STATE OF NEW YORK

2601

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. FALL -- read once and referred to the Committee on Agriculture

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.

4. "Breeder" means any person who breeds three of more animals for sale per year for profit. Such term 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.

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

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

§ 422. Minimum standards of animal care. Breeders shall comply with the following minimum standards of care for every animal in their custody or possession.

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

(b) Primary enclosures or cages housing the animals shall provide sufficient space to allow each 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. If the flooring is constructed of metal strands, such strands shall either be greater than one-eighth inch in diameter (nine gauge wire) or shall be coated with material such as plastic or fiberglass, and shall be constructed so as to not allow passage of the animal's feet through any opening in the floor of the enclosure. Such flooring shall not sag or bend substantially between structural supports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In the event an animal is returned to a breeder due to a congenital or hereditary condition, illness, or disease requiring veterinary care, the breeder shall, without undue delay, provide the animal with the proper veterinary care.

6. Humane euthanasia. Humane euthanasia of an animal shall be carried out in accordance with section three hundred seventy-four of this chapter.

§ 423. Records of purchase and sale. Each breeder shall keep and maintain records for each animal purchased, acquired, held, sold or otherwise disposed of. The records shall include the following:

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

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

3. The date each animal was acquired.

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

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

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

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

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

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

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

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

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

7. Upon validation by the commissioner or the county or city authorized under this section to issue breeder licenses, the application shall become the license of the breeder.

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

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

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

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

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

1. Material misstatement in license application; or

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

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

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

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

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

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

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

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

3. The provisions of this article may be enforced concurrently by the department and by a county or city to which the commissioner has delegated his or her licensing and inspection authority pursuant to sections four hundred twenty-four and four hundred twenty-six of this article, and all moneys collected thereafter shall be retained by such municipality or local government.

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

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

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

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

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

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

§ 3. Section 401 of the agriculture and markets law is amended by adding a new subdivision 9 to read as follows:

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

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

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

§ 5. This act shall take effect April 1, 2023. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.