STATE OF NEW YORK

1403

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. AVELLA -- 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 providing greater protection for companion pets left outdoors

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

Section 1. Subdivisions 3 and 5 of section 350 of the agriculture and markets law, subdivision 3 as added by chapter 619 of the laws of 1987 and subdivision 5 as amended by chapter 118 of the laws of 1999, are amended to read as follows:

3. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a [~~pet, of any dog or cat~~] companion animal, seized or surrendered.

5. "Companion animal" or "pet" means any dog or cat, [~~and shall also mean~~] rabbit, hamster, bird or any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this section.

§ 2. The opening paragraph of section 353 of the agriculture and markets law, as amended by chapter 523 of the laws of 2005, is amended to read as follows:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food [~~or~~], drink, adequate care, shelter or reasonable veterinary care or neglects or refuses to furnish [~~it~~] the animal such sustenance [~~or~~] , food, drink, or adequate care, shelter or reasonable veterinary care or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food [~~or~~], drink, adequate care, shelter or

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

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reasonable veterinary care or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a class A misdemeanor and for purposes of paragraph (b) of subdivision one of section 160.10 of the criminal procedure law, shall be treated as a misdemeanor defined in the penal law.

§ 3. Subdivisions 1 and 3 of section 353-a of the agriculture and markets law, as added by chapter 118 of the laws of 1999, are amended to read as follows:

1. A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally or maliciously kills or intentionally or maliciously causes serious physical injury to [~~a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty" shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner~~] an animal.

3. Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the penal law [~~provided, however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years~~].

§ 4. Section 353-b of the agriculture and markets law, as added by chapter 594 of the laws of 2003, is amended to read as follows:

§ 353-b. Appropriate shelter for dogs [~~left outdoors~~] or other companion animals. 1. For purposes of this section:

(a) "Physical condition" shall include any special medical needs of a dog or other companion animal due to disease, illness, injury, age or breed about which the owner or person with custody or control of the dog or other companion animal should reasonably be aware.

(b) [~~"Inclement weather" shall mean weather conditions that are likely to adversely affect the health or safety of the dog, including but not limited to rain, sleet, ice, snow, wind, or extreme heat and cold.~~

~~(c)~~] "Dogs or other companion animals that are left outdoors" shall mean dogs or other companion animals that are outdoors [~~in inclement weather~~] for more than an hour, without ready access to, or the ability to enter, a house, apartment building, office building, or any other permanent structure that complies with the standards enumerated in paragraph (b) of subdivision three of this section.

2. (a) Any person who owns or has custody or control of a dog or other companion animal that is left outdoors shall provide [~~it~~] the animal with shelter that is appropriate [~~to its~~] or necessary based on the animal's breed, physical condition and the climate or weather. Any person who knowingly violates the provisions of this section shall be guilty of a violation, punishable by a fine of not less than fifty dollars nor more than one hundred dollars for a first offense, and a fine of not less than [~~one~~] two hundred dollars nor more than [~~two hundred fifty~~] three hundred dollars for a second and subsequent offenses; unless the violation is charged pursuant to section three hundred fifty-three or section three hundred fifty-three-a of this article. [~~Beginning seventy-two hours after a charge of violating this section, each day that a defendant fails to correct the deficiencies in the dog shelter for a dog that he or she owns or that is in his or her custody or control and that is left outdoors, so as to bring it into compliance with the provisions of this section shall constitute a separate offense.~~]

(b) The court may, in its discretion, reduce the amount of any fine imposed for a violation of this section by the amount which the defendant proves he or she has spent providing a dog **or other companion animal** **proper** shelter or repairing an existing [~~dog~~] shelter so that it complies with the requirements of this section. Nothing in this paragraph shall prevent the seizure of a dog **or other companion animal** for a violation of this section [~~pursuant to the authority granted in this article~~].

3. Minimum standards for determining whether shelter is appropriate to a dog's **or other companion animal's** breed, physical condition and the climate shall include:

(a) For dogs **or other companion animals** that are [~~restrained~~] **left outdoors** in any manner [~~outdoors~~], shade by natural or artificial means to protect the [~~dog~~] **animal** from direct sunlight at all times when exposure to sunlight is likely to threaten the health of the [~~dog~~] **animal**.

(b) For all [~~dogs~~] **animals** that are left outdoors [~~in inclement weather~~], a housing facility, which must: (1) have a waterproof roof; (2) be structurally sound with insulation appropriate to local climatic conditions and sufficient to protect the dog **or other companion animal** from inclement weather; (3) be constructed to allow each [~~dog~~] **animal** adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around and lie down with [~~its~~] **the animal's** limbs outstretched; and (4) allow for effective removal of excretions, other waste material; dirt and trash. The housing facility and the area immediately surrounding it shall be regularly cleaned to maintain a healthy and sanitary environment and to minimize health hazards.

4. Inadequate shelter may be indicated by the appearance of the housing facility itself, including but not limited to, size, structural soundness, evidence of crowding within the housing facility, healthful environment in the area immediately surrounding such facility, or by the appearance or physical condition of the dog **or other companion animal**.

4-a. There shall be a presumption that a dog or other companion animal left outside for more than one hour, and, under the following conditions, will be a violation of this subdivision or a violation of section three hundred fifty-three or section three hundred fifty-three-a of this article:

(a) a weather warning issued by the federal, state or local authorities is in effect; or

(b) in extreme heat or cold that a reasonable person should know such temperature or weather condition poses a risk to the animal; or if other outdoor environmental conditions, including, but not limited to, wind, rain, snow, ice, sleet, hail, pose a reasonable risk based on the animal's size, age, physical condition, or breed and taking into account the shelter provided for the animal or when the outdoor temperature is below twenty degrees or above ninety degrees fahrenheit.

5. Upon a finding of any violation of this section **or with pending charges pursuant to section three hundred fifty-three or section three hundred fifty-three-a of this article**, any [~~dog or dogs~~] **animals** seized pursuant to the provisions of this article that have not been voluntarily surrendered by the owner or custodian or forfeited pursuant to court order shall **not** be returned to the owner or custodian [~~only~~] **until any criminal charges are concluded and disposition of the animal or animals have been determined by the court. If the charges have been dismissed or a defendant is found not guilty by a court of competent jurisdiction, the animal or animals may be returned to the owner if so ordered by the**

court and upon proof that appropriate shelter as required by this section [~~**is being**~~] **has been** provided.

6. Nothing in this section shall be construed to affect any protections afforded to dogs or other animals under any other provisions of this article **or in any way to supersede or preclude charges pursuant to section three hundred fifty-three or section three hundred fifty-three-a of this article**.

7. Nothing in this section shall prevent an immediate seizure of a dog or other animal in a dangerous situation due to weather conditions, or the condition of the animal or immediate risk to the animal, or to preclude animals being seized as evidence pursuant to any charge filed for a violation of section three hundred fifty-three or section three hundred fifty-three-a of this article.

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that 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 and directed to be made and completed on or before such effective date.