



NEW YORK
CITY BAR

COMMITTEE ON ANIMAL LAW

CHRISTINE L. MOTT
CHAIR
80 PINE STREET
NEW YORK, NY 10005
Phone: (212) 701-3015
Fax: (212) 378-2612
cmott@cahill.com

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LORI A. BARRETT
SECRETARY
876 LINCOLN PLACE, SUITE 9
BROOKLYN, NY 11213
Phone: (347) 770-2473
barrettlori@hotmail.com

Hon. Linda Rosenthal
New York State Assembly
Legislative Office Building 741
Albany, NY 12248

Hon. Joseph Addabbo
New York State Senate
Legislative Office Building 613
Albany, NY 12247

Re: A.738 / S.1922 - relates to the sale of birds by pet dealers when such birds have not yet been fully weaned

Dear Assembly Member Rosenthal and Senator Addabbo:

Thank you for sponsoring A.738 / S.1922, an act to amend the Agriculture and Markets Law in relation to the sale of birds by pet dealers. The Committee on Animal Law of the New York City Bar Association supports the intent of the law to protect unweaned baby birds and to protect consumers who may not know how to care properly for these birds. But while we applaud the initiative, we would like to alert you to an issue with the bill as it is now drafted.

As you know, the proposed bill amends section 402 of Article 26-A of the Agriculture and Markets Law (“Ag & Mkts Law”) to provide that no “pet dealer” shall sell a bird not fully weaned. The bill provides an exception if the pet dealer discloses that the bird is not fully weaned, provides training on hand-feeding, maintains records of the bird’s weight, and if the buyer agrees to weekly inspections and weigh-ins until the bird is fully weaned. The penalty for violating the law includes denial, revocation, suspension or refusal of renewal of a pet dealer license. Ag & Mkts Law § 406(1).

Unfortunately, as it is currently written, the bill would not apply to many bird sellers. In particular, the law would apply only to “pet dealers,” as defined in Ag & Mkts Law section 400(4). A “pet dealer” is any person who sells more than nine “animals” a year for profit. Ag & Mkts Law § 400(4). “Animal,” however, is defined as a dog or a cat - the definition does not

include birds. Ag & Mkts Law § 400(1). As drafted, then, the “pet dealers” subject to the bill would include bird sellers only if they also sell dogs or cats. Many, however, do not. Indeed, many of the most popular bird sellers in New York City and nearby would not be subject to the bill.¹

We therefore recommend an alternative approach - one that would keep the bill substantively the same but ensure that it applied to bird sellers generally. Specifically, rather than amend Article 26-A of the Ag & Mkts Law, the bill could instead add a new section to Article 26. Notably, the definition of “animal” in Article 26 is broader than in Article 26-A, covering “every living creature except a human being.” Ag & Mkts Law § 350(1). By adding a section to Article 26, the bill would cover bird sellers in general—not just those that sell dogs or cats. (The definition of “bird” in the new section could refer to the definition of “pet” and “companion animal” in Ag & Mkts Law 350(4) if the sponsors desire to exclude farmed birds from the protection of the proposed law.) As for the section’s placement within Article 26, we believe adding a new section after Ag & Mkts Law section 354, which pertains to the sale of chicks, ducklings or other fowl and baby rabbits, would provide the best notice to a potential seller.

Because a new section in Article 26 would no longer be limited to sellers with a pet dealer license, we would suggest adding to the bill three minor provisions regarding record-keeping and penalties. First, the bill could require that the seller provide a receipt to the buyer that includes the species and breed of the bird, the approximate date of birth and/or age of the bird, the weight of the bird on the date of sale, and the date of sale in addition to any other information required by law. Second, the bill could provide that a buyer who buys a bird not fully weaned - and executes the required written agreement to have the bird inspected and weighed - shall produce the pet bird for inspection and weighing by the seller at least once a week until the bird is fully weaned. Third, since the bill will no longer apply to just licensees, the bill could provide a penalty for a knowing violation of the provisions of this section.

As noted, this approach would keep the bill substantively the same. But we also suggest that you consider two other legislative approaches to protecting unweaned baby birds. One alternative approach would establish a fuller regulatory system. For instance, it would require that the person training the buyer in hand-feeding be skilled, provide a consumer remedy for buyers of unweaned birds, and delay the effective date to 120 days after enactment to provide adequate time for bird sellers to prepare, because many popular bird species are not fully weaned for 16 weeks (some take even longer to wean). The other alternative approach would ban the sale of unweaned baby birds altogether. Notably, California did so in 2004 - a bill applauded by animal welfare advocates nationwide.

We have drafted the attached alternative bill language to address all three of our suggested approaches: Bill Proposal #1 is an expanded version of the current legislation, Bill Proposal #2 includes the fuller regulatory system and Bill Proposal #3 would ban the sale of unweaned birds. Once again, we commend your initiative in sponsoring A.738 / S.1922.

¹ See New York State Licensed Pet Dealers, <http://www.agriculture.ny.gov/petdealer/petdealerextract.asp>. (Last visited March 15, 2013).

Thank you for considering our recommendations. If you have questions about our analysis or our bills, please contact Committee members Lori Barrett (347-770-2473 or barrettlori@hotmail.com) or Christopher Wlach (cwlach@gmail.com).

Sincerely,

A handwritten signature in cursive script, appearing to read 'C. Mott', written in dark ink.

Christine L. Mott, Chair
Committee on Animal Law

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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

ANIMAL LAW COMMITTEE UNWEANED BIRD BILL PROPOSAL #1

STATE OF NEW YORK

2013-2014 Regular Sessions

AN ACT to amend the agriculture and markets law, in relation to the sale of baby pet birds.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Title 26 of the agriculture and markets law is amended to add a new section
2 354-a to read as follows:

3 Section 354-a. (1) No person shall sell any pet bird at retail that has not been fully
4 weaned; provided, however, that a person may sell a pet bird at retail that has not been
5 fully weaned if:

6 (A) The seller discloses to the buyer in writing that the bird is not fully
7 weaned;

8 (B) The seller provides a receipt to the buyer that includes the species and
9 breed of the bird, the approximate date of birth and/or age of the bird, the weight
10 of the bird on the date of sale, and the date of sale in addition to any other
11 information required by law;

12 (C) The seller provides training to the buyer on the proper hand-feeding of
13 the bird or the buyer has demonstrated the proper hand-feeding technique to the
14 seller; and

15 (D) The buyer executes a written agreement to produce the bird for
16 inspection and weighing by the seller at least once a week during the seller's
17 regular business hours until such bird is fully weaned.

18 (2) The seller shall weigh and inspect a pet bird subject to subdivision (1) of this
19 section when it is produced by the buyer until such bird is fully weaned.

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1 (3) No buyer who executes a written agreement pursuant paragraph (D) of
2 subdivision (1) of this section shall fail to produce the pet bird for inspection and
3 weighing by the seller at least once a week until such bird is fully weaned.

4 (4) “Weaned” means that the pet bird does not require hand-feeding or feeding by
5 another bird to sustain at least 90% of its weight on the date of sale.

6 (5) “Hand-feeding” means the process by which a pet bird is manually fed by a
7 human being through the use of hand, spoon, or oral gavage.

8 (6) Any person who knowingly violates subdivisions (1) or (2) of this section
9 shall be guilty of a violation, punishable by a fine of not less than one hundred dollars
10 and no more than two hundred fifty dollars.

11 §2. This act shall take effect on the sixtieth day after it shall have become a law.

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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

ANIMAL LAW COMMITTEE UNWEANED BIRD BILL PROPOSAL #2

STATE OF NEW YORK

2013-2014 Regular Sessions

AN ACT to amend the agriculture and markets law and general business law, in relation to the sale of baby pet birds.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Title 26 of the agriculture and markets law is amended to add a new section
2 354-a to read as follows:

3 Section 354-a. (1) Definitions. As used in this section:

4 (A) "Hand-feeding" means the process by which a pet bird is manually fed
5 by a human being through the use of a hand, spoon, or oral gavage.

6 (B) "Person" means an individual, firm, partnership, association or
7 corporation, not including incorporated societies for the prevention of cruelty to
8 animals and incorporated humane societies dedicated to the care of unwanted
9 animals.

10 (C) "Weaned" means that the pet bird does not require hand-feeding or
11 feeding by another bird to sustain at least 90% of its weight on the date of sale.

12 (2) No person shall sell any pet bird at retail that has not been fully weaned;
13 provided, however, that a person may sell a pet bird at retail that has not been fully
14 weaned if:

15 (A) The seller discloses to the buyer in writing that the bird is not fully
16 weaned;

17 (B) The seller provides a receipt to the buyer that includes the species and
18 breed of the bird, the approximate date of birth and/or age of the bird, the weight
19 of the bird on the date of sale, and the date of sale in addition to any other
20 information required by law;

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1 (C) The seller provides training to the buyer on the proper hand-feeding of
2 the bird or the buyer has demonstrated the proper hand-feeding technique to the
3 seller; and

4 (D) The buyer executes a written agreement to produce the bird for
5 examination and weighing by the seller at least once a week until such bird is
6 fully weaned.

7 (3) The seller shall weigh and examine a pet bird subject to subdivision (2) of this
8 section when it is produced by the buyer until such bird is fully weaned.

9 (4) No buyer who executes a written agreement pursuant to paragraph (D) of
10 subdivision (2) of this section shall fail to produce the pet bird for inspection and
11 weighing by the seller at least once a week until such bird is fully weaned.

12 (5) Any person who provides training to a buyer pursuant to paragraph (C) of
13 subdivision (2) of this section must be skilled in the proper hand-feeding of a bird that is
14 not fully weaned.

15 (6) Any person who knowingly violates subdivisions (2), (3) or (5) of this section
16 shall be guilty of a violation, punishable by a fine of not less than one hundred dollars
17 and no more than two hundred fifty dollars.

18 § 2. Article 26 of the general business law is amended to add a new section 391-s to read
19 as follows:

20 (1) Definitions. As used in this section:

21 (A) “Person” means an individual, firm, partnership, association or
22 corporation.

23 (B) “Pet bird” means any bird normally maintained in or near the
24 household of the owner or person who cares for such bird and does not include
25 any “farm animal” defined in section 350(4) of the agriculture and markets law.

26 (C) “Seller” means a person who sells a pet bird at retail not including
27 societies for the prevention of cruelty to animals and incorporated humane
28 societies dedicated to the care of unwanted animals.

29 (D) “Consumer” means a person who buys a pet bird from a seller at
30 retail.

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1 (E) “Weaned” means that a pet bird does not require hand-feeding or
2 feeding by another bird to sustain at least 90% of its weight on the date of sale.

3 (2) No person shall sell any pet bird at retail that has not been fully weaned;
4 provided, however, that a person may sell a pet bird at retail that has not been fully
5 weaned if such sale complies with section 354-a of the agriculture and markets law.

6 (3) If, after a consumer has purchased a pet bird that has not been fully weaned, a
7 veterinarian licensed pursuant to article 135 of the education law and selected by the
8 consumer certifies that the pet bird is ill before the pet bird is fully weaned, the seller
9 shall allow the consumer a choice of one of the following options:

10 (A) The right to return the pet bird and receive a refund of the purchase
11 price, including sales tax and reasonable veterinary costs directly related to the
12 veterinarian's certification that the pet bird is ill; or

13 (B) The right to retain the pet bird and to receive reimbursement from the
14 seller for veterinary services from a licensed veterinarian of the consumer's
15 choosing, for the reasonable costs of curing or attempting to cure the pet bird. The
16 seller shall not be required to reimburse the consumer for veterinary services
17 exceeding the purchase price of the pet bird. The cost of such services is
18 reasonable if comparable to the value of similar services rendered by other
19 licensed veterinarians in proximity to the treating veterinarian. Such
20 reimbursement shall not include the costs of initial veterinary examination fees
21 and diagnostic fees not directly related to the veterinarian's certification that the
22 bird is ill.

23 (4) A consumer waives the right to refund or reimbursement pursuant to
24 subdivision (3) of this section if he or she fails to produce the pet bird for inspection and
25 weighing by the seller at least once a week until such bird is fully weaned pursuant to
26 subdivision (4) of section 354-a of the agriculture and markets law.

27 (5) The refund and/or reimbursement required by subdivision (3) of this section
28 shall be made by the seller not later than ten business days following receipt of a signed
29 veterinary certification. Such certification shall be presented to the seller not later than
30 three business days following the veterinarian's examination of the bird.

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1 (6) If the seller wishes to contest a demand for refund or reimbursement made
2 pursuant to this section, the seller may require the consumer to produce the bird for
3 examination by a licensed veterinarian designated by such seller. Upon such examination,
4 if the consumer and the dealer are unable to reach an agreement which constitutes one of
5 the options set forth in subdivision (3) of this section within ten business days following
6 receipt of the bird for such examination, the consumer may initiate an action in a court of
7 competent jurisdiction to recover or obtain such refund and/or reimbursement.

8 (7) Nothing in this section shall in any way limit the rights or remedies which are
9 otherwise available to a consumer under any other law.

10 (8) Any seller who sells a bird that is not fully weaned shall post a notice clearly
11 visible to the consumer and provide the consumer at the time of sale with a written notice
12 setting forth the rights provided under this section. Such notices shall be prescribed by
13 the commissioner, but the written notice may be contained in a written contract, an
14 animal history certificate or separate document, provided such notices are in ten-point or
15 larger boldface type.

16 (9) Any seller who violates subdivisions (2), (3), (5) or (8) of this section shall be
17 subject to a fine of not less than one hundred dollars to no more than two hundred fifty
18 dollars.

19 (10) This section may be enforced concurrently by the attorney general, the
20 director of a municipal consumer affairs office, the town attorney, or city corporation
21 counsel.

22 § 3. This act shall take effect on the one-hundred twentieth day after it shall have become
23 a law.



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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

ANIMAL LAW COMMITTEE UNWEANED BIRD BILL PROPOSAL #3

STATE OF NEW YORK

2013-2014 Regular Sessions

AN ACT to amend the agriculture and markets law and general business law, in relation to the sale of baby pet birds.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Title 26 of the agriculture and markets law is amended to add a new section
2 354-a to read as follows:

3 Section 354-a. (1) No person shall sell any pet bird at retail that has not been fully
4 weaned.

5 (2) “Weaned” means that the pet bird does not require hand-feeding or feeding by
6 another bird to sustain at least 90% of its weight on the date of sale.

7 (3) Any person who knowingly violates subdivision (1) of this section shall be
8 guilty of a violation, punishable by a fine of not less than one hundred dollars and no
9 more than two hundred fifty dollars.

10 § 2. This act shall take effect one year after it shall have become a law.