

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

4961--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. OPPENHEIMER, DIAZ, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 (C) 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 is amended by adding a new paragraph (h) to read as follows:

20 (H) PET DEALERS SHALL DESIGNATE AND PROVIDE AN ISOLATION AREA FOR
21 ANIMALS THAT EXHIBIT SYMPTOMS OF DISEASE OR ILLNESS. THE LOCATION OF
22 SUCH DESIGNATED AREA MUST, TO THE SATISFACTION OF THE COMMISSIONER OR

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

LBD11160-03-9

1 HIS OR HER DESIGNEE, PREVENT OR REDUCE THE SPREAD OF DISEASE TO HEALTHY
2 ANIMALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 11. Pet dealers shall conspicuously display their license on the prem-
2 ises where the animals are kept for sale so that they may be readily
3 seen by potential consumers. ANY LICENSEE THAT FAILS TO CONSPICUOUSLY
4 POST THEIR LICENSE AS REQUIRED BY THIS SUBDIVISION SHALL BE CONSIDERED
5 IN VIOLATION OF THIS ARTICLE.

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

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

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

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

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

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

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

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

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

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

55 1. The commissioner or his or her authorized agents shall, at a mini-
56 mum, make yearly inspections of pet dealers' facilities to ensure

1 compliance with the provisions of this article and with the provisions
2 of article thirty-five-D of the general business law[, except for those
3 pet dealers who engage in the sale of less than twenty-five animals in a
4 year, in which case inspections shall be made whenever in the discretion
5 of the commissioner or his or her authorized agents, a complaint
6 warrants such investigation].

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

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

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

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

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

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

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

1 S 12. Section 753-a of the general business law, as added by chapter
2 259 of the laws of 2000, is amended to read as follows:

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

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

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

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

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

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