S T A T E O F N E W Y O R K

11684

I N A S S E M B L Y

August 4, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Zebrowski) -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to restricting the performance of surgical devocalization procedures on dogs and cats

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The agriculture and markets law is amended by adding a new section 365-a to read as follows:

S 365-A. DEVOCALIZATION OF ANIMALS. 1. NO PERSON SHALL PERFORM THE SURGICAL DEVOCALIZATION OF A DOG OR CAT EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

2. A. SURGICAL DEVOCALIZATION OF A DOG OR CAT SHALL BE PERFORMED ONLY BY A PERSON LICENSED AS A VETERINARIAN IN THIS STATE UNDER THE PROVISIONS OF ARTICLE ONE HUNDRED THIRTY-FIVE OF THE EDUCATION LAW.

B. SURGICAL DEVOCALIZATION OF A DOG OR CAT MAY BE PERFORMED ONLY WHEN THE PROCEDURE IS MEDICALLY NECESSARY TO TREAT OR RELIEVE AN ILLNESS, DISEASE OR INJURY OR CORRECT A CONGENITAL ABNORMALITY SUFFERED BY THE ANIMAL, WHICH ILLNESS, DISEASE, INJURY OR CONGENITAL ABNORMALITY IS CAUSING OR MAY CAUSE THE ANIMAL PHYSICAL PAIN OR HARM.

3. A. ANY PERSON WHO PERFORMS A SURGICAL DEVOCALIZATION PROCEDURE ON A DOG OR CAT SHALL PREPARE A RECORD OF THE PROCEDURE CONTAINING THE FOLLOWING INFORMATION:

(1) THE NAME AND ADDRESS OF THE ANIMAL'S OWNER;

(2) THE NAME AND ADDRESS OF THE PERSON FROM WHOM PAYMENT IS RECEIVED FOR THE PROCEDURE;

(3) A DESCRIPTION OF THE ANIMAL, INCLUDING ITS NAME, SPECIES, BREED, DATE OF BIRTH, SEX, COLOR, MARKINGS AND CURRENT WEIGHT;

(4) THE LICENSE NUMBER AND MUNICIPALITY THAT ISSUED THE LICENSE FOR THE ANIMAL;

(5) THE DATE AND TIME OF THE PROCEDURE;

(6) THE REASON THE PROCEDURE WAS PERFORMED; AND

(7) ANY DIAGNOSTIC OPINION, ANALYSIS OR TEST RESULTS TO SUPPORT THE DIAGNOSIS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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B. PRIOR TO PERFORMING A SURGICAL DEVOCALIZATION PROCEDURE ON A DOG OR CAT, THE PERSON PERFORMING THE PROCEDURE SHALL FILE WITH THE CLERK OF THE MUNICIPALITY IN WHICH THE SURGERY IS TO BE PERFORMED A COPY OF THE RECORD SPECIFIED IN PARAGRAPH A OF THIS SUBDIVISION, TOGETHER WITH A WRITTEN STATEMENT DECLARING THAT THE PROCEDURE IS MEDICALLY NECESSARY TO PROTECT THE HEALTH OR WELLBEING OF THE DOG OR CAT.

C. THE RECORD REQUIRED BY PARAGRAPH A OF THIS SUBDIVISION SHALL BE RETAINED BY THE PERSON PERFORMING THE PROCEDURE FOR A PERIOD OF FOUR YEARS AFTER THE LAST CONTACT WITH THE ANIMAL ON WHICH THE PROCEDURE WAS PERFORMED. ALL SUCH RECORDS SHALL BE SUBJECT TO AUDIT BY THE STATE BOARD FOR VETERINARY MEDICINE.

D. ANY PERSON WHO PERFORMS A DEVOCALIZATION PROCEDURE ON A DOG OR CAT SHALL REPORT THE NUMBER OF ALL SUCH PROCEDURES TO THE STATE BOARD FOR VETERINARY MEDICINE ANNUALLY ON OR BEFORE MARCH THIRTIETH. THE BOARD SHALL MAINTAIN ALL NOTICES RECEIVED UNDER THIS SUBDIVISION FOR FOUR YEARS FROM THE DATE OF RECEIPT.

E. ANY PERSON WHO PERFORMS A SURGICAL DEVOCALIZATION PROCEDURE ON A DOG OR CAT SHALL PREPARE AND PROVIDE TO THE ANIMAL'S OWNER A WRITTEN NOTICE THAT SUCH PROCEDURE HAS BEEN CONDUCTED ON THE ANIMAL IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND CONTAINING THE INFORMATION SPECIFIED IN SUBPARAGRAPHS ONE, THREE, FIVE AND SIX OF PARAGRAPH A OF THIS SUBDIVISION.

4. NO COMMERCIAL ESTABLISHMENT, PET SHOP, FIRM, CORPORATION OR PERSON SHALL SELL A DOG OR CAT THAT HAS BEEN SURGICALLY DEVOCALIZED, UNLESS A COPY OF THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH E OF SUBDIVISION THREE OF THIS SECTION IS PROVIDED TO ANY PROSPECTIVE PURCHASER BEFORE THE PURCHASER ENTERS INTO AN AGREEMENT TO PURCHASE SAID ANIMAL. IN ADDITION TO THE PENALTIES SET FORTH IN THIS SECTION, A FAILURE TO PROVIDE SUCH NOTICE SHALL RENDER ANY PURCHASE AGREEMENT VOID AND A VIOLATION OF THIS PARAGRAPH SHALL CONSTITUTE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE CONDUCT OF A TRADE OR COMMERCE UNDER SECTION THREE HUNDRED FORTY-NINE OF THE GENERAL BUSINESS LAW.

5. AS USED IN THIS SECTION, "DEVOCALIZATION" MEANS A SURGICAL PROCEDURE ON THE LARYNX OR VOCAL CORDS OF AN ANIMAL WHICH CAUSES THE REDUCTION OR ELIMINATION OF VOCAL SOUNDS PRODUCED BY THAT ANIMAL AND INCLUDES PROCEDURES COMMONLY REFERRED TO AS DEBARKING OR SILENCING.

6. A. ANY PERSON WHO PERFORMS, OR CAUSES TO BE PERFORMED, THE SURGICAL DEVOCALIZATION OF A DOG OR CAT IN VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BY A FINE OF NOT TO EXCEED FIVE THOUSAND DOLLARS OR BY BOTH SUCH FINE AND IMPRISONMENT.

B. IN ADDITION TO THE PENALTIES DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION, THE COURT MAY ORDER ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION TO SUCCESSFULLY COMPLETE A COURSE OF INSTRUCTION RELATIVE TO THE HUMANE TREATMENT OF ANIMALS OR BE BARRED FROM OWNING OR KEEPING A DOG OR CAT OR SHARING A RESIDENCE WITH ANOTHER WHO OWNS OR KEEPS A DOG OR CAT FOR A PERIOD OF TIME AS DETERMINED BY SAID COURT. THE COURT MAY FURTHER ORDER ANY PERSON WHO VIOLATES THIS SECTION TO SURRENDER THE ANIMAL ON WHICH THE PROCEDURE WAS PERFORMED, AS WELL AS ANY OTHER ANIMALS OWNED OR CONTROLLED BY SUCH PERSON.

C. ANY VETERINARIAN WHO PERFORMS A SURGICAL DEVOCALIZATION PROCEDURE IN VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO THE REVOCATION OR SUSPENSION OF HIS OR HER LICENSE.

S 2. The commissioner of agriculture and markets and the commissioner of education are authorized and directed to promulgate and implement all rules, regulations and standards they respectively deem necessary to

enforce the provisions of this act on or before the effective date of this act.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.