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

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:

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

4. "Pet Dealer" means any person who (A) SELLS, OFFERS FOR SALE OR NEGOTIATES THE SALE OR PURCHASE OF ANIMALS BORN OR RAISED ON ANOTHER PREMISES; (B) KEEPS ON HIS OR HER PREMISES MORE THAN FOUR INTACT FEMALE DOGS SIX MONTHS OF AGE OR OLDER FOR THE PURPOSE OF BREEDING SUCH DOGS OR WHO (B) engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals[; provided that a breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeder's residential premises shall not be considered a pet dealer as a result of selling or offering to sell such animals. Such definition shall further], BUT 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.

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

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

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

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

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

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

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

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

(IV) ADEQUATE GUIDANCE TO PERSONNEL INVOLVED IN THE CARE AND USE OF ANIMALS REGARDING HANDLING, IMMOBILIZATION, ANESTHESIA, ANALGESIA, TRANQUILIZATION, AND EUTHANASIA; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Pet dealers shall conspicuously display their license on the premises where the animals are kept for sale so that they may be readily

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

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

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

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

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

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

[3.] (D) Violation of any provision of this article OR ARTICLE THIRTY-FIVE-D OF THE GENERAL BUSINESS LAW, or conviction of a violation of any provision of article twenty-six of this chapter or regulations promulgated thereunder pertaining to humane treatment of animals, cruelty to animals, endangering the life or health of an animal, or violation of any federal, state, or local law pertaining to the care, treatment, sale, possession, or handling of animals or any regulation or rule promulgated pursuant thereto relating to the endangerment of the life or health of an animal.

[4.] 2. Before any license shall be suspended or revoked, the commissioner, or any hearing officer he or she may designate, shall hold a hearing, upon due notice to the licensee, in accordance with any regulations promulgated by the department and in accordance with articles three and four of the state administrative procedure act. SUCH A HEARING IS MANDATED TO BE HELD IF A LICENSEE FAILS EITHER THREE CONSECUTIVE INSPECTIONS PURSUANT TO THIS SECTION OR THREE INSPECTIONS IN A THREE YEAR PERIOD PURSUANT TO THIS SECTION. NOTHING IN THIS SECTION SHALL PROHIBIT THE COMMISSIONER FROM TAKING ADDITIONAL ACTIONS REGARDING SUCH LICENSES PRIOR TO FAILURE BY A LICENSEE OF EITHER THREE CONSECUTIVE INSPECTIONS OR THREE INSPECTIONS IN A THREE YEAR PERIOD.

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

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

S 9. Subdivision 1 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:

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

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

S 10. 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] TWO HUNDRED dollars and not more than [one] TWO thousand FIVE HUNDRED dollars for each violation may be imposed. THE COMMISSIONER SHALL, AMONG OTHER FACTORS HE OR SHE DEEMS APPROPRIATE, CONSIDER THE SEVERITY OF THE VIOLATION AND THE SALES VOLUME OF THE LICENSEE IN VIOLATION IN DETERMINING THE AMOUNT OF THE PENALTY.

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 four hundred three and four hundred five of this article, and all moneys collected thereunder shall be retained by such municipality or local government.

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

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

3. For purposes of [section seven hundred fifty-three of] this article, a "pet dealer" shall mean any person who[, in the ordinary course of business,]: (A) SELLS, OFFERS FOR SALE OR NEGOTIATES THE SALE OR PURCHASE OF ANIMALS BORN OR RAISED ON ANOTHER PREMISES; (B) KEEPS ON HIS OR HER PREMISES MORE THAN FOUR INTACT FEMALE DOGS SIX MONTHS OF AGE OR OLDER FOR THE PURPOSE OF BREEDING SUCH DOGS; OR (C) engages in the sale or offering for sale of more than nine animals per year for profit to the public. 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 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 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 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.]

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

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

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

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

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

1. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not less than [fifty] TWO HUNDRED dollars and not more than [one] TWO thousand FIVE HUNDRED dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

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