



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

**A.1204
S.2271**

**M. of A. Zebrowski
Sen. Grisanti**

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

A.1204/S.2271 (“the bill”) adds a new section 365-a to the Agriculture & Markets Law that would impose new restrictions on ventriculocordectomy (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. Where this surgery is performed, a veterinarian must include information about the procedure in the animal's treatment record.¹ The veterinarian is also required to annually report to the Commissioner of Education the number of such surgeries he or she performed.

Violation of the law by any person who performs the devocalization surgery or knowingly caused the surgery to be performed is a Class B misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500. A veterinarian’s license may be suspended or revoked upon the finding of a violation.

¹ NY Education Law § 6714 provides that veterinary treatment records shall be provided to the owner of an animal upon written request and that such records may also be reported or disclosed to law enforcement “[w]hen a veterinarian reasonably and in good faith suspects that a companion animal’s injury, illness or condition is the result of animal cruelty or a violation of any state or federal law pertaining to the care, treatment, abuse or neglect of a companion animal.”

2. 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.² 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.³ 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.⁴ 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.⁵ In the oral technique, a very small piece of tissue is taken from one or both vocals through the mouth.⁶ The oral approach is less invasive; however, it results in a higher rate of future respiratory problems.⁷ Both surgeries run a higher risk of infection than most other surgeries on animals.⁸

b. *Problems with the procedure*

Physical problems may result even if the devocalization surgery is performed by a well-qualified veterinarian.⁹ Webbing, a common complication of devocalization surgery, occurs when scar tissue forms across the larynx.¹⁰ This can make it very difficult for an animal to breathe during the rest of his or her life.¹¹ Devocalized dogs are also more susceptible to aspiration pneumonia.¹²

² Sam Dolnick, *Sit. Whisper. Good Dog*, NY TIMES (Feb. 2, 2010), <http://www.nytimes.com/2010/02/03/nyregion/03debark.html> (last visited Feb. 17, 2013); JoNel Aleccia, *Dog Debarking Policy at AVMA Raises Activists’ Howls of Protest*, NBCNews.com (Oct. 25, 2013), <http://vitals.nbcnews.com/news/2012/10/25/14677222-dog-debarking-policy-at-avma-raises-activists-howls-of-protest?lite> (last visited Feb. 17, 2013).

³ *Answers about Canine Devocalization*, NY TIMES (Feb. 4, 2010), <http://cityroom.blogs.nytimes.com/2010/02/04/answers-about-canina-devocalization> (last visited Feb. 17, 2013). 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.

⁴ *Answers about Canine Devocalization*, *supra* note 3.

⁵ *Id.*

⁶ *Id.*

⁷ Humane Society Veterinary Medical Association, *Devocalization Fact Sheet*, *available at* <http://www.hsvma.org/assets/pdfs/devocalization-facts.pdf> (last visited Feb. 17, 2013).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

People who live with devocalized dogs report that their dogs have trouble swallowing food and a greater risk of choking 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 "Debarking should only be performed by a qualified, licensed veterinarian after other behavioral modification efforts to correct excessive barking have failed."¹⁸ The Humane Society 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

¹¹ *Id.*; see also interviews with veterinarians and veterinary technicians about devocalization on the Coalition to Protect and Rescue Pets Web site, <http://cprpets.weebly.com/expert-perspectives1.html> (last visited Feb. 17, 2013).

¹² Landmark Logan's Law Ends Dog and Cat Devocalization in Massachusetts, Best Friends Animal Society Web site (July 29, 2010), at <http://www.bestfriends.org/News-And-Features/News/Landmark-Logan-s-Law-Ends-Dog-and-Cat-Devocalization-in-Massachusetts> (last visited Feb. 17, 2013).

¹³ See statements about devocalization from dog adopters on the Coalition to Protect and Rescue Pets Web site, <http://cprpets.weebly.com/expert-perspectives1.html> (last visited Feb. 17, 2013).

¹⁴ Humane Society Veterinary Medical Association, *supra* note 7.

¹⁵ *Id.*

¹⁶ Stella's Story, Coalition to Protect and Rescue Pets, <http://cprpets.weebly.com/devocalized-stellas-story.html> (last visited Feb. 17, 2013).

¹⁷ Sam Dolnick, *supra* note 2.

¹⁸ American Veterinary Medical Association Web site, AVMA Policy regarding canine devocalization, at <https://www.avma.org/KB/Policies/Pages/Canine-Devocalization.aspx> (last visited Feb. 17, 2013).

¹⁹ Humane Society Veterinary Medical Association, *supra* note 7.

²⁰ *Id.*

c. Law in other jurisdictions

Massachusetts prohibits 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 It was opposed by the Massachusetts Veterinary Medical Association (the “MVMA”).²⁴

New Jersey,²⁵ Ohio,²⁶ Pennsylvania,²⁷ and Warwick (Rhode Island)²⁸ also restrict devocalization surgery and/or have consumer protection statutes relating to the sale of devocalized animals.

3. OPPOSITION TO THE NEW YORK STATE BILL

The American Veterinary Medical Association and American Kennel Club (AKC) oppose the bill. The AKC has argued that devocalization is not cruel, that it saves the lives of noisy dogs

²¹ Mass. General Laws Annotated 272 80 ½.

²² Three Barks for Logan’s Law, Animal Law Coalition Web site (Apr. 23, 2010), at <http://www.animallawcoalition.com/animal-cruelty/article/684> (last visited Feb. 17, 2013).

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,” <http://www.massfeddogs.org/Downloads/MVMADevocalizationPosition2009.pdf> (last visited Feb. 17, 2013).

²⁵ N.J. Stat. §§ 4:19-38 - 4:19-43 provides in part, “A person who surgically debarks or silences a dog, or causes the surgical debarking or silencing of a dog, for reasons other than to protect the life or health of the dog as deemed necessary by a duly licensed veterinarian shall be guilty of a crime of the third degree.”

²⁶ OH Rev. Code § 955.22(F)(1)&(2) provides that no person shall “[d]ebark or surgically silence a dog that the person knows or has reason to believe is a dangerous dog” or “possess a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced.”

²⁷ 18 Pa.C.S. § 5511(h)(2)(i) bars devocalization except when performed by a licensed veterinarian.

²⁸ Code of Ordinances, Warwick, R.I. § 4-132, provides in part:

No person shall surgically debark or silence a dog or cat, or cause the surgical debarking or silencing of a dog or cat, unless a veterinarian licensed in this state has filed a written certification with the City Animal Control Officer in the Police Department stating that the surgical debarking or silencing is medically necessary to treat or relieve an illness, disease, or injury, or correct a congenital abnormality that is causing or will cause the dog or cat medical harm or pain.

who would otherwise be relinquished to a shelter and euthanized, and that the government has no business interfering in private “medical decisions.”²⁹

As explained in paragraph 2(b) above, devocalization surgery is risky and can result in health and psychological problems as well as pain. There is no support for the contention that restricting the procedure will result in an increase in shelter dogs. Shelter employees from the North Shore Animal League of America, Dutchess County SPCA, That Newfoundland Place, Buddy Dog Humane Society, and Save A Dog say that devocalized animals are surrendered just like any other.³⁰ According to the Humane Society Veterinary Medical Association, behavioral modification is an effective way to stop loud barking and address the psychological factors that may be causing the dog to bark and this is in the dog’s best interest.³¹ Devocalization is not a “medical decision” - it is a non-therapeutic, surgical means of changing a dog’s natural behavior that is perceived as annoying or giving an animal a competitive edge in a show. New York has previously protected horses from unnecessary surgeries on their tails by banning the practice and by banning the display of show horses with surgically manipulated tails.³²

4. PRIOR VERSIONS OF THE BILL

The Committee on Animal Law requests that the bill be restored to the version originally introduced in 2011.³³ The original version of the bill that prohibited 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 and included consumer protection provisions available under General Business Law section 349. The original version of the bill also required a veterinarian to file a public record that includes identifying information about the dog or cat, the name and address of the animal’s owner,

²⁹ The AKC stated in a letter opposing the bill (http://images.akc.org/governmentrelations/documents/SampleLetter_A1204-Debarking.docx, last visited Feb. 17, 2013):

The *veterinary procedure* of debarking is not cruel, and merely reduces the volume of noise a dog can make after other efforts at modifying the noisy dog’s behavior have failed. In many cases, veterinary debarking actually saves lives—when owners of dogs whose noise disturbs a community would otherwise be forced to relinquish their pet to a shelter where they would be housed and/or euthanized at public expense.

The American Veterinary Medical Association and the American Kennel Club agree that veterinary debarking is a humane solution to a barking problem that would otherwise result in the relinquishment or death of a pet. Like other medical decisions, debarking is a decision that should be left to dog owners and their veterinarian—and not subject to arbitrary government regulation.

³⁰ Shelters Speak Out About Devocalization, <http://www.youtube.com/watch?v=n2gNtrBI1Us> (last visited Feb. 17, 2013); Landmark Logan’s Law Ends Dog and Cat Devocalization in Massachusetts, *supra* note 12.

³¹ Humane Society Veterinary Medical Association, *supra* note 7.

³² Ag & Mkts L. § 368.

³³ This Committee has previously issued reports in favor of the original 2011 bill as well as another version of the bill in January 2012 and May 2012. The June 2011 report is available at <http://www2.nycbar.org/pdf/report/uploads/20072102-ReportonA.3431-Aregardingsurgicaldevocalizationproceduresondogsandcats.pdf>.

the date of the procedure, the reason the procedure was performed, and the basis for the diagnosis that devocalization surgery was medically necessary. The original bill provided that a violation was a Class A misdemeanor, and in addition to fines and imprisonment, it authorized a court to 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. We recommended that the bill be amended to include other animals in addition to dogs and cats.

The current version of the bill gives prospective purchasers of a dog or cat no notice that the animal has been devocalized and allows no consumer protection under the General Business Law. The Animal Law Committee believes that the transparency offered in the original bill by the public filing requirement is important because it would likely discourage unnecessary procedures and provide the public with information necessary to protect animals. Without the consumer protection and public filing requirements, the bill is significantly weakened.

While we support the current bill as a useful step in providing devocalization protection, we recommend that the bill be restored to its original version to ensure that animals and consumers are protected and that information necessary to enforce the law is readily available.

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