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

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I N  A S S E M B L Y

February 13, 2009

Introduced by M. of A. BALL, SPANO, TOBACCO, TOWNSEND, BURLING, WALKER, RAIA, ERRIGO, CAMARA, GIGLIO, MOLINARO, ALFANO, MAYERSOHN, LAVINE, SALADINO, FINCH -- Multi-Sponsored by -- M. of A. CALHOUN, CONTE, HAYES, KOLB, McDONOUGH, McKEVITT, QUINN, J. RIVERA, SCOZZAFAVA, SEMINERIO, THIELE, TOWNS, WEISENBERG -- read once and referred to the Committee on Agriculture

AN ACT to amend the general business law and the agriculture and markets law, in relation to the sale of dogs and cats; and to amend the agriculture and markets law, in relation to commercial kennels

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

Section 1. Short title. This act shall be known and may be cited as "Charlemagne's law".

S 2. Section 752 of the general business law, as added by chapter 431 of the laws of 1988, subdivision 3 as amended by chapter 687 of the laws of 2006, subdivisions 5, 6 and 7 as added by chapter 259 of the laws of 2000 and such section as renumbered by chapter 68 of the laws of 1993, is amended to read as follows:

S 752. Definitions. As used in this article:

1. "Animal" means a dog or a cat.

2. "Consumer" means any individual purchasing an animal from AN ANIMAL FACILITY INCLUDING a pet dealer. [A pet dealer shall not be considered a consumer.]

3. For purposes of [section] THIS SECTION, AND SECTIONS seven hundred fifty-three AND SEVEN HUNDRED FIFTY-THREE-F of this article, a "pet dealer" shall mean any person who, in the ordinary course of business, engages in the sale or offering for sale of more than [nine] FIVE animals per year for profit to the public AT WHOLESALE OR RETAIL. Such definition shall include breeders of animals who sell or offer for sale animals directly to a consumer but it shall not include duly incorporated humane societies dedicated to the care of unwanted animals which

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

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make such animals available for adoption whether or not a fee for such adoption is charged. For purposes of sections seven hundred fifty-three-a, seven hundred fifty-three-b, seven hundred fifty-three-c[, seven hundred fifty-three-d] and seven hundred fifty-three-e of this article, "pet dealer" shall mean any person who engages in the sale or offering for sale of more than [nine] FIVE animals per year for profit to the public. Such definition shall include breeders who sell animals; provided that a breeder who sells or offers to sell directly to the consumer fewer than [twenty-five] TEN animals per year that are born and raised on the breeders residential premises shall not be considered a pet dealer as a result of selling or offering to sell such animals. Such definition shall not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged.

4. "Commissioner" shall mean the commissioner of agriculture and markets.

5. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.

6. "Nonelective surgical procedure" means a surgical procedure that is necessary to preserve or restore the health of an animal, to prevent an animal from experiencing pain or discomfort, or to correct a condition that would interfere with an animal's ability to walk, run, jump, or otherwise function in a normal manner.

7. "Clinically ill" means an illness that is apparent to a veterinarian based on observation, examination, or testing of an animal or upon review of the medical records relating to the animal.

8. "INHUMANE CONDITION" MEANS VIOLATION OF ANY FEDERAL, STATE, LOCAL LAW OR REGULATION THAT PERTAINS TO THE HUMANE TREATMENT OF ANIMALS, CRUELTY TO ANIMALS, ENDANGERING THE LIFE OR HEALTH OF AN ANIMAL OR TO THE CARE, TREATMENT, SALE, POSSESSION OR HANDLING OF ANIMALS, OR TO THE CRIME OF MORAL TURPITUDE.

9. "ANIMAL FACILITY" MEANS ANY AREA BUILT, INSTALLED OR DESIGNED TO SERVE AS A BREEDING OR MAINTAINING AREA FOR ANIMALS. SUCH FACILITY SHALL PROVIDE AN AREA WHERE A PERSON MAY ENGAGE IN THE SALE OR OFFERING FOR SALE, GIVING AWAY OR TRANSFER OF ANY NUMBER OF ANIMALS.

10. "HUMANE TREATMENT STANDARDS" MEANS RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER FOR THE HUMANE TREATMENT OF ANIMALS INVOLVED IN ANIMAL BREEDING. SUCH REGULATIONS SHALL TAKE INTO CONSIDERATION: ADEQUATE LIVING CONDITIONS FOR THE ANIMAL, DAILY MINIMUM AMOUNTS OF EXERCISE EACH ANIMAL SHALL RECEIVE AND DAILY HUMAN INTERACTION.

11. "CAT" MEANS THE GENUS AND SPECIES KNOWN AS FELIS CATUS.

12. "DOG" MEANS THE GENUS AND SPECIES KNOWN AS CANIS FAMILIARIS.

13. "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE AND MARKETS.

S 3. The general business law is amended by adding a new section 753-f to read as follows:

S 753-F. PROHIBITED SALE OF ANIMALS. 1. NO PERSON SHALL SELL, GIVE AWAY OR TRANSFER ANY ANIMAL KEPT, BORN OR BRED AT ANY ANIMAL FACILITY THAT BREEDS OR MAINTAINS ANIMALS UNDER INHUMANE CONDITIONS AND/OR BREEDS IN EXCESS THAT CAUSES HEALTH PROBLEMS FOR A FEMALE DOG OR CAT OR ITS PUPPIES OR KITTENS.

2. NO PET DEALER SHALL BE ELIGIBLE TO SELL ANIMALS THAT ARE HOUSED IN CONDITIONS THAT ARE IN VIOLATION OF ANY RULE OR REGULATION OUTLINING THE HUMANE TREATMENT STANDARDS OF ANIMALS INVOLVED IN ANIMAL BREEDING.

3. IT SHALL BE PROHIBITED TO PURCHASE OR ACCEPT AN ANIMAL FROM ANY ANIMAL FACILITY, DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, BY A

CONSUMER, CO-BREEDER, RETAIL PET STORE, RESEARCH OPERATION OR BROKER ACCEPTING DOGS OR CATS FOR USE BY THEMSELVES OR FOR TRANSFER TO A THIRD PARTY.

4. NOTHING IN THIS SECTION SHALL PRECLUDE ANY PEACE OR ANIMAL CONTROL OFFICER WHO SHALL HAVE THE POWERS OF A PEACE OFFICER AS DEFINED IN SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW WITH RESPECT TO THIS SECTION FROM ENFORCING THE PROVISIONS OF THIS SECTION IF HE OR SHE SHALL RECEIVE ORALLY OR IN WRITING A REPORT OF ANY INHUMANE CONDITION AT SUCH ANIMAL FACILITY.

5. ANY ANIMAL FACILITY DETERMINED TO BE IN VIOLATION OF THIS SECTION SHALL PRESENT TO THE DEPARTMENT, A SWORN, WRITTEN STATEMENT SIGNED BY A VETERINARIAN CERFIFYING THAT THE ANIMAL FACILITY HAS ABIDED BY ALL FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS THAT PERTAIN TO THE HUMANE TREATMENT OR CONDITIONS OF ANIMALS, IN ORDER FOR SUCH FACILITY TO RESUME HOUSING ANIMALS IN SUCH FACILITY.

S 4. Section 400 of the agriculture and markets law is amended by adding a new subdivision 5 to read as follows:

5. "ANIMAL FACILITY" MEANS ANY AREA BUILT, INSTALLED OR DESIGNED TO SERVE AS A BREEDING OR MAINTAINING AREA FOR ANIMALS. SUCH FACILITY SHALL PROVIDE AN AREA WHERE A PERSON MAY ENGAGE IN THE SALE OR OFFERING FOR SALE, GIVING AWAY OR TRANSFER OF ANY NUMBER OF ANIMALS.

S 5. Subdivision 3 of section 405 of the agriculture and markets law, as added by chapter 259 of the laws of 2000, is amended to read as follows:

3. Any person conducting an inspection of [a pet dealer] AN ANIMAL FACILITY or responding to a complaint concerning [a pet dealer] AN ANIMAL FACILITY shall be specifically trained PURSUANT TO RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER in the proper care of cats and dogs and in the investigation and identification of cruelty to animals.

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

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

2. Violation of any provision of this article, is a civil offense, for which a penalty of not less than [fifty] THREE HUNDRED dollars and not more than [one] THREE thousand dollars for each violation may be imposed.

2-A. THE DEPARTMENT, AT ITS DISCRETION, SHALL REVIEW THE NATURE OF SUCH VIOLATION OR VIOLATIONS, AND MAY REMOVE ANY ANIMAL OR ANIMALS AND PLACE THEM IN THE CARE OF A VETERINARIAN OR ANIMAL SHELTER. THE INDIVIDUAL IN VIOLATION SHALL BE REQUIRED TO PAY ALL REASONABLE COSTS ASSOCIATED WITH THE CARE OF SEIZED ANIMALS.

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

S 7. The agriculture and markets law is amended by adding a new article 26-C to read as follows:

ARTICLE 26-C

COMMERCIAL KENNELS

SECTION 420. COMMERCIAL KENNEL; DEFINITION.
421. COMMERCIAL KENNEL; REQUIREMENTS.
422. INSPECTIONS.
423. VIOLATIONS.

S 420. COMMERCIAL KENNEL; DEFINITION. FOR THE PURPOSES OF THIS ARTICLE, "COMMERCIAL KENNEL" MEANS ANY KENNEL THAT BREEDS AND WHELPS DOGS AND WHICH:

1. SELLS OR TRANSFERS ANY DOG TO A PET DEALER, AS DEFINED IN ARTICLE TWENTY-SIX-A OF THIS CHAPTER; OR

2. SELLS OR TRANSFERS MORE THAN SIXTY DOGS DURING ANY CALENDAR YEAR.

S 421. COMMERCIAL KENNEL; REQUIREMENTS. 1. ALL THAT PORTION OF A COMMERCIAL KENNEL USED TO HARBOR OR HOUSE A DOG SHALL:

(A) BE MAINTAINED AT A TEMPERATURE OF BETWEEN FIFTY AND EIGHTY-FIVE DEGREES FAHRENHEIT;

(B) BE LIT WITH LIGHTING SUFFICIENT TO OBSERVE THE CONDITION OF THE DOGS THEREIN AND THE KENNEL ITSELF, AS DETERMINED BY THE COMMISSIONER IN HIS OR HER RULES AND REGULATIONS.

(C) COMPLY WITH THE RULES AND REGULATIONS OF THE COMMISSIONER ESTABLISHING THE APPROPRIATE STANDARDS FOR VENTILATION, HUMIDITY AND AMMONIA.

(D) BE CLEANED ON A DAILY BASIS.

(E) HAVE PRIMARY ENCLOSURES WHICH PROTECT THE DOGS FROM INJURY, TEMPERATURE CHANGES AND WEATHER CONDITIONS.

(F) PROVIDE DAILY NUTRITIOUS FOOD AND POTABLE WATER TO ALL DOGS AS APPROPRIATE FOR THE SIZE, AGE AND CONDITION OF EACH DOG.

(G) BE EQUIPPED WITH A WORKING SMOKE ALARM AND FIRE SUPPRESSION EQUIPMENT.

2. EVERY COMMERCIAL KENNEL SHALL PROVIDE DOGS UNDER TWELVE WEEKS OF AGE WITH A PRIMARY ENCLOSURE WHICH IS IMPERVIOUS TO MOISTURE. NO SUCH ENCLOSURES SHALL BE STACKED MORE THAN TWO ENCLOSURES HIGH. FURTHERMORE, NO PRIMARY ENCLOSURE SHALL BE MORE THAN FIFTY-FOUR INCHES ABOVE THE FLOOR OF THE KENNEL.

3. EVERY PRIMARY ENCLOSURE FOR A DOG SHALL BE OF SUFFICIENT SIZE FOR THE DOG OR DOGS TO BE KEPT THEREIN, AS DETERMINED BY THE RULES OF THE COMMISSIONER. NO PRIMARY ENCLOSURE SHALL BE MORE THAN THIRTY INCHES ABOVE THE KENNEL FLOOR.

4. EVERY DOG HOUSED IN A COMMERCIAL KENNEL FOR MORE THAN ONE HUNDRED EIGHTY DAYS SHALL BE EXAMINED BY A VETERINARIAN NOT LESS THAN ONCE DURING EACH SUCH ONE HUNDRED EIGHTY DAY PERIOD.

5. THE FLOORING IN ALL AREAS OF A COMMERCIAL KENNEL WHERE DOGS ARE HARBORED SHALL:

(A) NOT SAG OR BEND, OR HAVE BEEN DESTROYED BY A DOG OR DOGS;

(B) NOT ALLOW ANY DOG'S PAWS TO PASS THROUGH IT;

(C) NOT BE COMPOSED OF METAL STRAND;

(D) NOT SLOPE MORE THAN ONE-QUARTER OF ONE INCH PER LINEAR FOOT IN ANY DIRECTION; AND

(E) ALLOW FOR MODERATE DRAINAGE OF FLUIDS.

6. EVERY PRIMARY ENCLOSURE SHALL ALLOW THE DOG OR DOGS THEREIN TO HAVE UNFETTERED ACCESS TO A GROUND LEVEL OUTDOOR EXERCISE AREA WHICH IS NOT LESS THAN TWICE THE AREA OF THE PRIMARY ENCLOSURE.

S 422. INSPECTIONS. 1. THE COMMISSIONER AND HIS OR HER AUTHORIZED AGENTS SHALL INSPECT EVERY COMMERCIAL KENNEL NO LESS THAN ONCE EACH CALENDAR YEAR TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE OR ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO WHICH SUCH KENNEL IS SUBJECT TO.

2. THE COMMISSIONER MAY DELEGATE HIS OR HER AUTHORITY, TO ANY POLICE OFFICER OR PEACE OFFICER, TO CONDUCT INSPECTIONS OF COMMERCIAL KENNELS AND TO RESPOND TO COMPLAINTS CONCERNING COMMERCIAL KENNELS.

3. ANY PERSON CONDUCTING AN INSPECTION OF A COMMERCIAL KENNEL OR RESPONDING TO A COMPLAINT CONCERNING A COMMERCIAL KENNEL SHALL BE SPECIFICALLY TRAINED IN THE PROPER CARE OF CATS AND DOGS AND IN THE INVESTIGATION OF CRUELTY TO ANIMALS.

S 423. VIOLATIONS. VIOLATION OF ANY PROVISION OF THIS ARTICLE, IS A CIVIL OFFENSE SUBJECT TO A FINE OF NOT LESS THAN TWO HUNDRED FIFTY DOLLARS, NOR MORE THAN ONE THOUSAND DOLLARS.

S 8. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.