



ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

S714 (Sen. Daniel Akaka –D-Hawaii)

H1280 (Rep. Michael Doyle – D- Pa.)

THIS LEGISLATION IS APPROVED

Entitled the “Pet Safety and Protection Act”, this legislation amends certain sections of the Federal Animal Welfare Act, specifically 7 USC 2137, 7 USC 2138, and 7 USC 2158. The new legislation would ensure that all dogs and cats obtained for research facilities are obtained legally. The proposed amendments would restrict permissible sources of dogs and cats sold to research facilities. The legislation is necessitated by the inadequacies in the existing law and the fact that prior enforcement efforts under such existing law have proved inadequate (as evidenced by decisional law, discussed below) to protect the concerned animals or to eliminate the fraud and abuse involved in animal trade.

According to the National Humane Education Society, approximately five million pets are reported missing annually. Many of these lost or stolen pets are illegally sold to “random source” or “Class B” dealers. Currently, under the regulations promulgated pursuant to the Animal Welfare Act, there are three types of animal licensees: Class A, Class B, and Class C. 9 CFR Sec.1.1. Class A dealers breed animals in a closed or stable colony and are licensed under the applicable regulations and standards to sell them to research facilities. Class C licensees are “exhibitors”. Class B licensees are also known as “random source” dealers who purchase animals from a variety of sources for resale (primarily to research institutions). The regulations state, in the definition of Class B licensees, that such persons “do not usually take actual physical possession or control of the animals, and do not usually hold animals in any facilities”. 9 CFR Sec.1.1.

This conclusory statement is belied by both the HBO documentary film, “Dealing Dogs”, and decisional law. In the HBO film, an undercover filmmaker showed how random source dealers obtain dogs by fraud and sometimes by outright theft. There was a Congressional screening of “Dealing Dogs” prior to introduction in 2006 of the Pet Safety and Protection Act. Further, decisional law antedating the Pet Safety and Protection Act evidences that some Class B dealers house animals under substandard conditions while maintaining lucrative relationships with pounds and shelters that result in violations of the Animal Welfare Act. For example, in *Cox v. U. S. Dep’t of Agriculture*, 925 F. 2d. 1102 (8th Cir. 1991), cert. den. 302 U. S. 860

(1991), Petitioners, a husband and wife, were licensed breeders and brokers of dogs who owned Pixy Pals Kennels. This was one of the largest in Nebraska with an annual gross income of over one million dollars. They were imposed a \$12,000 fine, their license was suspended for 90 days for Animal Welfare Act violations and they were ordered to cease and desist from violations of that statute. The violations included falsifying records as to the source of dogs, holding dogs for less what was then the required holding period – 5 days (it has since been amended to 10, not including the day of acquisition – 9 CFR Sec. 2.1.32(c)(3)) and transporting dogs less than eight weeks old. The Court, in denying their appeal, stated, “(f)ailure to hold dogs for five days between acquisition and sale ...makes it more difficult to track down stolen dogs. In addition, the waiting period is necessary to make sure the dogs are healthy, especially if the dealer buys them from an unlicensed breeder.” *Cox v. U.S. Dep’t of Agriculture, supra*, at 1106-1107. See also *Toney v. Glickman, 101 F. 3d 1236 (8th Cir. 1996)*(Petitioners violated numerous provisions of the Animal Welfare Act, falsified records, failed to keep animals for the required time period, and kept them in deplorable unsanitary conditions, with inadequate food and shelter. Indeed, there was uncontrovertible proof that animals Petitioners claimed to have obtained from pounds were first taken from individuals who had not raised them. “The evidence establishes that the town of Keytesville did not have a pound and that Marceline’s pound was closed on the dates that the Toney’s claim to have acquired the dogs.” *Id.* at 1239); *Hodgins v. U. S. Dep’t of Agriculture, 238 F. 3d 421, 2000 WL1785733 (6th Cir. 2000)*(like Cox and Toney, involved Class B dealers who kept animals on their premises, although the Court basically found in favor of the dealers, minimizing the findings of the Government’s veterinarian. The Court in so holding observed that the Government veterinarian only visually observed some thin dogs, coughing dogs and shaking dogs and no physical examination was done.)¹

Phillips v. Ingham County, 371 F. Supp. 2d 918 (U. S. Dist. Ct. W. D. Mich. 2005) is another case which illustrates the lucrative relationship between shelters and Class B dealers. A former State Assistant District Attorney formerly volunteered at the local animal shelter, which regularly sold to Class B dealers. This situation troubled her, and she facilitated the rescue of a stray which was going to be sold to a Class B dealer by having a friend pose as the owner. About \$200 was paid to the shelter by the friend for having boarded “her” cat. While her scheme violated the policy of the Lansing County Board of Commissioners, which required that when a shelter animal was sold or marked for sale it must be returned when the owner appeared, after the case that Board banned shelter sales to Class B dealers, although shelters could sell directly to institutions.

On July 14, 2004, in response to some of these problems, the Code of Federal Regulations was amended. 9 CFR Sec. 2.1.32: Procurement of dogs, cats and other animals; dealers. These amendments included an expansion of the waiting period to 10 days, not including the date of acquisition, more stringent record keeping requirements, prohibition of misrepresentations, restrictions on the housing of animals (*e.g.*, if an exhibitor or researcher also operates a pound or shelter, the facilities must be housed separately (9 CFR Sec. 2.1.32(c)(1)) and restrictions on the source of the animals (*e. g.*, if a dealer obtains animals from an unlicensed

¹ The Sixth Circuit Court’s decision is referenced in a “Table of Decisions Without Reported Opinions” in the Federal Reporter and published at the Westlaw citation. The case was remanded to the agency for further proceedings not inconsistent with the Court’s opinion.

person, they must have been raised on that person's premises, such person must have sold fewer than 25 dogs or cats that year, or if those animals were not pets, such person must have no more than three breeding female dogs and/or cats (9 CFR Sec. 2.1.32(d)).

Under the proposed Pet Safety and Protection Act, "permissible sources" of dogs and cats for research or educational purposes in any federally licensed research facility or any Federal research facility would be limited to the following:

- (1) a licensed dealer that has bred or raised the dog or cat;
- (2) a publicly owned or operated pound or shelter that
 - (A) is registered with the Secretary of the Department of Agriculture;
 - (B) is in compliance with Sec. 28 (a)(1) of USC and the requirements for dealers of subsections (b) and (c) of Sec.28; and
 - (C) obtained the dog or cat from its legal owner, other than a pound or shelter.
- (3) is a person who is donating the dog or cat and that
 - (A) bred and raised the dog or cat; or
 - (B) owned the dog or cat for not less than one year immediately preceding the donation;
- (4) a research facility licensed by the Secretary; and
- (5) a Federal research facility licensed by the Secretary.

The Pet Safety and Protection Act properly prescribes a fine (\$1,000) for each violation of its provisions, in addition to any existing penalties in other provisions of the Animal Welfare Act.

The Pet Safety and Protection Act is a necessary and important step to reduce the trafficking in lost and stolen animals. It does not eliminate the Class B dealers entirely, but it greatly restricts their ability to obtain lost and stolen pets. The prior law and regulations have proved to be inadequate.