



NEW YORK
CITY BAR

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS**

**A.9449-D
S.6412-D**

**M. of A. Kellner
Sen. Duane**

AN ACT to amend the Agriculture and Markets law, in relation to requiring the release of a shelter animal to a rescue group upon request of the rescue group prior to euthanasia of the animal.

THIS BILL IS NOT APPROVED

Bill Summary

This Committee disapproves of the proposed legislation A-9449-D and its Senate equivalent, S-6412-D (collectively, the "Proposed Legislation"). The Proposed Legislation would amend the Agriculture and Markets Law, Section 374 by adding a new subdivision 9, called Oreo's Law, that would *require* public shelters or pounds, authorized humane societies and societies for the prevention of cruelty to animals, to release animals to any "*nonprofit, as defined in section 501(c)(3) of the internal revenue code, animal rescue or adoption organization*" that requests possession of them. A public shelter would include shelters with contracts with counties or municipalities to perform animal control services. The facility holding the animal would still collect the required spay/neuter deposit and could also assess a fee not to exceed the standard adoption fee.

Under the Proposed Legislation, the only animals whose release would not be mandated would be: (1) those who are "*physically suffering irremediably*" as long as a licensed veterinarian has issued a written, signed certification stating "*that the prognosis for recovery is poor or grave even with comprehensive prompt and necessary veterinary care;*" (2) dogs that are symptomatic for parvovirus and cats symptomatic for panleukopenia which conditions have been confirmed by a licensed veterinarian in a written, signed certificate which also states "*that the prognosis for recovery is poor or grave even with comprehensive prompt and necessary veterinary care;*" (3) animals suspected of carrying or who show signs of rabies as determined by a licensed veterinarian; and (4) animals "*determined by a court having competent jurisdiction to be dangerous pursuant to the provisions of section one hundred twenty-one.*" "*Irremediable physical suffering*" would be defined to mean "*that the animal suffers from a medical condition that has a poor or grave prognosis and that the animal is unlikely to be able to live without prolonged, severe and unremitting pain despite necessary veterinary care.*"

Organizations would be barred from taking animals if an “*officer, Board member, staff member or volunteer*” is currently charged or has been convicted of violation of a “*statute*” to prevent animal cruelty or neglect or dog fighting.

The organization interested in taking possession of an animal would be required to provide the holding facility with either (1) notification of such interest and contact information, or (2) a single notice requesting that it be notified of all animals scheduled for euthanasia. The facility would then be responsible for notifying the interested organization at least one day before the scheduled euthanasia by “*posting...the identification number of such animal on the [facility’s] website...by direct link from the facility’s website home page*” and also contacting the organization by email, phone, text message, fax, or “*any other means or electronic written communication as provided by the...organization.*” The organization would be required to notify the facility “*by phone, e-mail, fax, text message, or other electronic written request*” that it will take possession of the animal and would then have two business days to pick up the animal, “*not including the day upon which the notice is given.*”

The Proposed Legislation would place all liability for the animal on the rescuing organization except for “*harm caused to the animal*” prior to its possession or caused by “*acts or omissions of a person not associated with the organization.*”

Summary of Disapproval

The Proposed Legislation mandates release of any shelter animal prior to euthanasia to a 501(c)(3) organization without regard to whether the organization can provide even minimal responsible, humane care and treatment. The Proposed Legislation does not require the non-profits to meet any criteria to establish they are “*responsible*” or “*reputable*” organizations. The Proposed Legislation simply requires release of animals to any 501(c)(3) animal rescue or adoption organization that requests them. A 501(c)(3) status is simply an IRS designation meaning it is tax-exempt and donations are generally tax-deductible. It has no bearing on the quality of the operation and care provided.

The Proposed Legislation also fails to consider other collaborations or transfer agreements that may be in place in New York State, and could jeopardize New York State’s breed-neutral “*dangerous dog*” laws.

Background

The Proposed Legislation was initiated almost immediately on the heels of the ASPCA’s decision to euthanize a dog named Oreo. The ASPCA had rescued the dog after her owner is said to have thrown her from the top of a six-story building. Oreo sustained multiple fractures and other injuries. She was nursed back to health by the ASPCA and also given a number of temperament tests over a period of several months. ASPCA staff described that Oreo continued to demonstrate “*unpredictably aggressive*” behavior, at times even biting her caregiver or, for example, suddenly lunging at familiar people for no apparent reason. The ASPCA decided the dog was too dangerous and scheduled her to be euthanized on Friday, November 13, 2009.

A non-profit, 501(c)(3) organization that operates an animal sanctuary in Middletown, New York, Pets Alive, claims Oreo should have been released to its care. The Pets Alive management

claims they left phone messages with ASPCA staff and sent emails on Thursday, November 12, 2009 to the effect they would take Oreo. There was a public outcry over the decision to euthanize Oreo. The ASPCA euthanized Oreo on November 13.

The Proposed Legislation was introduced in the midst of the controversy. However, it requires significant revision before it can achieve its main objective – to ensure that no animal is put to death if there is a responsible alternative in the form of a reputable humane or rescue organization. As presently drafted, the Proposed Legislation could well do more harm than good.

The Committee's Concerns

The Proposed Legislation does not contain sufficient anti-cruelty and anti-hoarding provisions.

As currently drafted, the Proposed Legislation ties the hands of shelters to keep animals from known abusers or institutional hoarders that may not have been convicted of particular “*statutes*” or are not currently facing charges, or those rescues that cannot provide adequate shelter, food, water, veterinary care, and socialization or training, if required, and safe handling.

The bill proposes to disqualify organizations with an “*officer, Board member, staff member or volunteer*” facing or convicted of violations of “*statutes*” to prevent animal cruelty or neglect or dog fighting. This is hardly sufficient to establish the organization is “*responsible*” or “*reputable.*” It should include any employee, as well such as managers, and not the less clear or inclusive “*staff member*”. It is not clear why the proposed law would be limited to “*statutes*” instead of all animal protection and animal fighting laws, including ordinances and regulations.

Further, it is notoriously difficult to obtain citations or charges, let alone prosecutions and convictions, for animal cruelty, animal fighting and animal protection laws. It is also difficult for an animal control agency to learn about such charges or convictions that have occurred in other states or even other counties. In some cases, animals may be seized and impounded because of cruelty or neglect but charges never pursued. In other cases, charges may not be filed in return for transfer of ownership of the animals or permission to keep the animals on the property while they are given care and placed for adoption. In one case, for example, charges of animal cruelty were not filed for nearly a year after the animals were seized. Under the Proposed Legislation, public shelters would be required to release animals to such an organization until charges were filed. There are a number of circumstances under which an organization may be a hoarder or operate a seriously substandard facility but not face charges or have a conviction. In New York State, where shelters and rescues are largely unregulated – as well as in other states, whose shelters and rescues would also be able to claim an animal under the Proposed Legislation – hoarding and other forms of cruelty may never even be discovered.

In effect, the Proposed Legislation is likely to increase, not decrease, tensions between animal control and shelters.¹

¹ Any 501(c)(3) organization as described in the Proposed Legislation would, of course, be required to follow New York’s anti-cruelty laws that have an anti-hoarding provision, NY CLS Ag & M §350 et seq.; NY CLS Ag & M §373. But there is no law in New York that requires licensing, inspections and other regulation that would enable animal control to determine the adequacy of the facility and care and treatment provided in these other respects. In

The Proposed Legislation fails to consider the Mayor’s Alliance for New York City’s Animals or the potential for other collaborations or transfer agreements in New York State.

The Mayor's Alliance for NYC's Animals, Inc., founded in 2002, is a coalition of more than 160 animal rescue groups and shelters that are working with the City of New York to place shelter animals. The groups and shelters are vetted and meet minimal requirements. The Mayor’s Alliance reports that 1,500-1,700 animals each month in New York City alone are sent to rescues by Animal Care & Control.

The Proposed Legislation may well undermine a collaboration already working to save New York City’s animals. It would be advisable to evaluate whether similar collaborations or transfer arrangements exist or could be established in New York State before passing legislation that does not require and enforce standards for humane care and treatment or otherwise establish that the 501(c)(3) is indeed a “responsible” and “reputable” alternative.

The Proposed Legislation could jeopardize New York State’s breed-neutral dangerous dog law.

As noted above, the Proposed Legislation exempts from mandatory release only those animals “physically suffering irremediably,” as long as a licensed veterinarian has issued a written, signed certification stating “that the prognosis for recovery is poor or grave even with comprehensive prompt and necessary veterinary care;” dogs that are symptomatic for parvovirus and cats symptomatic for panleukopenia which conditions have been confirmed by a licensed veterinarian in a written, signed certificate which also states “that the prognosis for recovery is poor or grave even with comprehensive prompt and necessary veterinary care;” dogs believed to have or showing signs of rabies as determined by a licensed veterinarian; and animals declared dangerous by a court.

The reality of the shelter world, however – particularly open admission shelters – is that it is unlikely that such adjudications of dangerousness can be timely obtained to have any meaning for the purposes of the Proposed Legislation. As a result, this legislation could leave the door open for re-evaluating the state’s dangerous dog laws and the prohibition on breed discrimination by animal control and local governments concerned about a mandatory release requirement.

addition to the Illinois law, for example, *infra at Appendix*, a handful of other states have such regulation for non-profit animal shelters: Pennsylvania, 3 P.S. § 459-102, 206-207, administered and enforced by the state’s Dog Law Enforcement Bureau though it is limited to dogs; Colorado, C.R.S. 35-42.5-101, 35-80-102, 8 CCR 1201-11 under the Dept. of Agriculture’s jurisdiction; North Carolina, N.C. Stat. §§19A-1-41; 2 N.C.A.C. 52J.0101-0803 which is administered and enforced by the Animal Health Division of Department of Agriculture and Consumer Services; §19A-22; Virginia, Va. Code §§3.2-6500-6590, which requires licensing and authorizes inspections by the state veterinarian; Georgia, O.C.G.A. §§ 4-11-2 thru 4-11-10; Ga. Comp. R. & Regs. r. 40-13-13-.01-.09 which provide for licensing, inspections and regulation of care and treatment that is administered and enforced by the Dept. of Agriculture; Missouri, RSMo. §273.325-.327; 2 CSR 30-9.010-.030 under the Dept. of Agriculture’s jurisdiction; Maine, 7 M.R.S. § 3901 et seq; CMR 01-001-701 which requires licensing by the Dept. of Agriculture. A new Arizona law, ARS §11-1008, and a recently passed Wisconsin law, Assembly Bill 250, regulate dog rescues depending on the number of dogs. New Jersey requires private animal shelters to obtain local licenses. N.J. Stat. § 4:19-15.8. This is not to say the regulation required in these other states is effective, but it would be advisable to evaluate these laws in determining qualifications for 501(c)(3)s under the Proposed Legislation.

Dangerous dog laws could be made more onerous and the state prohibition on breed discrimination could be jeopardized.²

The Committee further notes that there is no limit on the animals required to be released to “adoptable” or “treatable” animals (*see, e.g.*, the California law discussed in the Appendix). In another state – Illinois – release to rescues is specifically limited to “unclaimed dogs and cats *deemed adoptable by the animal control facility*” (emphasis added).³

Summary of Recommendations

The Committee urges that further analysis be done before proceeding with this bill. To assist in this effort, the Committee has attached an appendix which discusses the approach taken by two other states: California’s Hayden’s Law and Illinois’ Public Health and Safety Animal Population Control Act. The Committee has the following three recommendations:

First, it would be advisable, before proceeding with any alternative, to evaluate the existence and effectiveness of collaborations or transfer agreements in New York State for placement of shelter animals with 501(c)(3) organizations.

Second, it would be advisable to research, if possible, the extent to which shelters in California have followed the Hayden Law’s mandate, how it has been implemented, and, if known, whether animals have ended up in hoarding situations or seriously substandard conditions.

Third, it would make sense to evaluate other states’ regulation of private shelters and determine the best qualifying criteria. Such criteria might include, for example, financial wherewithal to provide adequate care and treatment for the animals; whether management or staff have felony or other convictions, or whether they have ever been charged, cited or investigated for violation of any animal protection laws or had animals seized from them for cruelty or other violations of law; availability of veterinary services, quality of care and treatment of animals; whether there is an adoption or foster care program in place; availability of training, if required, etc.

Conclusion

For the reasons stated above, the Committee opposes this bill.

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² New York Agr. & Markets §107.5

³ 510 ILCS 5/11

APPENDIX: THE APPROACH TAKEN BY OTHER STATES

California: The Hayden Law

The Hayden Law is a collection of laws or amendments to existing laws under Chapter 752 that were introduced by state Sen. Tom Hayden and passed in one bill with the purpose of “*end[ing] euthanasia of adoptable and treatable animals by 2010.*”⁴ It increased minimum holding periods for strays as well as owner surrendered animals.⁵ Public shelters must take steps to find owners.⁶ The Hayden Law requires public shelters or agencies to release unclaimed stray dogs and cats to any 501(c)(3) non-profit group that requests them.⁷ Under the Hayden Law, shelters must take steps to verify whether a cat is actually feral or simply frightened; if a cat is determined by a standard protocol to be feral, the animal may be euthanized after three (3) days unless there is a request from a 501(c)(3) non-profit group to take the animal.⁸ There are also recordkeeping requirements under the Hayden Law.⁹

Notably, the Hayden Law contains provisions requiring shelters to provide humane care and treatment.¹⁰ These provisions do not require proof of intent to cause harm; they are, in a sense, anti-hoarding laws. The anti-hoarding provisions in the Hayden Law acknowledge there is a risk of persons or organizations hiding behind a 501(c)(3) status to obtain animals they sell for research¹¹ or worse, such as for fur or food either here or abroad. The Hayden Law also contains detailed provisions for enforcement and forfeiture proceedings.¹² Under the Hayden Law, an officer does have a duty to impound and hold dogs that may present a public safety risk.¹³ Also, dogs that are declared dangerous under a dangerous dog law are not required to be released to a 501(c)(3) organization.

Moreover, several sections of the Hayden Law enunciate the “*policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. Adoptable animals include only those animals eight weeks of age or older that, at or subsequent to the time the animal is impounded or otherwise taken into possession, have manifested no sign of a behavioral or temperamental defect that could pose a health or safety risk or otherwise make the animal unsuitable for placement as a pet, and have manifested no sign of disease, injury, or congenital or hereditary condition that adversely affects the health of the animal or that is likely to adversely affect the animal's health in the future.*”¹⁴ Similarly, these sections also enunciate the “*policy of the state that no treatable animal should be euthanized. A treatable animal shall include any animal that is not adoptable but that could become adoptable with reasonable*

⁴ See http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1751-1800/sb_1785_bill_19980923_chaptered.html.

⁵ Cal. Food & Agr. Code §§31108, 31752, 31753, 31754

⁶ Cal. Food & Agr. Code §32001

⁷ Cal. Food & Agr. Code §§31108, 31752

⁸ Cal. Food & Agr. Code §31752.5

⁹ Cal. Food & Agr. Code §32003

¹⁰ Cal Civil Code §§1816, 1834, 1846, 2080

¹¹ *Id.*

¹² Cal. Penal Code §§597.1, 599d

¹³ Cal. Penal Code §597.1

¹⁴ Cal. Civil Code §1834.4; Cal. Food & Agr. Code §17005; Cal. Penal Code §599d

efforts. This subdivision, by itself, shall not be the basis of liability for damages regarding euthanasia.”¹⁵

Illinois’ Public Health and Safety Animal Population Control Act

Compare also the 2005 Illinois law which provides that unclaimed dogs and cats “*deemed adoptable by the animal control facility shall be offered for adoption, or made available to a licensed humane society or rescue group....No animal shelter or animal control facility shall release dogs or cats to an individual representing a rescue group, unless the group has been licensed or has a foster care permit issued by the Illinois Department of Agriculture or is a representative of a not-for-profit out-of-state organization. The Department may suspend or revoke the license of any animal shelter or animal control facility that fails to comply with the requirements set forth in this Section or that fails to report its intake and euthanasia statistics each year.*”¹⁶ In addition, Illinois has an anti-hoarding law.¹⁷

As there is already strong collaboration among New York City and more than 160 rescue organizations to place shelter animals, it would be advisable before going forward with any such legislation to assess its impact on this collaboration and also determine the existence and effectiveness of other similar collaborations or transfer agreements to place shelter animals in New York State.

Notably, the Proposed Legislation could also open the door to onerous changes to the state dangerous dog laws including the prohibition on breed discrimination.

¹⁵ *Id.*

¹⁶ Illinois Public Health and Safety Animal Population Control Act, 510 ILCS 5/11. See also provisions for licensing and regulation of nonprofit shelters under the IL Humane Care for Animals Act, 510 ILCS 70, 70/2/01h; and Euthanasia in Animal Shelters Act, 510 ILCS 72, and other recordkeeping and care requirements. 8 Ill. Adm. Code 25.130 Foster homes are also subject to regulation, care and recordkeeping requirements and must be “accessible for general observation” to determine compliance with “sanitation and the quality of care being afforded the animals.” 8 Ill. Adm. Code 25.140

¹⁷ IL Humane Care for Animals Act, 510 ILCS 70/2.10, 3.04