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

**A.972-A
S.3743-A**

**M. of A. Kellner
Sen. Addabbo**

AN ACT to amend the Agriculture and Markets law, in relation to requiring the installation and testing of fire equipment and sprinkler systems for animal housing maintained by pet dealers.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

The Animal Law Committee offers its approval of the proposed legislation with recommendations. A.972-A/S.3743-A (“the proposed legislation”) would amend Article 26-A of the Agriculture and Markets Law entitled “Care of Animals by Pet Dealers” by requiring the implementation of fire safety measures at pet housing facilities containing dogs and cats.

SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation would add a new section 408 to Article 26-A requiring that “all pet dealers licensed under this article shall provide fire protection measures for every premises¹ at which the dealer houses animals² in accordance with the provisions of this section,” including the installation and testing of fire detection and sprinkler systems. As drafted, the proposed legislation would only apply to pet dealer facilities housing dogs and cats and would not cover pet stores that are not required to be licensed, such as small animal pet stores that sell only birds, rabbits, and/or reptiles.³

¹ The proposed legislation would apply to “existing buildings and to buildings hereafter erected but shall not include buildings zoned residential.”

² The proposed legislation provides that the term “Animal” as used in the new section 408 shall have “the same meaning as ‘Companion Animal’ as defined in subdivision five of section three hundred fifty of this Chapter,” (which is defined as “any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. ‘Pet’ or ‘companion animal’ shall not include a ‘farm animal’ as defined in this section.” N.Y. AGRIC. & MKTS. LAW §350(5)). However, the term “Pet Dealer,” which is incorporated into the new section 408 and defined in Section 400(4), already incorporates a definition of the term “animal” as follows: “‘Animal’ means a dog or a cat.” See N.Y. AGRIC. & MKTS. LAW §400(1),(4).

³ Section 403 provides that “[n]o person shall operate as a pet dealer unless such person holds a license issued therefor by the commissioner.” N.Y. AGRIC. & MKTS. LAW § 403(1). The term “Pet Dealer” is defined to mean “any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals; provided that a breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeder’s residential premises shall not

The “fire protection measures” required by the bill include (1) the provision of “fire detection, fire alarm, and firefighting equipment, including an adequate number of fire extinguishers, appropriate to the type of building and animals occupying such buildings . . . in all retail and wholesale establishments utilized by a pet dealer to house animals;” which must be tested every six months, maintained in good working condition, and instructions for the functioning and operation of the equipment must be provided to staff; and (2) the implementation of “an electrically supervised automatic sprinkler system” in all portions of retail and wholesale establishments utilized to house animals as well as in the stairwell area and any means of egress, which must be tested every six months to certify that the systems are in good working condition. Written records of each inspection must be maintained by the pet dealer for three years. The bill also requires pet dealers to provide advanced notice to the fire department “if, for any reason, it becomes necessary to disconnect the source of current of any fire alarm system or the sprinkler system.”

The bill requires that the Commissioner of Agriculture and Markets promulgate rules, regulations and standards necessary to implement the provisions of the proposed legislation and would take effect on January 1, 2015, except that buildings in existence as of the effective date would have until January 1, 2017 to comply with the requirements. This grace period provides pet dealers with sufficient time to implement the required fire protection measures without placing an undue burden on the operation of their businesses. Additionally, the proposed law adds no additional or new penalties for its violation. If a pet dealer violates the law, the dealer is subject to the same standard penalties for violating *any* State law governing the care of animals by pet dealers: a discretionary fine (between \$50 and \$1,000)⁴ and revocation, suspension or denial of its pet dealer license.⁵

THE PROPOSED LEGISLATION ADVANCES BOTH ANIMAL WELFARE AND PUBLIC SAFETY

Fires in pet stores or in other areas where animals are confined can have tragic consequences both for the animals and the first responders. As noted in the sponsor’s justification memo, “[p]et stores can be particularly vulnerable to fire because many of the animals they house require the use of many electrical outputs and appliances, such as heat lamps, in proximity or right next to flammable materials (like shredded newspaper or sawdust) used for bedding or cage lining.” By requiring the implementation of fire detection and sprinkler systems, thousands of animals and

be considered a pet dealer as a result of selling or offering to sell such animals. Such definition shall further not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged.” N.Y. AGRIC. & MKTS. LAW § 400(4). The term “animal” as used in the definition of “pet dealer” is defined to mean “a dog or a cat.” N.Y. AGRIC. & MKTS. LAW § 400(1). Thus, persons selling animals other than dogs and cats are not required to be licensed under Section 403.

A list of licensed pet dealers is available on the Department of Agriculture and Markets’ Web site at <http://www.agriculture.ny.gov/petdealer/petdealerextract.asp> (last visited March 1, 2013).

⁴ N.Y. AGRIC. & MKTS. LAW § 406(2).

⁵ N.Y. AGRIC. & MKTS. LAW § 406(1).

humans may be saved from horrible injuries and deaths arising out of fires occurring in pet stores and other locations in which pet dealers house animals.

The risk of injury and death to people and animals is greatly exacerbated where, as is the case in New York, there is no requirement that pet stores and other locations where pet dealers house animals maintain fire mitigation systems like water sprinklers or automated alarms. For example, in 2010 firefighters risked their lives to save animals in a Queens pet store fire, which resulted in injuries to several firefighters and the deaths of a number of animals. More than 1,000 animals were killed in a pet store fire on Long Island in 2004. Two years earlier in 2002, more than 200 animals died in a pet store fire in Manhattan. As noted in the sponsor's justification memo, these fires have resulted in numerous deaths and injuries to people and animals, placing "firefighters, store employees, and civilians in harm's way as they rushed into pet stores to save yelping and crying animals from burning to death." Confined animals have no means to escape a fire, which renders fire safety standards critical to their well-being. Additionally, the lack of fire mitigation requirements, which might otherwise extinguish or control fires, creates more dangerous situations for first responders arriving on the scene to assist these animals as well as the employees, customers and other members of the public who may be in proximity to the fire.

We recommend passage of the proposed legislation because it remedies a material omission in Article 26-A of the Agriculture and Markets Law entitled "Care of Animals by Pet Dealers" which requires licensed pet dealers in New York to comply with minimum standards of care for dogs and cats in their possession, including facilities for housing such animals. These housing standards require specific lighting, flooring, ventilation, and temperature controls sufficient to keep the animals in good health, but make no mention of fire safety.⁶

The extension of this statute to encompass fire safety is both rational and necessary to effectuate the purpose of the statute. Other states have already enacted similar fire safety legislation.⁷

RECOMMENDATIONS

Although we support the proposed legislation in its current form, we recommend that it be expanded to cover all companion animals housed by pet stores. As drafted, the proposed legislation only applies to pet stores selling dogs and cats because it specifically applies only to "Pet Dealers," which by definition are persons engaged in the sale of dogs and cats. To achieve the proposed legislation's intended effect of requiring the implementation of fire protection measures by all pet stores housing or selling "companion animals" as that term is defined in Section 350(5) of the

⁶ When the Legislature enacted Article 26-A, it clearly intended to provide for the welfare and safety of the confined animals, and fire safety standards must be considered at least as important to the animals' safety as other enumerated protections. Article 26-A was recently amended to further raise the standards of care for dogs and cats by pet dealers and commercial breeding facilities with respect to the animals' exercise and veterinary care. *See* N.Y. AGRIC. & MKTS. LAW § 401(1)(b);(3). As stated in the sponsor's memo for A.972, this proposed legislation would "ensure that all premises that house animals for sale by a pet dealer provide appropriate fire protection measures to guard against the unnecessary endangerment or death of animals."

⁷ *See* CAL. HEALTH & SAFETY CODE § 122155 requiring pet dealers to maintain either (a) a fire system connected to a central reporting station that alerts the local fire department in case of fire or (b) a fire suppression sprinkler system.

Agriculture and Markets Law, the proposed legislation should be amended so as not to apply only to “Pet Dealers.”

Additionally, we note that Section 400-A of the Agriculture & Markets Law provides that all provisions of Article 26-A preempt local law. Some New York State municipalities maintain local laws and ordinances regarding fire safety which are more stringent than the New York State Fire Code, as permitted under N.Y. Exec. Law Sections 379 and 383(1)(c). Therefore, we recommend that the proposed legislation be amended to permit municipalities to enact local laws or ordinances imposing higher or more restrictive standards with respect to fire safety measures in pet housing facilities, notwithstanding section 400-A. Ideally, a municipality’s fire safety inspectors should be allowed to inspect for compliance with the fire safety provision. Therefore, we also recommend adding a provision that allows every local government and its authorized agents to inspect and order in writing the remedying of any fire safety provision in this section because section 405(2) of the Agriculture and Markets Law would authorize only some local governments to enforce.⁸ Also, section 405(3), requiring inspectors to be trained in the proper care of dogs and cats and the investigation and identification of cruelty to animals, should not apply to the enforcement of the fire safety provisions because it is unlikely that fire inspectors have such qualifications.

CONCLUSION

For all of these reasons, the Committee supports this proposed legislation.

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⁸ N.Y. EXEC. LAW § 382(a) authorizes local governments to enforce the Uniform Fire Prevention and Building Code.