



**NEW YORK  
CITY BAR**

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**TESTIMONY ON BEHALF OF  
THE ANIMAL LAW COMMITTEE  
REGARDING RESOLUTION NO. T2013-6368**

**NEW YORK CITY COUNCIL  
COMMITTEE ON HEALTH  
JUNE 7, 2013**

Good morning. My name is Martha Golar. I am here on behalf of the New York City Bar Association Committee on Animal Law. I appreciate this opportunity to express our support for Resolution No. T2013-6368, a resolution calling on the New York State Legislature to pass and the Governor to sign Assembly Bill No.740/Senate Bill No. 3753.

The state bill would amend section 407 of the Agriculture and Markets Law and section 753-d of the General Business Law to authorize municipalities to enact local laws, ordinances, and regulations governing pet dealers and concerning public health, safety, and consumer protection relating to the sale of dogs and cats by pet dealers, so long as the local law is consistent with and more stringent than the provisions of state law. The state bill would repeal section 400-a of the Agriculture and Markets Law and section 753-e of the General Business Law which expressly preempt municipalities from enacting consumer-protection laws relating to pet dealers. If a municipality enacts a more stringent law, the municipality would be responsible for its enforcement.

The state's current statutory scheme restricts the City from adequately protecting animals and consumers and results in confusing and unnecessarily complicated local regulations. The problem stems in part from a gap in state law—the Agriculture and Markets Law and General Business Law regulate only persons who sell dogs and cats. (State law defines a “pet dealer” as a person who sells or offers to sell more than nine dogs and/or cats to the public per year or a person who sells or offers to sell 25 or more dogs and/or cats from his/her residential premises.)

State law regulating pet dealers does not cover pet stores that sell other kinds of common pets such as birds, fish, rabbits, and reptiles. There are many pet stores in New York City that sell these kinds of animals.

In an apparent effort to fill that gap and to provide additional protection to consumers and animals, Article 161 of the New York City Health Code includes a permitting and regulatory scheme for pet stores. City-regulated pet stores are subject to requirements concerning training, sanitary conditions, self-inspections and record keeping, precautions concerning animals with communicable diseases, the provision of dog license applications, and animal housing. But due to state law preemption, persons who exclusively sell dogs and/or cats are exempt from the City's requirements.

The following examples illustrate how arbitrary the current regulatory scheme is in New York City: A consumer that buys a puppy from a pet shop in Queens that sells dogs exclusively is protected by state law. A consumer that buys a puppy from a pet shop in the same neighborhood that also sells pet birds is protected by state and local law. And a consumer that buys a parakeet from the store that sells dogs and birds is protected by local law only. There is no reason why consumers or animals should be treated so differently.

The regulation of pet stores falls squarely within the City's home rule authority to enact laws that concern "government, protection, order, conduct, safety, health and well-being of persons or property" in the municipality, including the "licensing of occupations." Indeed a number of other New York State laws concerning animals and consumer protection do not preempt municipalities from enacting more stringent local laws. For example, state law authorizes municipalities to enact laws concerning the operation of spay/neuter facilities, dogs running at large and their seizure, the licensing and requirements of process servers and the licensing and requirements of home improvement contractors.

For these reasons, the Animal Law Committee urges the City Council to pass the resolution.



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

**A.740-A  
S.3753-A**

**M. of A. Rosenthal  
Sen. Grisanti**

AN ACT to amend the agriculture and markets law and the general business law, in relation to the preemption of local laws; and to repeal section 400-a of the agriculture and markets law and section 753-e of the general business law relating thereto.

**THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS**

**SUMMARY OF THE PROPOSED LAW**

Assembly Bill No. 740-A/Senate Bill No. 3753-A would amend section 407 of the Agriculture and Markets Law and section 753-d of the General Business Law to authorize municipalities to enact local laws, ordinances, and regulations governing pet dealers and concerning public health, safety, and consumer protection relating to the sale of dogs and cats by pet dealers, so long as the local laws, ordinances, and regulations are consistent with and more stringent than the provisions of Article 26-A of the Agriculture and Markets Law (“Ag & Mkts Law”) and Article 35-D of the General Business Law (“GBL”). The proposed legislation would also repeal section 400-a of the Agriculture and Markets Law and section 753-e of the General Business Law which preempt municipalities from enacting laws relating to pet dealers.

The proposed legislation provides that such local laws, ordinances or regulations governing pet dealers may include restrictions or requirements concerning “the source of animals offered for sale by pet dealers, whether spaying or neutering of such animals is required before sale, and the health or safety of animals maintained by pet dealers.” However, such local laws, ordinances or regulations governing pet dealers may not “result in the banning of all sales of dogs or cats raised and maintained in a healthy and safe manner.” The penalty for the violation of any such local laws, ordinances or regulations governing pet dealers may not exceed a civil penalty of five hundred dollars. Under the proposed legislation, if a municipality enacts a more stringent local law, ordinance, or regulation, the municipality would be responsible for its enforcement.

**SUMMARY OF EXISTING LAW**

Article 26-A of the Ag & Mkts Law and Article 35-D of the GBL govern “pet dealers.” The law defines a “pet dealer” as a person who sells or offers to sell more than nine dogs and/or

cats to the public per year or a person who sells or offers to sell 25 or more dogs and/or cats from his/her residential premises.<sup>1</sup>

Article 26-A of the Ag & Mkts Law sets forth minimum standards of animal care, record-keeping requirements, license requirements for pet dealers, inspections by the New York State Department of Agriculture and Markets, and a schedule of violations. Section 401 of the Ag & Mkts Law includes requirements about animal housing, the pet dealer's facility, sanitation, feeding and watering, humane handling, veterinary care, and euthanasia. Article 35-D of the GBL also governs pet dealers and provides that consumers may return dogs and cats purchased from a pet dealer that are "unfit for purchase," requires a veterinary examination by the dealer, requires the dealer to disclose certain congenital conditions, requires the dealer to provide information to a purchaser of a dog or a cat, and provides for penalties.

Section 400-a of the Agriculture and Markets Law and section 753-e of the GBL expressly preempt municipalities from enacting laws regulating pet dealers.

### **THE COMMITTEE SUPPORTS THE PROPOSED LEGISLATION**

Only pet stores that sell dogs and cats are covered by Article 26-A of the Ag & Mkts Law and Article 35-D of the GBL. Businesses that sell other kinds of pets, such as birds, rabbits, fish, and reptiles, are not covered by Article 26-A of the Ag & Mkts Law and Article 35-D of the GBL.<sup>2</sup> Accordingly, the preemption provision of section 400-a of the Agriculture and Markets Law and section 753-e of the GBL only applies to pet dealers (i.e., pet stores that sell dogs and cats).

As a result of this regulatory scheme, New York State municipalities are limited in enacting local laws and regulations governing pet stores selling dogs and cats. This situation creates a hardship for municipalities, which may seek to enact more stringent rules or regulations based on local community needs. As noted in the sponsors' justification memo, "[i]n order to protect the health and safety of residents in their communities, municipalities should not be prohibited from enacting laws, rules, regulations, or ordinances governing pet dealers as long as such laws, rules, regulations or ordinances are not less stringent than state law."

Additionally, because the preemption language of section 400-a of the Agriculture and Markets Law and section 753-e of the GBL only applies to pet dealers and does not apply to businesses that sell animals other than dogs and cats, the existing regulatory scheme has also resulted in gaps and inconsistencies in the regulation of pet stores throughout the State. For example, to ensure that all kinds of animals sold as pets and the consumers who buy them are protected, New York City has attempted to create its own permitting scheme for pet shops. But because state law preempts the regulation of pet dealers who sell dogs and cats, New York City's Law includes an illogical exemption that requires pet shops to obtain a permit from the

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<sup>1</sup> Ag & Mkts Law § 400 and GBL § 752.

<sup>2</sup> A few state laws cover sales of certain other animals commonly kept as pets. Ag & Mkts Law section 354 covers the sale of baby chicks, ducklings, and fowl and baby rabbits under two months of age and GBL section 391-n requires that a seller of reptiles provide a notice to the buyer.

Commissioner of Health and Mental Hygiene unless the pet shop “exclusively sells dogs and cats and is regulated by Article 26-A of the Agriculture and Markets Law.”<sup>3</sup> City-regulated pet shops are subject to requirements concerning training,<sup>4</sup> sanitary conditions,<sup>5</sup> self-inspections and record keeping,<sup>6</sup> precautions concerning animals with communicable diseases,<sup>7</sup> the provision of dog license applications,<sup>8</sup> and animal housing.<sup>9</sup> As a result of the current regulatory scheme, a consumer that buys a puppy from a pet shop in Queens that sells dogs exclusively is protected by state law. A consumer that buys a puppy from a pet shop in the same neighborhood that also sells pet birds is protected by state and local law. And a consumer that buys a parakeet from the store that sells dogs and birds is protected by local law only.

By allowing municipalities to enact laws relating to pet dealers so long as such laws and regulations are consistent with and more stringent than the provisions of Article 26-A of the Ag & Mkts Law and Article 35-D of the GBL, the proposed legislation would prevent inconsistencies in regulation of pet stores and permit local municipalities to enact laws that best suit the needs of their local communities.

## **MUNICIPAL HOME RULE**

Municipalities have the authority to adopt local laws to the extent that they do not conflict with general laws and are not preempted by a state statute.<sup>10</sup> Specifically, under Municipal Home Rule Law (“MHRL”) section 10(1)(ii)(a)(12), municipalities may enact laws that concern “government, protection, order, conduct, safety, health and well-being of persons or property” in the municipality, including the “licensing of occupations.” The sale of animals and the licensing of pet sellers fit squarely into this authority. As noted in the sponsors’ justification memo, the proposed legislation “would make Article 26-A of the Agriculture and Markets Law consistent with many other animal related state laws . . . which do not preempt municipalities from enacting local laws, rules, regulations or ordinances pertaining to animals within their jurisdiction.” Indeed a number of other New York State laws concerning animals and consumer protection do not preempt municipalities from enacting more stringent local laws. For example, state law authorizes municipalities to enact local laws, ordinances, and regulations concerning the operation of spay/neuter facilities,<sup>11</sup> dogs running at large and their seizure,<sup>12</sup> the licensing

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<sup>3</sup> 24 RCNY § 161.09(a)(1).

<sup>4</sup> 24 RCNY § 161.09(f).

<sup>5</sup> 24 RCNY § 161.11.

<sup>6</sup> 24 RCNY § 161.13.

<sup>7</sup> 24 RCNY § 161.15(d).

<sup>8</sup> 24 RCNY § 161.15(b).

<sup>9</sup> 24 RCNY § 161.17.

<sup>10</sup> New York State Constitution Art. IX, § 2(c); MHRL § 10.

<sup>11</sup> Ag & Mkts Law § 116.

and requirements of process servers<sup>13</sup> and the licensing and requirements of home improvement contractors<sup>14</sup>.

## RECOMMENDATIONS

We note that following introduction, the proposed legislation was amended to provide that any local laws, ordinances or regulations governing pet dealers may not “result in the banning of all sales of dogs or cats raised and maintained in a healthy and safe manner.” We believe this language is unduly vague and subject to a number of different interpretations. First, we note that the phrase “raised and maintained in a healthy and safe manner” is not defined. Next, we note that the amendment appears to create conflicting requirements for local laws, ordinances and regulations governing pet dealers. For example, the proposed legislation specifically permits the enactment of local laws, ordinances or regulations requiring the spaying or neutering of animals prior to sale. Thus, such laws, ordinances or regulations may categorically ban all sales of any non-sterilized dog or cat notwithstanding whether such dog or cat was “raised and maintained in a healthy and safe manner.” However, such a situation may be interpreted to be in violation of the requirement that no such law, ordinance or regulation may “result in the banning of all sales of dogs or cats raised and maintained in a healthy and safe manner.”

Additionally, as noted above, New York State has a strong history of “home rule” laws. Recently, the Appellate Division upheld a New York State municipality’s right to enact a ban on hydraulic fracturing, noting that a municipality’s ban on certain industries or practices within a municipality may be a “reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole.” *Matter of Norse Energy Corp. v. Town of Dryden*, 2013 NY Slip Op. 03145, n.9 (May 2, 2013) (quoting *Matter of Gernatt Asphalt Prods. v. Town of Sardinia*, 87 NY2d 668, 681-82 (1996)). Similarly, we note that a municipality should not be barred from exercising its police powers to enact laws, regulations or ordinances, including with respect to a total ban on the sale of commercially bred dogs and cats within its jurisdiction, if it is a reasonable exercise of the municipality’s police powers.<sup>15</sup>

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<sup>12</sup> Ag & Mkts Law § 122.

<sup>13</sup> GBL § 89-jj.

<sup>14</sup> GBL § 775.

<sup>15</sup> We note that several municipalities in California, including Los Angeles, Irvine, Hermosa Beach and West Hollywood, have banned the sale of commercially bred animals in pet stores as a means to address the issue of pet overpopulation and the euthanasia of thousands of healthy animals each year in municipal shelters. These municipalities now only permit the sale of animals obtained from shelters, humane societies and registered rescue groups. See Cori Solomon, *Los Angeles bans the sale in pet stores of puppy mill pets*, Examiner.com, Nov. 1, 2012, available at <http://www.examiner.com/article/los-angeles-bans-the-sale-pet-stores-of-puppy-mill-pets> (last visited June 12, 2013); *Irvine bans retail pet sales, rodeos, some circuses*, Los Angeles Times, Oct. 12, 2011, available at <http://latimesblogs.latimes.com/lanow/2011/10/irvine-bans-retail-pet-sales-rodeos-some-circuses.html> (last visited June 12, 2013).

For these reasons we recommend that the amendment to the proposed legislation concerning the prohibition on the “banning of all sales of dogs or cats raised and maintained in a healthy and safe manner” be removed.

## **CONCLUSION**

For the foregoing reasons, the Committee supports the proposed legislation with the aforementioned recommendations.

June 2013