

# STATE OF NEW YORK

7329--A

2017-2018 Regular Sessions

## IN ASSEMBLY

April 24, 2017

Introduced by M. of A. TITONE, COLTON, CUSICK, ZEBROWSKI, ENGLEBRIGHT, McDONOUGH -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, KOLB, MALLIOTAKIS, PERRY, THIELE -- read once and referred to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law and the state finance law, in relation to the registration and regulation of animal breeders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The agriculture and markets law is amended by adding a new article 26-C to read as follows:

### ARTICLE 26-C

#### CARE OF ANIMALS BY BREEDERS

##### Section 420. Definitions.

421. Preemption of local laws.

422. Minimum standards of animal care.

423. Records of purchase and sale.

424. Licenses.

425. License refusal, suspension or revocation.

426. Inspection of breeders.

427. Violations.

428. Construction with other laws.

##### § 420. Definitions. As used in this article:

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

2. "Consumer" means any individual purchasing an animal from a breeder. A breeder shall not be considered a consumer.

3. "Person" means any individual, corporation, partnership, limited liability company, association, municipality or other legal entity.

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

LBD11012-03-8

1     4. "Breeder" means any person who breeds three or more animals for  
2 sale per year for profit. Such term shall not include duly incorporated  
3 humane societies dedicated to the care of unwanted animals which make  
4 such animals available for adoption whether or not a fee for such  
5 adoption is charged.

6     § 421. Preemption of local laws. The provisions of this article shall  
7 apply to all municipalities, including cities with a population of one  
8 million or more, and shall supersede any local law, rule, regulation or  
9 ordinance regulating or licensing breeders. Nothing in this section  
10 shall be construed to limit or restrict any municipality from enforcing  
11 any local law, rule, regulation or ordinance of general application to  
12 businesses governing public health, safety or the rights of consumers.

13     § 422. Minimum standards of animal care. Breeders shall comply with  
14 the following minimum standards of care for every animal in their custo-  
15 dy or possession.

16     1. Housing. (a) Animals shall be housed in primary enclosures or  
17 cages, which shall be constructed so as to be structurally sound. Such  
18 enclosures shall be maintained in good repair to contain the animal  
19 housed inside and protect it from injury. Surfaces shall have an imper-  
20 vious surface so as not to permit the absorption of fluids and which can  
21 be thoroughly and repeatedly cleaned and disinfected without retaining  
22 odors.

23     (b) Primary enclosures or cages housing the animals shall provide  
24 sufficient space to allow each animal adequate freedom of movement to  
25 make normal postural adjustments, including the ability to stand up,  
26 turn around, and lie down with its limbs outstretched. If the flooring  
27 is constructed of metal strands, such strands shall either be greater  
28 than one-eighth inch in diameter (nine gauge wire) or shall be coated  
29 with material such as plastic or fiberglass, and shall be constructed so  
30 as to not allow passage of the animal's feet through any opening in the  
31 floor of the enclosure. Such flooring shall not sag or bend substantial-  
32 ly between structural supports.

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

38     (d) The temperature surrounding the animal shall be compatible with  
39 the health and well-being of the animal. Temperature shall be regulated  
40 by heating and cooling to sufficiently protect each animal from extremes  
41 of temperature and shall not be permitted to fall below or rise above  
42 ranges which would pose a health hazard to the animal. This shall  
43 include supplying shade from sunlight by natural or artificial means.

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

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

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

3 2. Sanitation. Housing facilities, including primary enclosures and  
4 cages, shall be kept in a clean condition in order to maintain a healthy  
5 environment for the animal. This shall include removing and destroying  
6 any agents injurious to the health of the animal and periodic cleaning.  
7 The primary enclosure or cage shall be constructed so as to eliminate  
8 excess water, excretions, and waste material. Under no circumstances  
9 shall the animal remain inside the primary enclosure or cage while it is  
10 being cleaned with sterilizing agents or agents toxic to animals or  
11 cleaned in a manner likely to threaten the health and safety of the  
12 animal. Trash and waste products on the premises shall be properly  
13 contained and disposed of so as to minimize the risks of disease,  
14 contamination, and vermin.

15 3. Feeding and watering. (a) Animals shall be provided with wholesome  
16 and palatable food, free from contamination and of nutritional value  
17 sufficient to maintain each animal in good health.

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

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

25 (d) Animals shall be provided with regular access to clean, fresh  
26 water, supplied in a sanitary manner sufficient for its needs, except  
27 when there are instructions from a duly licensed veterinarian to with-  
28 hold water for medical reasons.

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

31 5. Veterinary care. (a) All animals shall be inoculated as required by  
32 state or local law. Veterinary care appropriate to the species shall be  
33 provided without undue delay when necessary. Each animal shall be  
34 observed each day by the breeder or by a person working under the  
35 breeder's supervision.

36 (b) If an animal suffers from a congenital or hereditary condition,  
37 disease or illness which, in the professional opinion of the breeder's  
38 veterinarian, requires euthanasia, the veterinarian shall humanely  
39 euthanize such animal without undue delay.

40 (c) In the event an animal is returned to a breeder due to a congen-  
41 ital or hereditary condition, illness, or disease requiring veterinary  
42 care, the breeder shall, without undue delay, provide the animal with  
43 the proper veterinary care.

44 6. Humane euthanasia. Humane euthanasia of an animal shall be carried  
45 out in accordance with section three hundred seventy-four of this chap-  
46 ter.

47 § 423. Records of purchase and sale. Each breeder shall keep and main-  
48 tain records for each animal purchased, acquired, held, sold or other-  
49 wise disposed of. The records shall include the following:

50 1. The name and address of the person from whom each animal was  
51 acquired. If the person from whom the animal was obtained is a breeder  
52 licensed by the United States department of agriculture, the person's  
53 name, address, and federal breeder identification number. In the case of  
54 cats, if a cat is placed in the custody or possession of the breeder and  
55 the source of origin is unknown, the breeder shall state that the source  
56 of origin is unknown, accompanied by the date, time, and location of

1 receipt. Notwithstanding the provisions of this subdivision, no breeder  
2 shall knowingly buy, sell, exhibit, transport, or offer for sale, exhi-  
3 bition or transportation any stolen animal. No breeder shall knowingly  
4 sell any cat or dog younger than eight weeks of age.

5 2. The original source of each animal if different than the person  
6 recorded in subdivision one of this section.

7 3. The date each animal was acquired.

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

13 5. The name and address of the person to whom any animal is sold,  
14 given or bartered, or to whom it is otherwise transferred or delivered.  
15 The records shall indicate the date and method of disposition.

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

20 § 424. Licenses. 1. No person shall operate as a breeder unless such  
21 person holds a license issued therefor by the commissioner. Notwith-  
22 standing the forgoing, a breeder, in operation on or before the effec-  
23 tive date of this section, who has filed an application for an initial  
24 license under this article shall be authorized to operate without such  
25 license until the commissioner grants or, after notice and opportunity  
26 to be heard, declines to grant such license. Each application for a  
27 license shall be made on a form supplied by the department and shall  
28 contain such information as may be required by the department. Renewal  
29 applications shall be submitted to the commissioner at least thirty days  
30 prior to the commencement of the next license year.

31 2. The commissioner may delegate his or her authority pursuant to this  
32 section to issue breeder licenses to the county or city where the breed-  
33 er is seeking licensure is located. Such delegation shall be pursuant to  
34 an agreement entered into by the commissioner and such city or county.

35 3. Each application for a license shall be accompanied by a non-re-  
36 fundable fee of one hundred dollars, except that those breeders who  
37 engage in the sale of less than twenty-five animals in a year, shall pay  
38 a non-refundable fee of twenty-five dollars.

39 4. The moneys received by the commissioner pursuant to this section  
40 shall be deposited in the "breeder licensing fund" established pursuant  
41 to section ninety-eight-d of the state finance law.

42 5. Where the authority to issue breeder licenses is delegated to a  
43 county or city pursuant to subdivision two of this section, that county  
44 or city shall, on or before the fifth day of each month, remit to the  
45 appropriate municipal financial officer one hundred percent of all  
46 license fees collected during the preceding month. The remittance shall  
47 be accompanied by a report of license sales made during such month. A  
48 copy of such report shall simultaneously be sent to the commissioner.  
49 All license fees so remitted shall be the property of the municipality,  
50 and shall be used solely for the purpose of carrying out and enforcing  
51 the provisions of this article and of article thirty-five-D of the  
52 general business law.

53 6. Inspection in accordance with section four hundred twenty-six of  
54 this article, the results of which establish compliance with the  
55 provisions of this article and with the provisions of article thirty-  
56 five-D of the general business law regarding recordkeeping and consumer

1 disclosure requirements for breeders, shall precede issuance of a  
2 license or renewal thereof under this section.

3 7. Upon validation by the commissioner or the county or city author-  
4 ized under this section to issue breeder licenses, the application shall  
5 become the license of the breeder.

6 8. The commissioner shall provide a copy of the license to the breed-  
7 er. The commissioner shall also retain a copy of the license. In those  
8 counties where the commissioner has delegated the licensing authority to  
9 the county or city that county or city shall, provide a copy of the  
10 license to the breeder and a copy to the commissioner. The county or  
11 city shall also retain a copy of the license in its own records.

12 9. No breeder shall publish or advertise the sale or availability of  
13 any dog or cat unless the publication or advertisement is accompanied by  
14 the breeder's license number. Notwithstanding the foregoing, a breeder,  
15 in operation on or before the effective date of this section, who has  
16 filed an application for the initial license under this article may  
17 publish or advertise the sale of availability of any animal without the  
18 publication or advertisement being accompanied by the breeder's license  
19 number until the commissioner grants or, after notice and opportunity to  
20 be heard, declines to grant such license.

21 10. Such license shall be renewable annually, together with the  
22 payment of a non-refundable fee of one hundred dollars, or upon payment  
23 of a non-refundable fee of twenty-five dollars for those breeders who  
24 engage in the sale of less than twenty-five animals in a year.

25 11. Breeders shall conspicuously display their license on the premises  
26 where the animals are kept for sale so that they may be readily seen by  
27 potential consumers.

28 § 425. License refusal, suspension or revocation. The commissioner may  
29 decline to grant or renew or may suspend or revoke a breeder license, on  
30 any of the following grounds:

31 1. Material misstatement in license application; or

32 2. Material misstatement in or falsification of records required to be  
33 kept pursuant to this article or under any regulation promulgated there-  
34 under, or failure to allow the commissioner or his or her authorized  
35 agents to inspect records or breeder facilities.

36 3. Violation of any provision of this article or conviction of a  
37 violation of any provision of article twenty-six of this chapter or  
38 regulations promulgated thereunder pertaining to humane treatment of  
39 animals, cruelty to animals, endangering the life or health of an  
40 animal, or violation of any federal, state or local law pertaining to  
41 the care, treatment, sale, possession or handling of animals or any  
42 regulation or rule promulgated pursuant thereto relating to the endan-  
43 germent of the life or health of an animal.

44 4. Before any license shall be suspended or revoked, the commissioner,  
45 or any hearing officer he or she may designate, shall hold a hearing or  
46 upon due notice to the licensee, in accordance with any regulations  
47 promulgated by the department and in accordance with articles three and  
48 four of the state administrative procedure act.

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

52 § 426. Inspection of breeders. The breeder shall, at the breeder's  
53 expense, have a veterinarian licensed pursuant to article one hundred  
54 thirty-five of the education law at a minimum of six month intervals  
55 inspect his or her records, facilities and animals to ensure compliance  
56 with the provisions of this article. The veterinarian engaged in this

1 inspection shall certify that the breeder is in compliance with this  
2 section and that the veterinarian does not otherwise provide veterinary  
3 services to or have a financial interest with the breeder.

4 § 427. Violations. 1. In addition to the penalties provided for in  
5 this section, a breeder who violates any provisions of this article may  
6 be subject to the denial, revocation, suspension or refusal of renewal  
7 of his or her license in accordance with the provisions of section four  
8 hundred twenty-five of this article.

9 2. Violation of any provision in this article, is a civil offense, for  
10 which a penalty of not less than fifty dollars and not more than one  
11 thousand dollars for each violation may be imposed.

12 3. The provisions of this article may be enforced concurrently by the  
13 department and by a county or city to which the commissioner has deleg-  
14 ated his or her licensing and inspection authority pursuant to sections  
15 four hundred twenty-four and four hundred twenty-six of this article,  
16 and all moneys collected thereafter shall be retained by such municipi-  
17 pality or local government.

18 § 428. Construction with other laws. 1. Nothing in this article shall  
19 be construed to limit or restrict agents or officers of societies for  
20 the prevention of cruelty to animals or the police from enforcing other  
21 provisions of article twenty-six of this chapter or any other law relat-  
22 ing to the humane treatment of or cruelty to animals.

23 2. The provisions of this article shall not pertain to not-for-profit  
24 organizations.

25 § 2. The state finance law is amended by adding a new section 98-d to  
26 read as follows:

27 § 98-d. Breeder licensing fund. 1. There is hereby established in the  
28 joint custody of the state comptroller and the commissioner of taxation  
29 and finance a fund to be known as the "breeder licensing fund".

30 2. Such fund shall consist of all monies collected pursuant to article  
31 twenty-six-C of the agriculture and markets law, except for monies  
32 collected pursuant to subdivision five of section four hundred twenty-  
33 four of such article, and all other monies credited or transferred ther-  
34 eto from any other fund or source pursuant to law.

35 3. Monies of the fund shall be expended solely for the purposes of  
36 carrying out the provisions of article thirty-five-D of the general  
37 business law and article twenty-six-C of the agriculture and markets  
38 law. Monies shall be paid out of the fund on the audit and warrant of  
39 the state comptroller on vouchers approved by the commissioner of agri-  
40 culture and markets. Any interest received by the comptroller on monies  
41 on deposit in the breeder licensing fund shall be retained in and become  
42 part of such fund.

43 § 3. Section 401 of the agriculture and markets law is amended by  
44 adding a new subdivision 8 to read as follows:

45 8. Selling pets. Pet dealers shall only sell pets obtained from  
46 licensed breeders pursuant to article twenty-six-C of this chapter.

47 § 4. Subdivision 6 of section 402 of the agriculture and markets law  
48 is renumbered subdivision 7 and a new subdivision 6 is added to read as  
49 follows:

50 6. For all animals bought by the pet dealer, the pet dealer must have  
51 a record that such purchase came from a breeder which is either licensed  
52 or exempt pursuant to article twenty-six-C of this chapter.

53 § 5. This act shall take effect April 1, 2020; provided, however, that  
54 any rules and/or regulations necessary for the timely implementation of  
55 this act on its effective date shall be promulgated on or before such  
56 date.