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DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (*Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.*)

PART 3. NUISANCE [3479 - 3508.2] (*Part 3 enacted 1872.*)

TITLE 4. MOTION PICTURES [3504 - 3508.2] (*Title 4 added by Stats. 1978, Ch. 1152.*)

3504. As used in this title:

(a) "Animal" means any amphibian, bird, mammal or reptile. It does not include any fish or insect.

(b) "Motion picture" means any motion picture, regardless of length or content, which is exhibited in a motion picture theater to paying customers, or is exhibited on television to paying customers or under the sponsorship of a paying advertiser. It shall not include motion pictures made for scientific, research, or educational purposes, or motion pictures exhibited as home movies, or amateur films, which are shown free or at cost to friends, neighbors or civic groups.

(c) "Person" means individuals, corporations, associations, partnerships, limited liability companies, trustees, lessees, agents and assignees.

(*Amended by Stats. 1994, Ch. 1010, Sec. 56. Effective January 1, 1995.*)

3505. (a) The exhibition of any motion picture, if any intentional killing of, or cruelty to, a human being or an animal is shown in the motion picture and such intentional killing of, or cruelty to, a human being or an animal actually occurred in the production of the motion picture for the purpose of such production, is a nuisance, which shall be enjoined, abated, and prevented.

(b) As used in this section, "killing" and "cruelty" mean conduct which both (1) results in the death or the infliction of any physical injury or wound, including, but not limited to, any temporary or permanent physical harm resulting from the administration of any drug or chemical, and (2) is patently offensive to the average person, applying contemporary statewide community standards. It does not include conduct committed against a human being to which the human being has given his or her consent. In determining whether conduct is patently offensive, the trier of fact may consider any or all of the following: (i) the degree or extent of the physical injury inflicted, (ii) the manner in which the injury is inflicted, (iii) the extent to which the injuring or wounding or acts resulting therein are depicted on the screen, (iv) the number of instances of infliction of injury, wound or harm occurring in the making of the motion picture, and (v) whether such conduct is lawful or unlawful under any provision of law other than this title.

(c) For the purposes of this section, it shall not be a requirement that the entire motion picture and all of the conduct resulting therein be taken into account in determining whether a nuisance exists, and to this end, the Legislature finds and declares that any specific conduct which intentionally results in the killing of, or cruelty to, an animal or a human being in the making of a motion picture is unnecessary and is a nuisance, and that if a motion picture cannot be completed in the absence of such conduct, it is, therefore, a nuisance in its entirety.

(*Added by Stats. 1978, Ch. 1152.*)

3506. Whenever there is reasonable cause to believe that a nuisance as defined in this title is kept, maintained or is in existence in any county, the district attorney or the Attorney General, in the name of the people of the State of California, shall, on a proper showing, commence an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from maintaining or permitting it. As used herein, a proper showing to commence an action under this title must be based upon evidence independent of the motion picture itself that intentional killing of, or cruelty to, a human being or an animal actually occurred in the production of the motion picture for the purpose of such production.

(*Added by Stats. 1978, Ch. 1152.*)

3507. Whenever an action is initiated under this title to abate an alleged nuisance, an adversary trial on the merits shall be held pursuant to Section 3507.2. If the court finds that the exhibition of the particular motion picture constitutes a nuisance, it shall issue a

permanent injunction to abate and prevent the continuance or recurrence of such nuisance. No temporary restraining order or preliminary injunction shall be granted in such an action. An appeal may be taken from an order issuing a permanent injunction, and any injunction issued pursuant to this title by the trial court may be stayed by such court pending the outcome of such appeal. No appeal may be taken from a ruling by the trial court denying an injunction requested under this title.

(Added by Stats. 1978, Ch. 1152.)

3507.1. In actions brought under this title, the motion picture shall be admissible into evidence. The burden of proof that the exhibition of the particular motion picture constitutes a nuisance shall be met by the district attorney or Attorney General only when clear and convincing evidence, independent of the motion picture itself, is provided that the acts alleged actually occurred in the production of the motion picture.

(Added by Stats. 1978, Ch. 1152.)

3507.2. Actions brought under this title shall be brought as promptly as possible. Such actions shall have precedence over all actions, excepting criminal proceedings and election contests. It is also the intent of the Legislature that actions commenced under this title be adjudicated in the most speedy and expeditious manner.

(Added by Stats. 1978, Ch. 1152.)

3507.3. Any violation or disobedience of an injunction or order expressly provided for by this title is punishable as a contempt of court by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000).

(Added by Stats. 1978, Ch. 1152.)

3507.4. The distributor who furnished a motion picture to a person who is made a defendant in an action under this title, and the producer of a motion picture which is the subject of this title shall be jointly and severally liable, upon proof and after an opportunity to appear and interpose any appropriate defenses, to such person and the exhibitor for damages, including loss of profits, attorney's fees, and other costs of defending such action. Such distributor and such producer shall actively assist in such defense to the extent that such person possesses information necessary to such defense concerning the production of the motion picture which is not otherwise available to the defendant. The exhibitor shall not be liable upon any portion of any contract made on or after January 1, 1979, which requires the exhibition or advertisement of a motion picture subject to this title on or after the date of the filing of any action under this title, if the motion picture by final decision of a court is determined to be a nuisance under this title.

(Added by Stats. 1978, Ch. 1152.)

3508. (a) This title shall not apply to any of the following:

(1) The exhibition of any motion picture, such as a newsreel or documentary, involving acts of killing or cruelty which were not intentionally committed for the purpose of producing the motion picture.

(2) Any motion picture made, in whole or in part, prior to January 1, 1979.

(3) Any motion picture all or part of which has been edited or remade so that any previous conduct which constituted a nuisance under this title no longer appears.

(4) The taking of any animal as permitted by any provision of the Fish and Game Code or pursuant thereto in accordance with regulations adopted by the Fish and Game Commission unless the time, place, or manner of such taking violates any provision of law except this title. This title shall apply to any other animal whether or not the time, place, or manner of the taking is prohibited by any laws other than this title, however, this title shall not apply to the taking of any animal authorized by law in any other jurisdiction unless the time, place or manner of such taking is prohibited by law or regulation.

(5) A motion picture which includes scenes of killing or cruelty to animals if the acts constituting the killing or cruelty were authorized by the laws governing such acts in the jurisdiction where the scenes were filmed.

(6) Any motion picture which bears within its contents a statement from the producer of the motion picture that all scenes depicting animals were filmed without the intentional killing of, or cruelty to an animal or that any killing or cruelty to an animal was authorized by the laws of the jurisdiction where the scenes were filmed or that the film is otherwise exempt under this title.

(7) Any motion picture if the exhibitor thereof has a written signed statement, or a copy thereof, from the producer of the motion picture that all scenes depicting animals were filmed without the intentional killing of, or cruelty to an animal or that any killing or cruelty to an animal was authorized by the laws of the jurisdiction where the scenes were filmed or that the film is otherwise exempt under this title.

(b) This title shall not apply in any case in which it would conflict with federal supremacy in the field of television broadcasting.

(Added by Stats. 1978, Ch. 1152.)

3508.1. Any producer who willfully misstates or causes to be misstated any fact contained in a statement under paragraph (6) or (7) of Section 3508 is guilty of a misdemeanor.

(Added by Stats. 1978, Ch. 1152.)

3508.2. If any provision of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

(Added by Stats. 1978, Ch. 1152.)