STATE OF NEW YORK

387

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. TEDISCO, BOYLE, FELDER, HELMING, KAMINSKY, O'MARA -- 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 provision of food, water and appropriate shelter for companion animals left outdoors

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

Section 1. 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**, other than a companion animal,** of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or**, being any animal other than a companion animal,** to be deprived of necessary food or drink, 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.

§ 2. 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~~] **companion animals** left outdoors. 1. For purposes of this section:

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

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(a) "Physical condition" shall include any special medical needs of a dog due to disease, illness, injury, age or breed about which the owner or person with custody or control of [~~the dog~~] **a 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~~] **a companion animal**, including but not limited to rain, sleet, ice, snow, wind, or extreme heat and cold.

(c) "[~~Dogs~~] **Companion animals** that are left outdoors" shall mean [~~dogs~~] **companion animals** that are outdoors in inclement weather 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~~] **companion animal** that is left outdoors shall provide it with shelter appropriate to its breed, physical condition and the climate. Any person who knowingly violates the provisions of this section shall be guilty of a [~~violation~~] **felony**, punishable by a fine of not [~~less than fifty dollars nor~~] more than [~~one hundred~~] **five thousand** dollars [~~for a first offense, and a fine of not less than one hundred dollars nor more than two hundred fifty dollars for a second and subsequent offenses~~]**, or imprisonment for not more than two years, or both such fine and imprisonment**. 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~~] **companion animal** 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 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~~] **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~~] **companion animal's** breed, physical condition and the climate shall include:

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

(b) For all [~~dogs~~] **companion animals** that are left outdoors in inclement weather, a housing facility, which must: (1) have a waterproof roof; (2) be structurally sound [~~with~~] **so as to protect the companion animal from the inclement weather; (3) be appropriate for the companion animal's breed and physical condition, and the climate; (4) have** insulation appropriate to local climatic conditions and sufficient to protect the [~~dog~~] **companion animal** from inclement weather; [~~(3)~~] **(5) have four connected sides and a raised floor; (6) have a door maintained in good repair, that is offset and baffled, if necessary, to eliminate the entry of drafts and precipitation, and also allow the accumulation of body heat; provided, further, that damaged door flaps shall be replaced; (7)** be constructed to allow each [~~dog~~] **companion 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; and [~~(4)~~] **(8)** 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.

(c) For companion animals that are restrained in any manner outdoors in an enclosure, such enclosure shall be set on a solid foundation, such as stone or concrete, or solid ground that is well drained.

(d) For companion animals that are restrained in any enclosure, whether indoors or outdoors, the animal shall be provided with dry bedding and/or solid resting boards so as to conserve its body heat, and under no circumstance shall a companion animal be forced to lie on a damp surface or upon unheated concrete or stone.

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~~] **companion animal**.

5. Upon a finding of any violation of this section, any [~~dog or dogs~~] **companion animal or companion 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 be returned to the owner or custodian only upon proof that appropriate shelter as required by this section is being provided **and the completion of any sentence of imprisonment imposed for violation of this section**.

6. Nothing in this section shall be construed to affect any protections afforded to [~~dogs~~] **companion animals** or other animals under any other provisions of this article.

§ 3. The agriculture and markets law is amended by adding a new section 353-g to read as follows:

§ 353-g. Failure to provide proper food and drink to a companion animal. Any person who, having ownership, custody or control of a companion animal, refuses or neglects to supply such animal a sufficient supply of food or water so as to impair the health of the companion animal shall be guilty of a felony, punishable by a fine of not more than five thousand dollars, or imprisonment for not more than two years, or both such fine and imprisonment.

§ 4. Section 356 of the agriculture and markets law, as amended by chapter 458 of the laws of 1985, is amended to read as follows:

§ 356. Failure to provide proper food and drink to impounded animal. A person who, having impounded or confined any animal**, other than a companion animal**, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both. In case any animal**, including a companion animal,** shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by [~~him of~~] **such person from** the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

§ 5. This act shall take effect on the first of September next succeeding the date on which it shall have become a law.