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

A.5449-A M. of A. Paulin S.5433-A Sen. Ball

AN ACT to amend the agriculture and markets law, in relation to the treatment and disposition of lost, stray or homeless animals.

#### THIS BILL IS APPROVED

#### **BILL SUMMARY**

The Legal Issues Pertaining to Animals Committee of the New York City Bar Association ("the Committee") approves of the proposed legislation A.5449-A/S.5433-A (collectively, the "Proposed Legislation"). The Proposed Legislation would amend the Agriculture and Markets Law for the purposes of (1) increasing the opportunities for owners to find lost pets, (2) requiring vaccinations for animals held in animal shelters and improving and making shelter care standard for all animals that are seized and impounded; and (3) establishing a framework of cooperation between shelters and private animal rescue organizations to increase the opportunities for animals to be adopted and to reduce the incidents of euthanasia.

## REUNITING PETS AND THEIR OWNERS

The Proposed Legislation would amend Sections 113 and 373 of the Agriculture and Markets Law to apply the current redemption period not only to dogs but all animals taken in by dog control, peace officers acting pursuant to their special duties, police and "impounding organizations" or shelters. Under the Proposed Legislation, all such officers and shelters would be required "as soon as practicable" to take steps to (1) check animals for all currently possible forms of identification including, but not limited to, tags, microchips, tattoos or licenses; (2) compare the information known about the animal with records of animals reported to be lost or stolen pursuant to §112; (3) make available to the public on the internet on a website or other public means if a website is not practicable, at least during the redemption period, a photograph, if practicable, and a general

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<sup>&</sup>lt;sup>1</sup> The Proposed Legislation offers a definition of a shelter or an "impounding organization" that means "any duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals, animal shelter or pound maintained by or under contract or agreement with any county, city, town or village, that takes possession of abandoned, not properly cared for, lost, stray, or homeless animals, or animals that have been surrendered by the owner or owners".

description<sup>2</sup> of the animal to assist the owner(s) in finding the animal, including the species, type, and breed(s), if known.<sup>3</sup>

## REQUIRING VACCINATIONS OF SHELTER ANIMALS AND OTHER CARE

The Proposed Legislation requires shelters to examine each animal as soon as practicable after taking possession and provide all animals with care and treatment to relieve any pain and suffering, including necessary emergency veterinary care and treatment and parasite control, and appropriate vaccinations.

Also, the current requirements for care of dogs – shelter, food, and water – are extended to all impounded animals.

# RESCUE LIST AND SHELTER ACCESS

The Proposed Legislation amends §374 of the Agriculture and Markets Law to require shelters to maintain a list of animal rescues<sup>5</sup> in the same or adjoining counties which must be contacted prior to

Shelters will have the discretion to inspect rescues to determine whether the rescue should be approved and also maintained on the list. The first inspection must be completed within 45 days of the rescue's request for placement on the list.

The shelter must state in a signed writing, the reasons why the rescue is not qualified to be or to remain on the list. The reasons should be stated with sufficient specificity to inform the rescue of the particular criteria that have not been met and the actions required for approval, if possible. This must be provided as soon as practicable to the animal rescue.

<sup>&</sup>lt;sup>2</sup> Section 113 already requires that a "complete record…includ[ing] a description" be made and maintained for dogs seized or impounded. Under the Proposed Legislation the description must include any identification found on the dog, including tag, microchip, tattoo or license numbers, the breed(s), if known; approximate size and weight, coloring and identifying marks. The requirement would also be extended under Section 373 to apply to all seized or impounded animals.

<sup>&</sup>lt;sup>3</sup> The Proposed Legislation provides that information about the animal may be withheld if deemed appropriate to facilitate finding the owner(s) or otherwise to protect the safety of the animal.

<sup>&</sup>lt;sup>4</sup> The Proposed Legislation also clarifies that redemption periods and requirements for notifying owners as set forth in Section 113 apply not only to dogs but also to all animals that are seized or impounded.

<sup>&</sup>lt;sup>5</sup> The Proposed Legislation requires only rescues with the Internal Revenue Service designation of 501(c) 3 are eligible for inclusion on the list. Rescues can be on the list simply by (1) providing the name and contact information for a primary person and back up; (2) the species, types and breeds of animals the rescue will accept; and (3) resources the rescue has available including veterinary, rehabilitative or other care; care for special needs animals, training or behavior modification programs, including the names and credentials of trainers or behaviorists; or appropriate sanctuary or long term placement. Shelters have discretion in determining whether a rescue should be on the list or should remain on the list but cannot unreasonably withhold approval. The Proposed Legislation also provides that in making this determination, the shelter should consider whether the rescue (1) can provide animals with clean, sanitary and adequate shelter; food, water, exercise, necessary veterinary care and treatment, including vaccinations and parasite control; and a safe environment; (2) maintains a protocol for containing and managing contagious illness and disease; (3) maintains an active adoption program or facilities appropriate for long term placement; (4) manages animals to minimize risk of injury to the animals and the public; (5) manages its operations so that animals are not at risk for abuse or neglect or for use in animal fighting or research, experimentation or testing; (6) has knowingly made any material misrepresentations or material false statements to the impounding organization; and (7) avoids behavior that undermines a working relationship with the shelter's staff.

euthanasia of an animal to determine if placement is possible. Shelters that took in less than 100 animals in the preceding year would not be required to have more than three rescues on the list. Shelters could continue to perform euthanasia services for pet owners who bring animals there just for that purpose.

Except in certain situations described in Section 3746 or if an animal is brought to the shelter by the owner specifically for euthanasia, a shelter could not otherwise euthanize an animal unless the shelter has a record demonstrating that the shelter contacted each rescue approved for that species, type or breed of animal, that none of the rescues contacted were willing and able to accept transfer of the animal, or failed to respond or, after two days following the last contact, failed to pick up or accept transfer of an animal after agreeing to do so.

A copy of these records shall be maintained for two years and available to the public upon request.

Shelters will incur no liability as a result of the transfer of animals to a rescue.

# SUMMARY OF APPROVAL

The Proposed Legislation would create a framework for cooperation between shelters and rescues to encourage and increase the number of animals that are adopted from shelters instead of simply euthanized. In some respects the Proposed Legislation codifies current collaborations between shelters and rescues to save animal lives. The Mayor's Alliance for NYC's Animals, Inc., founded in 2002, and funded by Maddie's Fund®, The Pet Rescue Foundation, and the ASPCA, 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 rescues are vetted; they must meet minimal standards for the sheltering, caring for and placement of animals. The Mayor's Alliance reports that as a result of this collaboration, in 2011, 1,200-1,500 animals from New York City Animal Care & Control were placed each month with rescues. Indeed, a number of shelters throughout New York State report working with rescue "partners" in an effort to find homes for shelter animals. The Proposed Legislation would facilitate such collaborations at all shelters with rescues in the same or adjoining counties.

At the same time shelters have broad discretion to determine whether an organization is eligible to be placed or remain on a list of rescues that will be contacted prior to euthanasia of an animal. The Proposed Legislation includes significant anti-hoarding and anti-cruelty standards to allow the shelter to make sure animals are not placed in conditions where there is a risk they will suffer cruelty or neglect. See fn. 3.

The rescue then can demonstrate it has remedied the problem and request a re-inspection. The shelter is to cooperate with this but is not required to consider a rescue for the list more than twice annually.

<sup>&</sup>lt;sup>6</sup> Under Section 374 a shelter can euthanize an animal even prior to the redemption period "if upon examination a licensed veterinarian shall certify in writing, or if two reputable citizens called upon" by a shelter or officer, "to view the animal, find (1) that the animal is so maimed, diseased, disabled, or infirm so as to be unfit for any useful purpose and that humane euthanasia is warranted". The Proposed Legislation amends Sec. 374 to substitute "suffering irremediable physical or psychological pain" for "unfit for any useful purpose" and adds that euthanasia may also be performed if it is "necessary to alleviate a contagious, deadly health condition".

The Proposed Legislation would also require those authorities and shelters that seize or impound stray dogs as well as other animals to check any tags and micro-chips, check reports of lost or stolen animals, and provide the public with information about these animals. These are minimal common sense measures that will help owners find their lost pets.

The requirement of vaccinations for shelter animals will surely help reduce risks to public health and safety as well. Otherwise, the improvements are modest but could prove critical for the animal - a check of the animal's condition within 24 hours of seizure or impoundment and emergency care as needed during the redemption period to alleviate pain and suffering.

Finally, the bill modernizes the description of the circumstances when authorities or shelters may euthanize an animal prior to the end of the redemption period. Instead of the antiquated test of whether the animal is "unfit for a particular purpose", the assessment about whether an animal should be euthanized will focus on whether the animal is "suffering irremediable physical or psychological pain".

## **BACKGROUND**

As described above, there are a growing number of collaborations between public shelters and private rescue organizations in the effort to find homes for stray or homeless animals. In 1998 California mandated that shelters must release unclaimed stray dogs and cats to any 501(c) 3 non-profit that requests them. CA Food & Agr. Code §§31108, 31752.

The concern with such a broad mandate has been that shelters lack discretion to determine whether the animals are placed in conditions where they will suffer cruelty or neglect or the organization is simply not capable of managing them.

In 2010 Delaware Code §§ 8001-8007, enacted a law that recognizes this concern and which at the same time requires shelters to identify rescues they do find acceptable. Shelters are required to "establish and maintain a registry" of rescues, including breed rescues, where animals can be placed. Except in certain circumstances, no animal can be euthanized by a shelter until the manager issues a certification that, in part, states that no eligible "rescue on the registry cannot accept the animal".

Unlike the Proposed Legislation, however, the Delaware law does not provide shelters with guidelines for identifying appropriate rescues for the registry, for inspections or for maintaining rescues on the registry; the law simply requires that shelters maintain a registry. While such a scheme may work in Delaware where there are only a handful of shelters, it could create confusion among New York's hundreds of shelters as to what is required legally, and is unlikely to foster collaboration between shelters and rescues to save lives. The Proposed Legislation, on the other hand, provides clear guidelines for establishing and maintaining the list of rescues; shelters and rescues will understand what is expected under this framework for cooperation.

The Proposed Legislation not only recognizes the importance of the collaboration between shelters and rescues, but also actually codifies what are existing arrangements between many shelters and rescues in New York. The Proposed Legislation allows shelters broad discretion to ensure a rescue can provide appropriate care and management. At the same time, it makes sense to require shelters to check with their rescue "partners" in the county or adjoining counties to make sure as many options

to save animal lives as possible are exhausted prior to euthanasia. Under the Proposed Legislation, the shelter is only required then to keep a record showing appropriate rescues have been contacted prior to euthanasia of the animal.

There has also been a trend to encourage owners to license, tag, microchip, or tattoo their pets in order to increase the likelihood they can be returned to their owners if they become lost. The internet is now widely used to post information about impounded animals and animals available for adoption. The laws are just now beginning to catch up with the technology. The Delaware legislation requires animal control officers and shelters to take steps to find owners including checking tags, micro-chips, tattoos, and licenses; checking lists of animals reported lost, and posting information about stray or lost animals on the internet. The Proposed Legislation also reflects the devices and technology available to reunite owners with lost pets. It is often a matter of checking for a tag, license or tattoo; scanning for a microchip, or posting a photo on the internet to find an owner and save a life.

## **CONCLUSION**

For the reasons stated above, the Committee approves the Proposed Legislation.

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