STATE OF NEW YORK

5599

2017-2018 Regular Sessions

IN SENATE

April 19, 2017

Introduced by Sen. BOYLE -- 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 exempting certain entities from the definition of pet dealer

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 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~~] **it shall not include the following:**

(a) Any 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.~~];

(b) Any municipal pound or shelter dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged, established and maintained pursuant to subdivision one of section one hundred fourteen of this chapter; and

(c) Any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged that is exempt from taxes pursuant to paragraph

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

LBD10584-02-7

(3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is registered with the department pursuant to section four hundred eight of this article.

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

§ 408. Exemption of certain entities from the definition of pet dealer; registration required. 1. Any person eligible for exemption from the definition of pet dealer pursuant to paragraph (c) of subdivision four of section four hundred of this article shall be registered by the department pursuant to the provisions of this section. Such registration shall be renewable annually and be accompanied by a fee of one hundred dollars.

2. Application for registration as set forth in this section shall be made annually to the commissioner on a form prescribed by the commissioner. The applicant shall satisfy the commissioner of his or her character and responsibility and shall set forth such information as the commissioner shall require, including but not limited to the following:

(a) Proof of the applicant's tax exempt designation pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended;

(b) Proof of the applicant's incorporation as a not-for-profit organization in this state pursuant to the not-for-profit corporation law, provided further that such organization is in good standing with the attorney general and the department of state;

(c) Proof of the applicant's registration with the attorney general pursuant to article seven-A of the executive law;

(d) The name of the applicant and the name or names under which the applicant offers its services to the public, any name under which the applicant has offered its services to the public during the past five years, and whether the applicant has ever held a license issued pursuant to this article;

(e) The address and telephone number of the applicant and for any other premise owned or leased by such applicant's organization to carry out the purposes for which it was incorporated and by which it may be eligible for a licensing exemption pursuant to this section;

(f) The website and email address of the applicant;

(g) The number of animals taken in, adopted, placed into permanent or temporary homes, or otherwise transferred into, out of, or within the state by the applicant during the prior calendar year;

(h) The number of animals currently harbored by the applicant;

(i) The species of animal the applicant typically harbors for adoption, placement or transfer;

(j) A description of facilities by which the applicant carries out the purposes for which it was incorporated, including a statement regarding whether the applicant harbors the animals in its care in its own physical animal shelter or utilizes foster homes, commercial boarding kennels or other arrangements; and

(k) A sworn statement, signed by the applicant, declaring eligibility for a pet dealer licensing exemption pursuant to subdivision four of section four hundred of this article.

3. Upon approval by the commissioner, the registration shall be issued to the applicant and an exemption from the definition of pet dealer as defined in section four hundred of this article shall be granted. Writ-

ten approval of such registration shall be provided to the applicant by the commissioner and shall be accompanied by a pet dealer exemption identification number, which shall be prominently displayed on the registrant's websites and accompany such registrant's publications or advertisements made available to the public following registration approval.

4. The commissioner may deny any application for registration as set forth in subdivisions one and two of this section or revoke any registration already granted, after written notice to the applicant or registrant and an opportunity to be heard, when:

(a) Any statement made on the application or to the commissioner found to be false or misleading;

(b) The applicant or registrant, or an officer or director has failed to comply with any of the provisions of this section or rules and regulations promulgated pursuant to subdivision six of this section;

(c) The applicant or registrant, or an officer or director has been convicted of a misdemeanor or felony animal cruelty offense by a court of the United States or any state or territory thereof, without subsequent pardon by the governor or other appropriate authority of the state or jurisdiction in which such conviction occurred, or receipt of a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law;

(d) The applicant or registrant is determined by the commissioner to be in violation of the department's dog and cat importation regulations pursuant to 1 NYCRR Part 65;

(e) The applicant or registrant is determined by the commissioner to be in violation of section twenty-one hundred forty-one of the public health law or any rule or regulation promulgated thereunder by the commissioner of health; and

(f) The applicant or registrant, or an officer or director has been responsible in whole or in part for any act on account of which an application for registration may be denied or a registration cancelled pursuant to the provisions of this article.

5. Any person receiving an exemption pursuant to this section shall be subject to the provisions prescribed in subdivision two of section four hundred six of this article for any violation of this section, provided further that whenever there shall be a violation of this section, 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 section, 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 section has occurred, the court may impose a civil penalty of not less than one hundred dollars and not more than one thousand 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.

6. The commissioner is hereby authorized to promulgate rules and regulations concerning the application, registration and revocation process described in this section.

§ 3. 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, 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~~] any municipal pound or shelter established and maintained pursuant to subdivision one of section one hundred fourteen of the agriculture and markets law, or any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization that is tax exempt pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is registered with the department pursuant to section four hundred eight of the agriculture and markets law. For purposes of sections seven hundred fifty-three-a, seven hundred fifty-three-b, seven hundred fifty-three-c[~~,~~] and 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~~] but it shall not include the following:

(a) Any 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~~].

(b) Any municipal pound or shelter established and maintained pursuant to subdivision one of section one hundred fourteen of the agriculture and markets law.

(c) Any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization that is exempt from taxes pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is registered with the department pursuant to section four hundred eight of the agriculture and markets law.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.