two or
29 more inhabitants, one of whom had no knowledge of its unlawful
30 use.

31 (c) (1) If the prosecuting agency proceeds under subdivision
32 (a), that agency shall, in conjunction with the criminal proceeding,
33 file a petition for forfeiture with the superior court of the county
34 in which the defendant has been charged with the commission of
35 any of the crimes listed in subdivision (a) of Section 597.5 or
36 subdivision (b) of Section 597b, that shall allege that the defendant
37 has committed those crimes and the property is forfeitable pursuant
38 to subdivision (a).

39 (2) The prosecuting agency shall make service of process of a
40 notice regarding that petition upon every individual who may have

1 a property interest in the alleged proceeds, ~~which~~ *and that* notice
2 shall state that any interested party may file a verified claim with
3 the superior court stating the amount of the party's claimed interest
4 and an affirmation or denial of the prosecuting agency's allegation.

5 (3) If the notices cannot be served by registered mail or personal
6 delivery, the notices shall be published for at least three consecutive
7 weeks in a newspaper of general circulation in the county where
8 the property is located.

9 (4) If the property alleged to be subject to forfeiture is real
10 property, the prosecuting agency shall, at the time of filing the
11 petition for forfeiture, record a lis pendens in each county in which
12 real property alleged to be subject to forfeiture is located.

13 (5) The judgment of forfeiture shall not affect the interest of
14 any third party in real property that was acquired prior to the
15 recording of the lis pendens.

16 (6) All notices shall set forth the time within which a claim of
17 interest in the property seized is required to be filed pursuant to
18 this section.

19 (d) Any person claiming an interest in the property or proceeds
20 seized may, at any time within 30 days from the date of the first
21 publication of the notice of seizure, or within 30 days after receipt
22 of the actual notice, file with the superior court of the county in
23 which the action is pending a verified claim stating his or her
24 interest in the property or proceeds. A verified copy of the claim
25 shall be given by the claimant to the Attorney General, or the
26 district or city attorney, whichever is the prosecuting agency of
27 the underlying crime.

28 (e) (1) If, at the end of the time set forth in subdivision (d), an
29 interested person, other than the defendant, has not filed a claim,
30 the court, upon a motion, shall declare that the person has defaulted
31 upon his or her alleged interest, and that interest shall be subject
32 to forfeiture upon proof of the elements of subdivision (b).

33 (2) The defendant may admit or deny that the property is subject
34 to forfeiture pursuant to this section. If the defendant fails to admit
35 or deny, or fails to file a claim of interest in the property or
36 proceeds, the court shall enter a response of denial on behalf of
37 the defendant.

38 (f) (1) The forfeiture proceeding shall be set for hearing in the
39 superior court in which the underlying criminal offense will be
40 tried.

1 (2) If the defendant is found guilty of the underlying offense,
2 the issue of forfeiture shall be promptly tried, either before the
3 same jury or before a new jury in the discretion of the court, unless
4 waived by the consent of all parties.

5 (g) At the forfeiture hearing, the prosecuting agency shall have
6 the burden of establishing beyond a reasonable doubt that the
7 defendant was engaged in any of the crimes described in
8 subdivision (a) of Section 597.5 or subdivision (b) of Section 597b
9 and that the property comes within the provisions of subdivision
10 (b).

11 (h) Concurrent with, or subsequent to, the filing of the petition,
12 the prosecuting agency may move the superior court for the
13 following pendente lite orders to preserve the status quo of the
14 property alleged in the petition of forfeiture:

15 (1) An injunction to restrain all interested parties and enjoin
16 them from transferring, encumbering, hypothecating, or otherwise
17 disposing of that property.

18 (2) Appointment of a receiver to take possession of, care for,
19 manage, and operate the assets and properties so that the property
20 may be maintained and preserved.

21 (i) (1) No preliminary injunction may be granted or receiver
22 appointed without notice to the interested parties and a hearing to
23 determine that the order is necessary to preserve the property,
24 pending the outcome of the criminal proceedings, and that there
25 is probable cause to believe that the property alleged in the
26 forfeiture proceedings are proceeds or property interests forfeitable
27 under subdivision (a). However, a temporary restraining order may
28 issue pending that hearing pursuant to the provisions of Section
29 527 of the Code of Civil Procedure.

30 (2) Notwithstanding any other provision of law, the court, when
31 granting or issuing these orders may order a surety bond or
32 undertaking to preserve the property interests of the interested
33 parties. The court shall, in making its orders, seek to protect the
34 interest of those who may be involved in the same enterprise as
35 the defendant, but who are not involved in any of the crimes
36 described in subdivision (a) of Section 597.5 or subdivision (b) of
37 Section 597b.

38 (j) If the trier of fact at the forfeiture hearing finds that the
39 alleged property or proceeds are forfeitable pursuant to subdivision
40 (a), and that the defendant was convicted of a crime listed in

1 subdivision (a) of Section 597.5 or subdivision (b) of Section 597b,
2 the court shall declare that property or proceeds forfeited to the
3 state or local governmental entity, subject to distribution as
4 provided in subdivision (l).

5 (k) (1) If the trier of fact at the forfeiture hearing finds that the
6 alleged property is forfeitable pursuant to subdivision (a) but does
7 not find that a person holding a valid lien, mortgage, security
8 interest, or interest under a conditional sales contract acquired that
9 interest with actual knowledge that the property was to be used
10 for a purpose for which forfeiture is permitted, and the amount
11 due to that person is less than the appraised value of the property,
12 that person may pay to the state or the local governmental entity
13 that initiated the forfeiture proceeding the amount of the registered
14 owner's equity, which shall be deemed to be the difference between
15 the appraised value and the amount of the lien, mortgage, security
16 interest, or interest under a conditional sales contract. Upon that
17 payment, the state or local governmental entity shall relinquish all
18 claims to the property.

19 (2) If the holder of the interest elects not to make that payment
20 to the state or local governmental entity, the property shall be
21 deemed forfeited to the state or local governmental entity.

22 (3) The appraised value shall be determined as of the date
23 judgment is entered either by agreement between the legal owner
24 and the governmental entity involved, or if they cannot agree, then
25 by a court-appointed appraiser for the county in which the action
26 is brought.

27 (4) If the amount due to a person holding a valid lien, mortgage,
28 security interest, or interest under a conditional sales contract is
29 less than the value of the property and the person elects not to
30 make payment to the governmental entity, the property shall be
31 sold at public auction by the Department of General Services or
32 by the local governmental entity which shall provide notice of that
33 sale by one publication in a newspaper published and circulated
34 in the city, community, or locality where the sale is to take place.
35 Proceeds of the sale shall be distributed pursuant to subdivision
36 (l).

37 (l) Notwithstanding that no response or claim has been filed
38 pursuant to subdivision (d), in all cases where property is forfeited
39 pursuant to this section and is sold by the Department of General
40 Services or a local governmental entity, the property forfeited or

1 the proceeds of the sale shall be distributed by the state or local
2 governmental entity, as follows:

3 (1) To the bona fide or innocent purchaser, conditional sales
4 vendor, or holder of a valid lien, mortgage, or security interest, if
5 any, up to the amount of his or her interest in the property or
6 proceeds, when the court declaring the forfeiture orders a
7 distribution to that person. The court shall endeavor to discover
8 all those lienholders and protect their interests and may, at its
9 discretion, order the proceeds placed in escrow for a period not to
10 exceed 60 additional days to ensure that all valid claims are
11 received and processed.

12 (2) To the Department of General Services or local governmental
13 entity for all expenditures made or incurred by it in connection
14 with the sale of the property, including expenditures for any
15 necessary repairs, storage, or transportation of any property seized
16 under this section.

17 (3) To local nonprofit organizations exempt under Section
18 501(c)(3) of the Internal Revenue Code, the primary activities of
19 which include ongoing rescue, foster, or other care of animals that
20 are the victims of cockfighting or dogfighting, and to law
21 enforcement entities, including multiagency task forces, that
22 actively investigate and prosecute animal fighting crimes.

23 (4) Any remaining funds not fully distributed to organizations
24 or entities pursuant to paragraph (3) shall be deposited in an escrow
25 account or restricted fund to be distributed as soon as possible in
26 accordance with paragraph (3).