

# STATE OF NEW YORK

2627

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Domestic Animal Welfare

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:

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

### ARTICLE 26-C

#### CARE OF ANIMALS BY BREEDERS

#### Section 420. Definitions.

6 421. Preemption of local laws.

7 422. Minimum standards of animal care.

8 423. Records of purchase and sale.

9 424. Licenses.

10 425. License refusal, suspension or revocation.

11 426. Inspection of breeders.

12 427. Violations.

13 428. Construction with other laws.

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

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

16 2. "Consumer" means any individual purchasing an animal from a breed-  
17 er. A breeder shall not be considered a consumer.

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

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

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

LBD07381-01-9

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

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

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

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

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

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

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

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

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

53     2. Sanitation. Housing facilities, including primary enclosures and  
54 cages, shall be kept in a clean condition in order to maintain a healthy  
55 environment for the animal. This shall include removing and destroying  
56 any agents injurious to the health of the animal and periodic cleaning.

1 The primary enclosure or cage shall be constructed so as to eliminate  
2 excess water, excretions, and waste material. Under no circumstances  
3 shall the animal remain inside the primary enclosure or cage while it is  
4 being cleaned with sterilizing agents or agents toxic to animals or  
5 cleaned in a manner likely to threaten the health and safety of the  
6 animal. Trash and waste products on the premises shall be properly  
7 contained and disposed of so as to minimize the risks of disease,  
8 contamination, and vermin.

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

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

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

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

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

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

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

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

38 6. Humane euthanasia. Humane euthanasia of an animal shall be carried  
39 out in accordance with section three hundred seventy-four of this chap-  
40 ter.

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

44 1. The name and address of the person from whom each animal was  
45 acquired. If the person from whom the animal was obtained is a breeder  
46 licensed by the United States department of agriculture, the person's  
47 name, address, and federal breeder identification number. In the case of  
48 cats, if a cat is placed in the custody or possession of the breeder and  
49 the source of origin is unknown, the breeder shall state that the source  
50 of origin is unknown, accompanied by the date, time, and location of  
51 receipt. Notwithstanding the provisions of this subdivision, no breeder  
52 shall knowingly buy, sell, exhibit, transport, or offer for sale, exhi-  
53 bition or transportation any stolen animal. No breeder shall knowingly  
54 sell any cat or dog younger than eight weeks of age.

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

1 3. The date each animal was acquired.

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

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

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

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

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

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

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

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

47 6. Inspection in accordance with section four hundred twenty-six of  
48 this article, the results of which establish compliance with the  
49 provisions of this article and with the provisions of article thirty-  
50 five-D of the general business law regarding recordkeeping and consumer  
51 disclosure requirements for breeders, shall precede issuance of a  
52 license or renewal thereof under this section.

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

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

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

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

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

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

26     1. Material misstatement in license application; or

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

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

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

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

47     § 426. Inspection of breeders. The breeder shall, at the breeder's  
48 expense, have a veterinarian licensed pursuant to article one hundred  
49 thirty-five of the education law at a minimum of six month intervals  
50 inspect his or her records, facilities and animals to ensure compliance  
51 with the provisions of this article. The veterinarian engaged in this  
52 inspection shall certify that the breeder is in compliance with this  
53 section and that the veterinarian does not otherwise provide veterinary  
54 services to or have a financial interest with the breeder.

55     § 427. Violations. 1. In addition to the penalties provided for in  
56 this section, a breeder who violates any provisions of this article may

1 be subject to the denial, revocation, suspension or refusal of renewal  
2 of his or her license in accordance with the provisions of section four  
3 hundred twenty-five of this article.

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

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

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

18 2. The provisions of this article shall not pertain to not-for-profit  
19 organizations.

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

22 § 98-d. Breeder licensing fund. 1. There is hereby established in the  
23 joint custody of the state comptroller and the commissioner of taxation  
24 and finance a fund to be known as the "breeder licensing fund".

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

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

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

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

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

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

48 § 5. This act shall take effect April 1, 2021. Effective immediately  
49 the addition, amendment and/or repeal of any rule or regulation neces-  
50 sary for the implementation of this act on its effective date are  
51 authorized to be made and completed on or before such date.