



**NEW YORK
CITY BAR**

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

A.3431-A

M. of A. Zebrowski

AN ACT to amend the agriculture and markets law, in relation to restricting the performance of surgical devocalization procedures on dogs and cats.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

1. SUMMARY OF THE PROPOSED LAW

Assembly Bill No. 3431 adds a new section 365-A to the Agriculture & Markets Law that would impose new restrictions on ventriculocordecotomy (commonly referred to as (“devocalization surgery”), a surgical procedure that reduces or eliminates a dog’s or a cat’s ability to produce vocal sounds. It would also establish record keeping requirements in connection with devocalization surgery.

Specifically, the bill provides that devocalization surgery may be performed only by a licensed veterinarian and only when medically necessary to relieve the dog or cat from pain or harm. A veterinarian must file with the municipal clerk a record that states identifying information about the dog or cat, the name and address of the animal’s owner, the date of the procedure, the reason the procedure was performed, and the basis for the diagnosis that devocalization surgery was medically necessary. The veterinarian is also required to annually report to the State Board for Veterinary Medicine about the number of such surgeries performed and provide a notice to the animal’s owner. Finally, the bill bars a person from selling a dog or cat who has been surgically devocalized unless the seller provides a written notice about the surgery prior to the sale.

Violation of the law by any person who performs the devocalization surgery or knowingly caused the surgery to be performed is a Class A misdemeanor. A veterinarian’s license may be suspended or revoked upon the finding of a violation. Failure to provide the required notice to a purchaser of an animal constitutes an unfair or deceptive trade practice in violation of General Business Law section 349. In addition to fines and imprisonment, a court may order instruction in humane education, bar a violator from owning or keeping a dog or a cat, and order the violator to surrender any animals that he or she owns or controls.

2. REASONS FOR APPROVAL

The New York City Bar approves the bill with recommendations because interfering with an animal's physical ability to vocalize by a permanent alteration to an animal's body is inherently cruel; the surgery may result in serious health complications and pain; and many pet owners report being unaware that the surgery was performed on their animal until after they brought the animal home from the animal's seller. We recommend that the bill be amended to include other animals in addition to dogs and cats.

3. BACKGROUND

a. The procedure

The bill addresses what has been called "convenience devocalization" because it is done for the benefit of human owners to suppress a dog's loud barking. People typically have the procedure done because they find an animal's vocalization annoying, in reaction to neighbor's complaints, or to gain a competitive edge in show dog competitions.¹ There is no available data on how many animals are devocalized because there are no reporting requirements.

Devocalization surgery can be performed in two ways.² In the laryngotomy technique, a surgeon makes a two-inch incision on the dog's neck and removes all of the dog's vocal fold tissue.³ The surgery has a prolonged recovery time and there is a danger of serious complications including tissue damage and scarring so extensive that the dog has difficulty breathing for life.⁴ In the oral technique, a very small piece of tissue is taken from one or both vocals through the mouth.⁵ The oral approach is less invasive; however, it results in a higher rate of future respiratory problems.⁶ Both surgeries run a higher risk of infection than most other surgeries on animals.⁷

¹ Sam Dolnick, *Sit. Whisper. Good Dog*, NY TIMES (Feb. 2, 2010), available at <http://www.nytimes.com/2010/02/03/nyregion/03debark.html>. (Last visited March 27, 2011.)

² *Answers about Canine Devocalization*, NY TIMES (Feb. 4, 2010), available at <http://cityroom.blogs.nytimes.com/2010/02/04/answers-about-canina-devocalization>. (Last visited March 27, 2011.)
Note: The answers in the article were provided by Dr. Sharon L. Vanderlip, a veterinarian who performs the procedure and calls herself a "big, big proponent of the measure." Dolnick, *supra* note 1.

³ *Answers about Canine Devocalization*, *supra* note 2.

⁴ *Id.*

⁵ *Id.*

⁶ Humane Society Veterinary Medical Association, *Devocalization Fact Sheet*, available at http://www.hsvma.org/pdf/fact_sheets/devocalization-facts.pdf. (Last visited March 27, 2011.)

⁷ *Id.*

b. Problems with the procedure

Physical problems may result even if the devocalization surgery is performed by a well-qualified veterinarian.⁸ Webbing, a common complication of devocalization surgery, occurs when scar tissue forms across the larynx.⁹ This can make it very difficult for an animal to breathe during the rest of his or her life.¹⁰ Devocalized dogs are also more susceptible to aspiration pneumonia.¹¹ People who live with devocalized dogs report that their dogs have trouble swallowing food and a greater risk of choking¹² and trouble breathing.¹³

Devocalization surgery may also result in psychological and behavioral problems. An animal may become frustrated when his or her ability to communicate is impaired and this could lead to destructive behavior toward property or aggression toward animals or people.¹⁴ This could ultimately cause the owner to surrender the animal to a shelter. The surgery may cause an increased level of stress, which could in turn contribute to a decline in the animal's overall health.¹⁵

In addition to the complications for animals, consumers sometimes purchase animals unaware that the procedure has been performed until the animals are living with them.¹⁶

Due to the potential pain and ethical considerations, some veterinary schools no longer teach the devocalization procedure and other veterinary practices refuse to perform it.¹⁷ The American Veterinary Medical Association's position is that "Canine devocalization should only be performed by qualified, licensed veterinarians as a final alternative after behavioral modification efforts to correct excessive vocalization have failed."¹⁸ The Humane Society

⁸ *Id.*

⁹ Interview with Joel Woolfson, DVM, Youtube, at <http://www.youtube.com/watch?v=W4ADbMoX4aw>. (Last visited March 27, 2011.)

¹⁰ *Id.*

¹¹ Landmark Logan's Law Ends Dog and Cat Devocalization in Massachusetts, Best Friends Animal Society Web site, at <http://network.bestfriends.org/golocal/vermont/15761/news.aspx>. (Last visited March 27, 2011.)

¹² *E.g.*, Interview with John Perrault, Executive Director, Berkshire Humane Society, at <http://www.youtube.com/watch?v=W4ADbMoX4aw>. (Last visited March 27, 2011.)

¹³ Interview with Stella's owner, Faces of Devocalization, YouTube, at <http://www.youtube.com/watch?v=hZPoyuMw870&feature=related>. (Last visited March 27, 2011.)

¹⁴ Humane Society Veterinary Medical Association, *supra* note 6.

¹⁵ *Id.*

¹⁶ Interview with Stella's owner, Faces of Devocalization, YouTube, at <http://www.youtube.com/watch?v=hZPoyuMw870&feature=related>. (Last visited March 27, 2011.)

¹⁷ Sam Dolnick, *supra* note 1.

¹⁸ American Veterinary Medical Association Web site, AVMA Policy regarding canine devocalization, at http://www.avma.org/issues/policy/animal_welfare/devocalization.asp.

Veterinary Medical Association cautions that while devocalizing an animal may appear to be a “quick fix” it does not address the underlying cause of the excessive vocalization.¹⁹ Potential causes include a loud or stressful environment, isolation and loneliness, and physiological conditions such as endocrine disorders or “hormone-intensified excitement and aggression” in pets that have not been spayed or neutered.²⁰

c. Law in other jurisdictions

On April 23, 2010, Massachusetts became the first state to prohibit devocalization surgery unless “medically necessary to treat or relieve an illness, disease or injury or to correct a congenital abnormality that is causing or may cause the animal physical pain or harm. . . .”²¹ The Massachusetts statute is called Logan’s Law and is named for Logan, a show dog that underwent devocalization surgery and was subsequently abandoned.²² The bill received widespread support from pet owners, over 200 veterinarians, animal shelters, attorneys, animal welfare advocates, and animal rights activists.²³

The bill was opposed by the Massachusetts Veterinary Medical Association (the “MVMA”).²⁴ In its statement, the MVMA opined, “Devocalization should be performed only in extreme circumstances – as a last resort before turning a pet over to an animal shelter or performing humane euthanasia – and should never be performed as a routine matter.”²⁵ Nonetheless the MVMA opposed the bill because, in its opinion, the bill (1) required public disclosure of an animal’s medical diagnosis creating privacy concerns, (2) provided no exceptions for use of the procedure as the last resort where behavior modification failed; and (3) the bill infringed on a veterinarian’s exercise of professional judgment.²⁶ Other opponents cited concerns that apartment dwellers may not be able to keep loud animals unless the procedure was available.

Supporters of the Massachusetts bill countered that behavioral modification is an effective way to stop loud barking and address the psychological factors that may be causing the dog to bark - which is in the dog’s best interest.²⁷ Supporters further opined that people should

¹⁹ Humane Society Veterinary Medical Association, *supra* note 6.

²⁰ *Id.*

²¹ Mass. General Laws Annotated 272 80 ½.

²² Three Barks for Logan’s Law, Animal Law Coalition Web site, at <http://www.animallawcoalition.com/animal-cruelty/article/684>. (Last visited March 27, 2011.)

²³ *See id.*

²⁴ Statement of the Massachusetts Veterinary Medical Association on Devocalization of Household Pets, and on House No. 344, “An Act Prohibiting Devocalization of Dogs and Cats, available at <http://www.massfeddogs.org/Downloads/MVMADevocalizationPosition2009.pdf>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Humane Society Veterinary Medical Association, *supra* note 6.

not purchase loud animals if noise is a concern because dogs have a natural instinct to bark.²⁸ And shelter owners said that few people state that the reason for surrendering a dog is because it barks; devocalized animals are surrendered just like any other.²⁹

The New York bill largely follows Logan's Law; however, there are some key differences that make the New York bill stronger. In Massachusetts, suspension of a veterinary license is a potential penalty. The New York bill allows suspension or revocation.

The Massachusetts law imposes filing requirements on veterinarians but expressly exempts such records from public disclosure. New York requires more transparency. A veterinarian would have to annually file a report stating the number of devocalization procedures he or she performed with the State Board of Veterinary Medicine. In addition, prior to surgery, the veterinarian would be required to file with the municipal clerk the record described in section 1, above. The veterinarian would have to maintain a copy of the record for four years and make it available to the State Board of Veterinary Medicine upon demand. A requirement that the records be filed with a clerk would create a new ground for disclosing an animal's medical treatment records. Existing law limits a veterinarian from disclosing a companion animal's treatment records to the owner and to officials in instances where he or she suspects animal cruelty or determines that disclosure is necessary to protect the animal.³⁰ The Committee believes that transparency is desirable because it may discourage unnecessary procedures and provide the public with information necessary to protect animals. However, so long as the annual record filed with the State Board of Veterinary Medicine is subject to disclosure under the Freedom of Information Law along with records produced pursuant to an audit, the Committee approves the bill with or without the requirement that a record be filed with the municipal clerk.

The New York bill also has an important consumer protection component that addresses numerous claims by pet owners that they were not aware that an animal had been devocalized prior to purchase. The bill requires persons selling dogs and cats who have knowledge that the animal was devocalized to disclose that devocalization surgery has been performed prior to a sale; there is no equivalent in the Massachusetts law. Failure to provide such disclosure constitutes a deceptive trade act or practice in violation of General Business Law section 349.³¹ The disclosure requirement complements pet dealer disclosure requirements in General Business Law section 753-b and 1 NYCRR section 81.5. Among other things, the law currently requires the disclosure of any medical treatment received by a dog or a cat while in the possession of the pet dealer and disclosure of certain conditions that may affect an animal's health.³²

²⁸ *Id.*

²⁹ Landmark Logan's Law Ends Dog and Cat Devocalization in Massachusetts, *supra* note 11.

³⁰ Education Law § 6714.

³¹ General Business Law section 349 applies to the sale of animals. *Rizzo v. The Puppy Boutique*, 27 Misc.3d 1227(A) (Richmond Co. Civ. Ct. 2010) (failure to disclose a dog's congenital defect is a violation of General Business Law section 349)). Both omissions and acts form the basis of a claim pursuant to General Business Law section 349. *Pelman v. McDonald's Corp.*, 396 F.Supp.2d 439, 444 (S.D.N.Y. 2005).

³² General Business Law § 753-b; 1 NYCRR § 81.5.

4. RECOMMENDATION

The New York City Bar approves the bill and recommends that it be amended to bar devocalization surgery on all animals unless medically necessary by replacing the phrase “dog or cat” with the word the word “animal.” There is no sound reason to limit the law to dogs and cats. In certain avian species, veterinarians are often asked to perform devocalization surgery.³³ Such surgery is not recommended because it is difficult to gain access to the voice box of the bird.³⁴ Some avian veterinarians believe that “devocalization is a cruel and unethical practice Birds with vocalization patterns that are unacceptable to a client should be placed in new homes.”³⁵

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³³ Mark A. Mitchell & Thomas N. Tully, MANUAL OF EXOTIC PET PRACTICE 259 (2009).

³⁴ *Id.*

³⁵ Branson W. Ritchie et al., AVIAN MEDICINE: PRINCIPLES AND APPLICATION 1112 (1994), *available at* <http://www.avianmedicine.net/ampa/41.pdf>.