

RESOLUTION 02-17-2008

DIGEST

Nonambulatory Livestock: Increased Penalties for Repeat Offense

Amends Penal Code section 599f to exempt slaughterhouses from a ban on trading nonambulatory animals, and enhances penalties for repeatedly mistreating those animals.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 599f to exempt slaughterhouses from a ban on trading nonambulatory animals, and enhances penalties for repeatedly mistreating those animals. This resolution should be disapproved because it would exempt slaughterhouses from any penalties for buying, selling or receiving nonambulatory animals, while keeping those penalties for stockyards and auctions, which would run counter to the statute's purpose of prohibiting such trafficking.

This resolution is similar to AB 2098, currently pending in the Assembly. AB 2098, however, does not remove slaughterhouses from the ban on buying selling or receiving nonambulatory animals. Rather, it removes a restriction that limited the ban to only those slaughterhouses "not inspected by the United States Department of Agriculture." If the strikethrough of the word "slaughterhouse" in this resolution was in error, and the intent of the deletion in this resolution is to similarly remove that restriction, the resolution should still be disapproved because it would subject the statute to preemption by federal regulation. Current USDA regulations found at 9 Code of Federal Regulations parts 309, 310, and 318 ("Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used") indicate the USDA's intent to command the field of regulating the use and treatment of non-ambulatory cattle. Although the scope of Penal Code section 599f is broader than "cattle," it seems likely that the language in section 599f limiting its scope to those slaughterhouses "not inspected by the United States Department of Agriculture" is meant to avoid such preemption.

This resolution is similar to AB No. 2098 (Krekorian) now pending in the Assembly.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Penal Code Section 599f to read as follows:

- 1 §599f
- 2 (a) No ~~slaughterhouse that is not inspected by the United States Department of~~
- 3 ~~Agriculture~~, stockyard, or auction shall buy, sell, or receive a nonambulatory animal.

4 (b) No slaughterhouse, stockyard, auction, market agency, or dealer shall hold a
5 nonambulatory animal without taking immediate action to humanely euthanize the animal
6 or to humanely remove the animal from the premises.

7 (c) While it is in transit or on the premises of a stockyard, auction, market agency,
8 dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or
9 pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or
10 other sled-like or wheeled conveyance.

11 (d) A first violation of this section is a misdemeanor punishable by a fine of up to
12 \$1,000.00 and imprisonment of up to one year. Second or subsequent violations may at the
13 discretion of the Court be punishable as a misdemeanor or a felony with fines in excess of
14 \$1,000.00 per occurrence and imprisonment of in excess of one year.

15 (e) As used in this section, “nonambulatory” means unable to stand and walk
16 without assistance.

17 (f) As used in this section, “animal” means live cattle, swine, sheep, or goats.

18 (g) As used in this section, “humanely euthanized” means to kill by a mechanical,
19 chemical, or electrical method that rapidly and effectively kills and renders the animal
20 insensitive to pain.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Santa Barbara County Bar Association

STATEMENT OF REASONS:

Existing Law: Currently, the law provides only a misdemeanor designation concerning transacting in “downed” or nonambulatory animals. There are no specification as to punishment and the current law is not a sufficient deterrent to such activity.

This Resolution: Further defines prohibited acts and resulting punishment.

The Problem: Transacting in any manner with “downed” or nonambulatory animals is inherently cruel. Unless sold at the moment of birth, such an animal has already been injured and is therefore unable to stand. To handle or trade such an animal in any manner will cause unnecessary pain and is by definition cruel. In addition, merely rendering an animal insensitive to pain is not sufficient. It is, for example, cruel to cut off limbs in preparation for food consumption prior to the animal actually being dead even though that animal may be anesthetized and thus “insensitive to pain” which could be found to comply with the current statute. It is therefore necessary to further define prohibited acts and resulting punishment

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Betty L. Jeppesen

COUNTERARGUMENTS

THE BAR ASSOCIATION OF SAN FRANCISCO

Bar Association of San Francisco is not yet persuaded that this resolution has identified a problem statewide which requires a solution. Further, if there is a problem, and therefore a solution is required, BASF is unpersuaded that increasing criminal penalties is the correct solution. We see proposals to increase penalties for crimes as popular, but not necessarily most effective. We would disapprove and hope that alternative “solutions” if truly necessary would be considered. BASF recommends swift and sure investigation, apprehension, and conviction, with commensurate swift and sure punishment, as the appropriate solution if there truly is a problem. Throwing “felony” at a problem may be the easy response, but it is rarely the correct answer.

SAN DIEGO COUNTY BAR ASSOCIATION

In seeking to generally protect against cruelty to animals, this resolution is extremely broad and, at the same time, limiting. It appears to provide for the prevention of cruelty to animals on a general scale while other laws currently in place protect only cruelty to horses or dogs owned by peace officers. However, this resolution fails to adequately define “animal,” so as to eliminate ambiguity as to whom this law would apply. Further, this resolution is vague as to the punishment for a second and/or subsequent offense. As this resolution touches on an important trend in common culture (prevention of heinous and cruel acts to animals) and attempts to provide needed protection for all animals as opposed to just horses and dogs owned by peace officers, the SDCBA may reconsider its support if the resolution is amended to more fully define “animal” or the “animals” sought to be protected and is revised to provide a definitive punishment for second or subsequent offenses as opposed to a discretionary punishment as currently drafted.