

4961

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the general business law, in relation to the care and sale of dogs and cats by pet dealers

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

1 Section 1. Subdivision 4 of section 400 of the agriculture and markets
2 law, as amended by chapter 687 of the laws of 2006, is amended to read
3 as follows:

4 4. "Pet Dealer" means any person who (A) SELLS, OFFERS FOR SALE OR
5 NEGOTIATES THE SALE OR PURCHASE OF ANIMALS BORN OR RAISED ON ANOTHER
6 PREMISES; (B) KEEPS ON HIS OR HER PREMISES MORE THAN FOUR INTACT FEMALE
7 DOGS SIX MONTHS OF AGE OR OLDER FOR THE PURPOSE OF BREEDING SUCH DOGS OR
8 WHO (B) engages in the sale or offering for sale of more than nine
9 animals per year for profit to the public. Such definition shall include
10 breeders who sell or offer to sell animals[; provided that a breeder who
11 sells or offers to sell directly to the consumer fewer than twenty-five
12 animals per year that are born and raised on the breeder's residential
13 premises shall not be considered a pet dealer as a result of selling or
14 offering to sell such animals. Such definition shall further], BUT SHALL
15 not include duly incorporated humane societies dedicated to the care of
16 unwanted animals which make such animals available for adoption whether
17 or not a fee for such adoption is charged.

18 S 2. Subdivision 1 of section 401 of the agriculture and markets law,
19 as added by chapter 259 of the laws of 2000, is amended by adding a new
20 paragraph (h) to read as follows:

21 (H) PET DEALERS SHALL DESIGNATE AND PROVIDE AN ISOLATION AREA FOR
22 ANIMALS THAT EXHIBIT SYMPTOMS OF DISEASE OR ILLNESS. THE LOCATION OF
23 SUCH DESIGNATED AREA MUST, TO THE SATISFACTION OF THE COMMISSIONER OR
24 HIS OR HER DESIGNEE, PREVENT OR REDUCE THE SPREAD OF DISEASE TO HEALTHY
25 ANIMALS.

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

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1 S 3. Paragraphs (a), (b), (c) and (d) of subdivision 5 of section 401
2 of the agriculture and markets law, as added by chapter 259 of the laws
3 of 2000, are relettered paragraphs (b), (c), (d) and (e) and a new para-
4 graph (a) is added to read as follows:

5 (A) ANY PET DEALER DULY LICENSED PURSUANT TO THIS ARTICLE SHALL DESIG-
6 NATE AND EMPLOY AN ATTENDING VETERINARIAN, WHO SHALL PROVIDE ADEQUATE
7 VETERINARY CARE TO HIS OR HER ANIMALS UNDER FORMAL ARRANGEMENTS. IN THE
8 CASE OF A PART-TIME ATTENDING VETERINARIAN OR CONSULTANT ARRANGEMENTS,
9 SUCH FORMAL ARRANGEMENTS SHALL INCLUDE A WRITTEN PROGRAM OF VETERINARY
10 CARE AND REGULARLY SCHEDULED VISITS TO THE PET DEALER'S PREMISES. EACH
11 PET DEALER SHALL ESTABLISH AND MAINTAIN, IN COORDINATION WITH HIS OR HER
12 VETERINARIAN, A PROGRAM OF VETERINARY THAT SHALL INCLUDE:

13 (I) THE AVAILABILITY OF APPROPRIATE FACILITIES, PERSONNEL, EQUIPMENT,
14 AND SERVICES TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE;

15 (II) THE USE OF APPROPRIATE METHODS TO PREVENT, CONTROL, DIAGNOSE, AND
16 TREAT DISEASES AND INJURIES, AND THE AVAILABILITY OF EMERGENCY, WEEKEND,
17 AND HOLIDAY CARE;

18 (III) DAILY OBSERVATION OF ALL ANIMALS TO ASSESS THEIR HEALTH AND
19 WELL-BEING; PROVIDED, HOWEVER, THAT DAILY OBSERVATION OF ANIMALS MAY BE
20 ACCOMPLISHED BY SOMEONE OTHER THAN THE ATTENDING VETERINARIAN; AND
21 PROVIDED, FURTHER, THAT A MECHANISM OF DIRECT AND FREQUENT COMMUNICATION
22 IS REQUIRED SO THAT TIMELY AND ACCURATE INFORMATION ON PROBLEMS OF
23 ANIMAL HEALTH, BEHAVIOR, AND WELL-BEING IS CONVEYED TO THE ATTENDING
24 VETERINARIAN;

25 (IV) ADEQUATE GUIDANCE TO PERSONNEL INVOLVED IN THE CARE AND USE OF
26 ANIMALS REGARDING HANDLING, IMMOBILIZATION, ANESTHESIA, ANALGESIA, TRAN-
27 QUILIZATION, AND EUTHANASIA; AND

28 (V) ADEQUATE PRE-PROCEDURAL AND POST-PROCEDURAL CARE IN ACCORDANCE
29 WITH ESTABLISHED VETERINARY MEDICAL AND NURSING PROCEDURES.

30 S 4. Section 401 of the agriculture and markets law is amended by
31 adding a new subdivision 7 to read as follows:

32 7. EXERCISE REQUIREMENTS. PET DEALERS SHALL DEVELOP AND MAINTAIN AN
33 APPROPRIATE PLAN, APPROVED BY THE COMMISSIONER OR HIS OR HER DESIGNEE,
34 TO PROVIDE ANIMALS WITH THE OPPORTUNITY FOR EXERCISE. SUCH PLAN SHALL
35 INCLUDE WRITTEN STANDARD PROCEDURES THAT, AT A MINIMUM, COMPLY WITH
36 FEDERAL STANDARDS FOR EXERCISE PRESCRIBED IN 9 CFR S 3.8.

37 S 5. Section 402 of the agriculture and markets law, as added by chap-
38 ter 259 of the laws of 2000, is amended to read as follows:

39 S 402. Records of purchase and sale. 1. Each pet dealer shall keep
40 and maintain records for each animal purchased, acquired, held, sold, or
41 otherwise disposed of. The records shall include the following:

42 [1.] (A) The name and address of the person from whom each animal was
43 acquired. If the person from whom the animal was obtained is a dealer
44 licensed by the United States department of agriculture, the person's
45 name, address, and federal dealer identification number. In the case of
46 cats, if a cat is placed in the custody or possession of the pet dealer
47 and the source of origin is unknown, the pet dealer shall state the
48 source of origin as unknown, accompanied by the date, time, and location
49 of receipt. Notwithstanding the provisions of this subdivision, no pet
50 dealer shall knowingly buy, sell, exhibit, transport, or offer for sale,
51 exhibition, or transportation any stolen animal. No pet dealer shall
52 knowingly sell any cat or dog younger than eight weeks of age.

53 [2.] (B) The original source of each animal if different than the
54 person recorded in [subdivision one] PARAGRAPH (A) of this [section]
55 SUBDIVISION.

56 [3.] (C) The date each animal was acquired.

1 [4.] (D) A description of each animal showing age, color, markings,
2 sex, breed, and any inoculation, worming, or other veterinary treatment
3 or medication information available. Records shall also include any
4 other significant identification, if known, for each animal, including
5 any official tag number, tattoo, or implant.

6 [5.] (E) The name and address of the person to whom any animal is
7 sold, given, or bartered or to whom it is otherwise transferred or
8 delivered. The records shall indicate the date and method of disposi-
9 tion.

10 [6.] 2. Records for each animal shall be maintained for a period of
11 two years from the date of sale or transfer, whichever occurs later.
12 During normal business hours, the records shall be made available to
13 persons authorized by law to enforce the provisions of this article.

14 3. NO ANIMAL MAY BE SOLD TO THE PUBLIC BY A PET DEALER WITHOUT THE
15 PET DEALER BEING IN POSSESSION OF THE RECORDS FOR THAT ANIMAL AS
16 PROVIDED IN SUBDIVISION ONE OF THIS SECTION AND THAT ANIMAL HAVING
17 UNDERGONE THE VETERINARY EXAMINATION MANDATED BY SECTION SEVEN HUNDRED
18 FIFTY-THREE-A OF THE GENERAL BUSINESS LAW.

19 4. NO PET DEALER MAY PURCHASE AN ANIMAL FROM A SOURCE THAT IS KNOWN OR
20 REASONABLY SHOULD BE KNOWN BY THE PET DEALER TO BE REQUIRED TO BE
21 LICENSED UNDER THIS ARTICLE, OR BY THE UNITED STATES DEPARTMENT OF AGRI-
22 CULTURE UNDER THE FEDERAL ANIMAL WELFARE ACT, IF THAT SOURCE DOES NOT
23 POSSESS A VALID LICENSE FROM SUCH AGENCY.

24 5. ANY PET DEALER LICENSED PURSUANT TO THIS ARTICLE SHALL PROVIDE A
25 WRITTEN RELEASE TO HIS OR HER DESIGNATED VETERINARIAN TO ALLOW SUCH
26 VETERINARIAN TO PROVIDE THE COMMISSIONER, OR HIS OR HER AUTHORIZED
27 AGENTS, ACCESS TO ALL ANIMAL HEALTH RECORDS FOR EACH ANIMAL ACQUIRED,
28 HELD, SOLD, OR OTHERWISE DISPOSED OF.

29 6. ANY PET DEALER LICENSED PURSUANT TO THIS ARTICLE WHO SELLS, OFFERS
30 FOR SALE OR NEGOTIATES THE SALE OF ANIMALS WITH A REGISTERED DOG OR CAT
31 BREED REGISTRY SHALL PROVIDE A WRITTEN RELEASE TO SUCH REGISTRY ASSOCI-
32 ATIONS TO ALLOW SUCH ASSOCIATIONS TO PROVIDE THE COMMISSIONER, OR HIS OR
33 HER AUTHORIZED AGENTS, ACCESS TO ALL ANIMAL BREED REGISTRY RECORDS FOR
34 EACH ANIMAL ACQUIRED, HELD, SOLD, OR OTHERWISE DISPOSED OF.

35 S 6. Subdivision 3 of section 403 of the agricultural and markets law,
36 as added by chapter 259 of the laws of 2000, is amended to read as
37 follows:

38 3. Each application for a license shall be accompanied by a nonrefund-
39 able fee of one hundred dollars[, except that those pet dealers who
40 engage in the sale of less than twenty-five animals in a year, shall pay
41 a nonrefundable fee of twenty-five dollars].

42 S 7. Subdivisions 10 and 11 of section 403 of the agriculture and
43 markets law, as added by chapter 259 of the laws of 2000, are amended to
44 read as follows:

45 10. Such license shall be renewable annually, together with the
46 payment of a nonrefundable fee [of one hundred dollars, or upon payment
47 of a nonrefundable fee of twenty-five dollars for those pet dealers who
48 engage in the sale of less than twenty-five animals in a year] BASED ON
49 THE GROSS SALES RECEIPTS FROM THE SALE OF ANIMALS FOR PROFIT TO THE
50 PUBLIC BY THE LICENSEE IN THE PRIOR YEAR. FOR LICENSEES WITH GROSS SALES
51 RECEIPTS FROM SUCH SALES OF UNDER FIFTY THOUSAND DOLLARS, THAT FEE SHALL
52 BE ONE HUNDRED DOLLARS; FOR LICENSEES WITH GROSS SALES RECEIPTS FROM
53 SUCH SALES OF FIFTY THOUSAND DOLLARS OR MORE, THAT FEE SHALL BE THREE
54 HUNDRED DOLLARS.

55 11. Pet dealers shall conspicuously display their license on the prem-
56 ises where the animals are kept for sale so that they may be readily

1 seen by potential consumers. ANY LICENSEE THAT FAILS TO CONSPICUOUSLY
2 POST THEIR LICENSE AS REQUIRED BY THIS SUBDIVISION SHALL BE CONSIDERED
3 IN VIOLATION OF THIS ARTICLE.

4 S 8. Section 404 of the agriculture and markets law, as added by chap-
5 ter 259 of the laws of 2000, is amended to read as follows:

6 S 404. License refusal, suspension, or revocation. 1. The commission-
7 er may decline to grant or renew or may suspend or revoke a pet dealer
8 license, on any one of the following grounds:

9 [1.] (A) Material misstatement in the license application.

10 [2.] (B) Material misstatement in or falsification of records required
11 to be kept pursuant to this article, or under any regulation promulgated
12 thereunder, or failure to allow the commissioner or his or her author-
13 ized agents to inspect records or pet dealer facilities. ANY REFUSAL TO
14 ALLOW THE COMMISSIONER, OR HIS OR HER AUTHORIZED AGENTS, TO INSPECT
15 RECORDS OR PET DEALER FACILITIES DURING NORMAL BUSINESS HOURS SHALL BE
16 CONSIDERED A VIOLATION OF THIS ARTICLE.

17 (C) THE APPLICANT OR HIS OR HER IMMEDIATE FAMILY MEMBERS, WITHIN THE
18 PREVIOUS FIVE YEARS, HELD A PET DEALER LICENSE THAT WAS REVOKED BY THE
19 COMMISSIONER PURSUANT TO THIS SECTION. FOR PURPOSES OF THIS SECTION, THE
20 DEFINITION OF "IMMEDIATE FAMILY MEMBERS" SHALL INCLUDE, BUT NOT BE
21 LIMITED TO, THE APPLICANT'S HUSBAND, WIFE, FATHER, MOTHER, DAUGHTER,
22 SON, BROTHER, SISTER, STEPPARENT, GRANDPARENT, STEPCHILD OR GRANDCHILD.

23 [3.] (D) Violation of any provision of this article OR ARTICLE THIR-
24 TY-FIVE-D OF THE GENERAL BUSINESS LAW, or conviction of a violation of
25 any provision of article twenty-six of this chapter or regulations
26 promulgated thereunder pertaining to humane treatment of animals, cruel-
27 ty to animals, endangering the life or health of an animal, or violation
28 of any federal, state, or local law pertaining to the care, treatment,
29 sale, possession, or handling of animals or any regulation or rule
30 promulgated pursuant thereto relating to the endangerment of the life or
31 health of an animal.

32 [4.] 2. Before any license shall be suspended or revoked, the commis-
33 sioner, or any hearing officer he or she may designate, shall hold a
34 hearing, upon due notice to the licensee, in accordance with any regu-
35 lations promulgated by the department and in accordance with articles
36 three and four of the state administrative procedure act. SUCH A HEAR-
37 ING IS MANDATED TO BE HELD IF A LICENSEE FAILS EITHER THREE CONSECUTIVE
38 INSPECTIONS PURSUANT TO THIS SECTION OR THREE INSPECTIONS IN A THREE
39 YEAR PERIOD PURSUANT TO THIS SECTION. NOTHING IN THIS SECTION SHALL
40 PROHIBIT THE COMMISSIONER FROM TAKING ADDITIONAL ACTIONS REGARDING SUCH
41 LICENSES PRIOR TO FAILURE BY A LICENSEE OF EITHER THREE CONSECUTIVE
42 INSPECTIONS OR THREE INSPECTIONS IN A THREE YEAR PERIOD.

43 [5.] 3. Any action of the commissioner shall be subject to judicial
44 review in a proceeding under article seventy-eight of the civil practice
45 law and rules.

46 4. THE REFUSAL, SUSPENSION, OR REVOCATION OR A PET DEALER'S LICENSE
47 UNDER THIS SECTION SHALL NOT PREVENT THE LEVYING OF ADDITIONAL CIVIL
48 PENALTIES, AS PROVIDED IN SECTION FOUR HUNDRED SIX OF THIS ARTICLE, FOR
49 VIOLATIONS.

50 S 9. Subdivision 1 of section 405 of the agriculture and markets law,
51 as added by chapter 259 of the laws of 2000, is amended to read as
52 follows:

53 1. The commissioner or his or her authorized agents shall, at a mini-
54 mum, make yearly inspections of pet dealers' facilities to ensure
55 compliance with the provisions of this article and with the provisions
56 of article thirty-five-D of the general business law[, except for those

1 pet dealers who engage in the sale of less than twenty-five animals in a
2 year, in which case inspections shall be made whenever in the discretion
3 of the commissioner or his or her authorized agents, a complaint
4 warrants such investigation].

5 S 10. Section 406 of the agriculture and markets law, as added by
6 chapter 259 of the laws of 2000, is amended to read as follows:

7 S 406. Violations. 1. In addition to the penalties provided for else-
8 where in this section, a pet dealer who violates any provisions of this
9 article OR ARTICLE THIRTY-FIVE-D OF THE GENERAL BUSINESS LAW may be
10 subject to denial, revocation, suspension, or refusal of renewal of his
11 or her license in accordance with the provisions of section four hundred
12 four of this article.

13 2. Violation of any provision of this article, is a civil offense, for
14 which a penalty of not less than [fifty] TWO HUNDRED dollars and not
15 more than [one] TWO thousand FIVE HUNDRED dollars for each violation may
16 be imposed. THE COMMISSIONER SHALL, AMONG OTHER FACTORS HE OR SHE DEEMS
17 APPROPRIATE, CONSIDER THE SEVERITY OF THE VIOLATION AND THE SALES VOLUME
18 OF THE LICENSEE IN VIOLATION IN DETERMINING THE AMOUNT OF THE PENALTY.

19 3. The provisions of this article may be enforced concurrently by the
20 department and by the county or city to which the commissioner has
21 delegated his or her licensing and inspection authority pursuant to
22 section four hundred three and four hundred five of this article, and
23 all moneys collected thereunder shall be retained by such municipality
24 or local government.

25 4. THE COMMISSIONER OR HIS OR HER AUTHORIZED AGENTS MAY SUMMARILY
26 SUSPEND, BASED ON THE SEVERITY OF A VIOLATION, A PET DEALER'S LICENSE
27 UNTIL SUCH DEFICIENCIES ARE CORRECTED.

28 S 11. Subdivision 3 of section 752 of the general business law, as
29 amended by chapter 687 of the laws of 2006, is amended to read as
30 follows:

31 3. For purposes of [section seven hundred fifty-three of] this arti-
32 cle, a "pet dealer" shall mean any person who[, in the ordinary course
33 of business,]: (A) SELLS, OFFERS FOR SALE OR NEGOTIATES THE SALE OR
34 PURCHASE OF ANIMALS BORN OR RAISED ON ANOTHER PREMISES; (B) KEEPS ON HIS
35 OR HER PREMISES MORE THAN FOUR INTACT FEMALE DOGS SIX MONTHS OF AGE OR
36 OLDER FOR THE PURPOSE OF BREEDING SUCH DOGS; OR (C) engages in the sale
37 or offering for sale of more than nine animals per year for profit to
38 the public. Such definition shall include breeders [of animals] who sell
39 or offer for sale animals [directly to a consumer] but [it] shall not
40 include duly incorporated humane societies dedicated to the care of
41 unwanted animals which make such animals available for adoption whether
42 or not a fee for such adoption is charged. [For purposes of sections
43 seven hundred fifty-three-a, seven hundred fifty-three-b, seven hundred
44 fifty-three-c, seven hundred fifty-three-d and seven hundred fifty-
45 three-e of this article, "pet dealer" shall mean any person who engages
46 in the sale or offering for sale of more than nine animals per year for
47 profit to the public. Such definition shall include breeders who sell
48 animals; provided that a breeder who sells or offers to sell directly to
49 the consumer fewer than twenty-five animals per year that are born and
50 raised on the breeders residential premises shall not be considered a
51 pet dealer as a result of selling or offering to sell such animals. Such
52 definition shall not include duly incorporated humane societies dedi-
53 cated to the care of unwanted animals which make such animals available
54 for adoption whether or not a fee for such adoption is charged.]

55 S 12. Section 753-a of the general business law, as added by chapter
56 259 of the laws of 2000, is amended to read as follows:

1 S 753-a. Veterinarian examination. 1. Within five business days of
2 receipt, but prior to the sale of any dog, the pet dealer shall have a
3 duly licensed veterinarian conduct an examination and PERFORM tests
4 appropriate to the breed and age to determine if the animal has any
5 medical conditions apparent at the time of the examination that adverse-
6 ly affect the health of the animal. For animals eighteen months of age
7 or older, such examination shall include a diagnosis of any congenital
8 conditions that adversely affect the health of the animal. Any animal
9 [found to be afflicted] DIAGNOSED with a contagious disease shall be
10 treated and caged separately from healthy animals IN ACCORDANCE WITH
11 SECTION FOUR HUNDRED ONE OF THE AGRICULTURE AND MARKETS LAW.

12 2. All animals shall be [inoculated] VACCINATED as required by state
13 or local law. Veterinary care appropriate to the species shall be
14 provided without undue delay when necessary. Each animal shall be
15 observed each day by the pet dealer or by a person working under the pet
16 dealer's supervision.

17 3. No pet dealer shall knowingly sell any animal [eighteen months of
18 age or older] that has a diagnosed congenital condition OR CONTAGIOUS
19 DISEASE that adversely affects the health of the animal without first
20 informing the consumer, in writing, of such condition.

21 S 13. Subdivision 1 of section 755 of the general business law, as
22 amended by chapter 259 of the laws of 2000, is amended to read as
23 follows:

24 1. In addition to the other remedies provided, whenever there shall be
25 a violation of this article, application may be made by the attorney
26 general in the name of the people of the state of New York to a court or
27 justice having jurisdiction by a special proceeding to issue an injunc-
28 tion, and upon notice to the defendant of not less than five days, to
29 enjoin and restrain the continuance of such violations; and if it shall
30 appear to the satisfaction of the court or justice that the defendant
31 has, in fact, violated this article, an injunction may be issued by such
32 court or justice, enjoining and restraining any further violation, with-
33 out requiring proof that any person has, in fact, been injured or
34 damaged thereby. In any such proceeding, the court may make allowances
35 to the attorney general as provided in paragraph six of subdivision (a)
36 of section eighty-three hundred three of the civil practice law and
37 rules, and direct restitution. Whenever the court shall determine that a
38 violation of this article has occurred, the court may impose a civil
39 penalty of not less than [fifty] TWO HUNDRED dollars and not more than
40 [one] TWO thousand FIVE HUNDRED dollars. In connection with any such
41 proposed application, the attorney general is authorized to take proof
42 and make a determination of the relevant facts and to issue subpoenas in
43 accordance with the civil practice law and rules.

44 S 14. This act shall take effect April 1, 2010; provided, however,
45 that effective immediately, the addition, amendment and/or repeal of any
46 rule or regulation necessary for the implementation of this act and its
47 effective date are authorized and directed to be made and completed on
48 or before such effective date.