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

4799

2013-2014 Regular Sessions

I N S E N A T E

April 24, 2013

Introduced by Sen. MARTINS -- 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, in relation to the care of animals 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 and a new subdivision 5 is added to read as follows:

4. "Pet Dealer" means any person who:

(A) HAS POSSESSION OF MORE THAN TEN SEXUALLY INTACT FEMALE DOGS OVER THE AGE OF ONE YEAR FOR THE PURPOSE OF BREEDING THOSE ANIMALS AND SELLING ANY OFFSPRING AS HOUSEHOLD PETS; OR

(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] 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.

5. "RETAIL PET STORE" MEANS A PERSON OR RETAIL ESTABLISHMENT OPEN TO THE PUBLIC WHERE DOGS ARE BOUGHT, SOLD, EXCHANGED, OR OFFERED FOR RETAIL SALE DIRECTLY TO THE PUBLIC TO BE KEPT AS PETS, BUT THAT DOES NOT ENGAGE IN ANY BREEDING OF DOGS FOR THE PURPOSE OF SELLING ANY OFFSPRING FOR USE AS A HOUSEHOLD PET.

S 2. Section 401 of the agriculture and markets law, as added by chapter 259 of the laws of 2000, paragraph (h) of subdivision 1, paragraph (a) of subdivision 5 and subdivision 7 as added, paragraph (c) of subdi-

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

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vision 5 as amended and paragraphs (b), (d) and (e) of subdivision 5 as relettered by chapter 110 of the laws of 2012, is amended to read as follows:

S 401. Minimum standards of animal care. Pet dealers shall comply with the following minimum standards of care for every animal in their custody or possession.

1. Housing. (a) Animals shall be housed in primary enclosures or cages, which shall be constructed so as to be structurally sound. Such enclosures shall be maintained in good repair to contain the animal housed inside and protect it from injury. Surfaces shall have an impervious surface so as not to permit the absorption of fluids and which can be thoroughly and repeatedly cleaned and disinfected without retaining odors. ALL DOGS SHALL HAVE CONSTANT AND UNFETTERED ACCESS TO AN INDOOR ENCLOSURE.

(b) Primary enclosures or cages housing the animals shall provide sufficient space to allow each animal adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around, and lie down with its limbs outstretched. [If the flooring is constructed of metal strands, such strands must either be greater than one-eighth inch in diameter (nine gauge wire) or shall be coated with a material such as plastic or fiberglass, and shall be constructed so as not to allow passage of the animal's feet through any opening in the floor of the enclosure. Such flooring shall not sag or bend substantially between structural supports.] ALL ANIMALS THAT ARE DOGS SHALL BE PROVIDED:

(1) SUFFICIENT INDOOR SPACE FOR EACH DOG TO TURN IN A COMPLETE CIRCLE WITHOUT ANY IMPEDIMENT (INCLUDING A TETHER);

(2) ENOUGH INDOOR SPACE FOR EACH DOG TO LIE DOWN AND FULLY EXTEND HIS OR HER LIMBS AND STRETCH FREELY WITHOUT TOUCHING THE SIDE OF AN ENCLOSURE OR ANOTHER DOG;

(3) AT LEAST ONE FOOT OF HEADROOM ABOVE THE HEAD OF THE TALLEST DOG IN THE ENCLOSURE; AND

(4) AT LEAST TWELVE SQUARE FEET OF INDOOR FLOOR SPACE PER EACH DOG UP TO TWENTY-FIVE INCHES LONG; AT LEAST TWENTY SQUARE FEET OF INDOOR FLOOR SPACE PER EACH DOG BETWEEN TWENTY-FIVE AND THIRTY-FIVE INCHES LONG; AND AT LEAST THIRTY SQUARE FEET OF INDOOR FLOOR SPACE PER EACH DOG FOR DOGS THIRTY-FIVE INCHES AND LONGER (WITH THE LENGTH OF THE DOG MEASURED FROM THE TIP OF THE NOSE TO THE BASE OF THE TAIL). FLOORING OF PRIMARY ENCLOSURES SHALL CONSIST OF A SOLID, IMPERMEABLE MATERIAL, EXCEPT THAT DRAINS MAY BE PROVIDED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION. A PRIMARY ENCLOSURE SHALL NOT BE STACKED OR PLACED ON TOP OF ANOTHER PRIMARY ENCLOSURE. THE REQUIREMENTS OF THIS CLAUSE SHALL NOT APPLY TO A RETAIL PET STORE.

(c) Housing facilities shall be adequately ventilated at all times to provide for the health and well-being of the animal. Ventilation shall be provided by natural or mechanical means, such as windows, vents, fans, or air conditioners. Ventilation shall be established to minimize drafts, odors, and moisture condensation.

(d) The temperature surrounding the animal shall be compatible with the health and well-being of the animal. Temperature shall be regulated by heating and cooling to sufficiently protect each animal from extremes of temperature and shall not be permitted to fall below or rise above ranges which would pose a health hazard to the animal. FOR ANIMALS THAT ARE DOGS, THE TEMPERATURE SHALL NOT FALL BELOW FORTY-FIVE DEGREES FAHRENHEIT OR RISE ABOVE EIGHTY-FIVE DEGREES FAHRENHEIT. This shall include supplying shade from sunlight by natural or artificial means.

(e) The indoor facilities housing the animals shall be provided with adequate lighting sufficient to permit routine inspection and cleaning and be arranged so that each animal is protected from excessive illumination which poses a health hazard to the animal.

(f) The indoor and outdoor facilities housing the animals, including the primary enclosure or cage, shall be designed to allow for the efficient elimination of animal waste and water in order to keep the animal dry and prevent the animal from coming into contact with these substances. If drains are used they shall be constructed in a manner to minimize foul odors and backup of sewage. If a drainage system is used it shall comply with federal, state, and local laws relating to pollution control.

(g) In the event that a pet dealer has a pregnant or nursing dog on his or her premises, the pet dealer shall provide a whelping box for such dog.

(h) Pet dealers shall designate and provide an isolation area for animals that exhibit symptoms of contagious disease or illness. The location of such designated area must be such as to prevent or reduce the spread of disease to healthy animals.

2. Sanitation. Housing facilities, including primary enclosures and cages, shall be kept in a clean condition in order to maintain a healthy environment for the animal. This shall include removing and destroying any agents injurious to the health of the animal [and periodic cleanings. The primary enclosure or cage shall be constructed so as to eliminate excess water, excretions, and waste material]; REMOVAL OF WASTE MATERIAL FROM PRIMARY ENCLOSURES AT LEAST ONCE PER DAY, AND THE CLEANING OF PRIMARY ENCLOSURES WITH STERILIZING AGENTS AT LEAST ONCE PER WEEK. Under no circumstances shall the animal remain inside the primary enclosure or cage while it is being cleaned with sterilizing agents, PRESSURIZED WATER, STEAM, or agents toxic to animals or cleaned in a manner likely to threaten the health and safety of the animal. Trash and waste products on the premises shall be properly contained and disposed of so as to minimize the risks of disease, contamination, and vermin.

3. Feeding and watering. (a) Animals shall be provided with wholesome and palatable food AT LEAST TWICE A DAY, free from contamination and of nutritional value sufficient to maintain each animal in good health.

(b) [Animals] EACH ANIMAL shall be adequately fed at intervals not to exceed twelve hours or at least twice in any twenty-four hour period in quantities appropriate for the animal species and age, unless determined otherwise by and under the direction of a duly licensed veterinarian.

(c) Food receptacles shall be provided in sufficient number, of adequate size, and so located as to enable each animal in the primary enclosure or cage to be supplied with an adequate amount of food.

(d) [Animals] EACH ANIMAL shall be provided with [regular] CONTINUOUS access to clean, fresh water[, supplied in a sanitary manner sufficient for its needs,] THAT IS NOT FROZEN, AND IS FREE OF DEBRIS, FECES, ALGAE AND OTHER CONTAMINANTS except when there are instructions from a duly licensed veterinarian to withhold water for medical reasons.

4. Handling. Each animal shall be handled in a humane manner so as not to cause the animal physical injury or harm.

5. Veterinary care. (a) Any pet dealer duly licensed pursuant to this article shall designate an attending veterinarian, who shall provide veterinary care to the dealer's animals which shall include a written program of veterinary care and regular visits to the pet dealer's premises, AND SHALL, AT MINIMUM PROVIDE AN ANNUAL EXAMINATION AND PROMPT

TREATMENT OF ANY ILLNESS OR INJURY. Such program of veterinary care shall include:

(i) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this article;

(ii) The use of methods determined to be appropriate by the attending veterinarian to prevent, control, and respond to 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 who has received the guidance identified in subparagraph (iv) of this paragraph; 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 and immobilization; and

(v) Pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

(b) All animals shall be inoculated as required by state or local law, AND SHALL, AT A MINIMUM RECEIVE AN ANNUAL EXAMINATION BY A DULY LICENSED VETERINARIAN, WHERE THE PET DEALER POSSESSES THE ANIMAL FOR MORE THAN ONE YEAR. 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.

(c) Within five business days of receipt, but prior to sale of any dog, the pet dealer shall have a duly licensed veterinarian conduct an examination and tests appropriate to the age and breed 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 diagnosed with a contagious disease shall be treated and caged separately from healthy animals.

(d) If an animal suffers from a congenital or hereditary condition, disease, or illness which, in the professional opinion of the pet dealer's veterinarian, requires euthanasia, the veterinarian shall humanely euthanize such animal without undue delay.

(e) In the event an animal is returned to a pet dealer due to a congenital or hereditary condition, illness, or disease requiring veterinary care, the pet dealer shall, without undue delay, provide the animal with proper veterinary care TO TREAT SUCH CONDITION, ILLNESS OR DISEASE.

(F) NO DOG SHALL BE BRED TO PRODUCE MORE THAN TWO LITTERS IN ANY EIGHTEEN MONTH PERIOD. NO DOG MAY BE BRED IF THE ANIMAL IS YOUNGER THAN ONE YEAR OR OLDER THAN EIGHT YEARS OF AGE.

6. Humane euthanasia. [Humane euthanasia of an animal shall be carried out in accordance with section three hundred seventy-four of this chapter.] (A) HUMANE EUTHANASIA OF ANIMALS SHALL BE ACCOMPLISHED ONLY BY A LICENSED VETERINARIAN USING LAWFUL TECHNIQUES DEEMED "ACCEPTABLE" FOR DOGS BY THE AMERICAN VETERINARY MEDICAL ASSOCIATION AND IN ACCORDANCE WITH SECTION THREE HUNDRED SEVENTY-FOUR OF THIS CHAPTER.

(B) NO ANIMAL SHALL BE LEFT UNATTENDED BETWEEN THE TIME THAT THE EUTHANASIA PROCEDURE BEGINS AND THE TIME WHEN DEATH IS CONFIRMED. THE BODY OF A EUTHANIZED ANIMAL SHALL NOT BE DISPOSED OF IN ANY MANNER UNTIL

DEATH IS CONFIRMED BY A LICENSED VETERINARIAN, A CERTIFIED EUTHANASIA TECHNICIAN OR A LICENSED VETERINARY TECHNICIAN.

7. GROOMING. EACH ANIMAL SHALL BE PROVIDED WITH BASIC GROOMING SUFFICIENT TO PREVENT CURLING OF NAILS OR MATTING OF FUR.

8. Exercise requirements. Pet dealers shall develop, maintain, document, and implement an appropriate plan to provide dogs with the opportunity for daily exercise. In developing such plan, consideration should be given to providing positive physical contact with humans that encourages exercise through play or other similar activities. Such plan shall be approved by the attending veterinarian, and must be made available to the department upon request. (A) EACH ANIMAL THAT IS A DOG SHALL BE PROVIDED DAILY WITH REGULAR EXERCISE, UNLESS A LICENSED VETERINARIAN STATES IN WRITING THAT SUCH EXERCISE WOULD BE DETRIMENTAL TO THE ANIMAL'S HEALTH.

(B) FOR DOGS POSSESSED BY PET DEALERS WHO ARE NOT RETAIL PET STORES, SUCH EXERCISE SHALL CONSIST OF CONSTANT AND UNFETTERED ACCESS TO AN OUTDOOR EXERCISE AREA THAT IS COMPOSED OF A SOLID, GROUND LEVEL SURFACE WITH ADEQUATE DRAINAGE, PROVIDES ADEQUATE PROTECTION FROM THE ELEMENTS, AND PROVIDES EACH DOG WITH AT LEAST TWICE THE INDOOR SQUARE FOOTAGE OF THE INDOOR FLOOR SPACE PROVIDED TO THAT DOG.

S 3. Subdivision 6 of section 402 of the agriculture and markets law is renumbered subdivision 7 and a new subdivision 6 is added to read as follows:

6. THE DATES ON WHICH EACH ANIMAL WAS BRED, IDENTIFICATION OF EACH DOG USED IN THE BREEDING, THE DATES ON WHICH EACH FEMALE ANIMAL WHELPED A LITTER, AND THE NUMBER OF PUPPIES IN EACH SUCH LITTER.

S 4. Subdivisions 1 and 3 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:

1. No person shall operate as a pet dealer unless such person holds a license issued therefor by the commissioner. [Notwithstanding the foregoing, a pet dealer, in operation on or before the effective date of this section, who has filed an application for an initial license under this article shall be authorized to operate without such license until the commissioner grants or, after notice and opportunity to be heard, declines to grant such license.] Each application for a license shall be made on a form supplied by the department and shall contain such information as may be required by the department. Renewal applications shall be submitted to the commissioner at least thirty days prior to the commencement of the next license year.

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 5. 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.

[3. Violation of any provision of this article or conviction] (C) A VIOLATION OF ANY PROVISION OF THIS ARTICLE.

2. THE COMMISSIONER SHALL, CONSISTENT WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, DECLINE TO GRANT, OR SHALL SUSPEND, DECLINE TO RENEW OR REVOKE A PET DEALER LICENSE ON ANY ONE OF THE FOLLOWING GROUNDS:

(A) 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].

(B) 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.] 3. 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.

[5.] 4. 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. THE COMMISSIONER MAY SUSPEND A PET DEALER'S LICENSE PENDING A DETERMINATION IN AN ARTICLE SEVENTY-EIGHT PROCEEDING.

5. THE REFUSAL, SUSPENSION, OR REVOCATION OF 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 6. Section 405 of the agriculture and markets law, as added by chapter 259 of the laws of 2000, is amended to read as follows:

S 405. Inspection of pet dealers. 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].

2. The commissioner may, pursuant to an agreement entered into with a county or city delegate the authority to conduct inspections of pet dealers and to respond to complaints concerning pet dealers to such county or city where the pet dealer is located[; provided however such delegation of inspection authority shall only be permitted where the commissioner has delegated his or her authority to issue licenses pursuant to section four hundred three of this article].

3. Any person conducting an inspection of a pet dealer or responding to a complaint concerning a pet dealer shall be specifically trained in the proper care of cats and dogs and in the investigation and identification of cruelty to animals.

4. ANY PERSON CONDUCTING AN INSPECTION OF A PET DEALER SHALL, UPON BELIEF THAT ARTICLE TWENTY-SIX OF THIS CHAPTER OR REGULATIONS PROMULGATED THEREUNDER PERTAINING TO HUMANE TREATMENT OF ANIMALS, CRUELTY TO ANIMALS, OR ENDANGERING THE LIFE OR HEALTH OF AN ANIMAL HAVE BEEN VIOLATED, REPORT THE SUSPECTED VIOLATION TO A DULY AUTHORIZED LAW ENFORCEMENT AGENT AND TO THE COMMISSIONER IN WRITING IMMEDIATELY, OR AS SOON AS IS REASONABLY POSSIBLE.

5. THE COMMISSIONER OR ANY COUNTY OR CITY AGENT DULY AUTHORIZED TO CONDUCT INSPECTIONS OF PET DEALERS MAY REQUIRE PET DEALERS TO PAY AN ANNUAL INSPECTION FEE TO BE PAID WITHIN THIRTY DAYS OF AN ANNUAL INSPECTION.

(A) ANY MONEYS RECEIVED BY THE COMMISSIONER PURSUANT TO THIS SECTION, INCLUDING ANY FINES AND PENALTIES NOT COLLECTED PURSUANT TO SUBDIVISION THREE OF SECTION FOUR HUNDRED SIX OF THIS ARTICLE, SHALL BE DEPOSITED IN THE "PET DEALER LICENSING FUND" ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-RR OF THE STATE FINANCE LAW.

(B) ANY CITY OR COUNTY IS HEREBY AUTHORIZED TO DEPOSIT ANY MONEYS RECEIVED PURSUANT TO THIS SECTION IN THE RESPECTIVE CITY OR COUNTY'S GENERAL FUND; INTO ANY FUND CREATED FOR THE PURPOSES OF ADMINISTERING THIS SECTION; OR INTO ANY FUND PROVIDING FOR ANIMAL WELFARE GENERALLY.

S 7. The agriculture and markets law is amended by adding a new section 408 to read as follows:

S 408. SEVERABILITY. IF ANY PROVISION OF THIS ARTICLE, OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES, IS HELD INVALID OR UNCONSTITUTIONAL, THAT INVALIDITY OR UNCONSTITUTIONALITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

S 8. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such effective date.