

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals and the Law #10

May 22, 2014

S. 4822

By: Senator LaValle

A. 3952

By: M. of A. Glick

Senate Committee: Insurance

Assembly Committee: Insurance

Effective Date: 90 days after it shall have become a law

AN ACT to amend the insurance law, in relation to prohibiting insurers from canceling, refusing to issue or renew, or charging higher premiums for homeowners' insurance based on the breed of dog owned.

SECTION AND LAW REFERRED TO: The Insurance Law is amended to add a new Section 3421 entitled "Homeowners' Liability Insurance; Dogs." Subdivision 1 of the new section prevents insurers that issue homeowners' policies in the state from canceling, refusing to issue or renew, or charging an increased premium for such policy based solely upon an applicant's or policyholder's harboring or owning a particular breed of dog or mixed breed of dog. Subdivision 2 of the new section sets forth the parameters and limitations of the new law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

S.4822/A.3952 amends the Insurance Law by adding a new section prohibiting insurers that issue homeowners' policies from using the breed of a dog (whether a full breed or as part of a mixed breed) as the sole criteria for deciding whether to write a policy, renew a policy, cancel a policy or charge an increased premium for a policy. Current New York State law (section 107(5) of the Agriculture and Markets Law) prohibits breed discrimination by providing that no state or local legislation may be passed which focuses exclusively upon a particular breed of dog. Accordingly, no state or local agency or legislative body may prohibit residents from harboring or owning a particular breed of dog; each dog must be judged independently, based upon its own temperament and behavior, regardless of its breed.

This legislation would simply extend the existing prohibition against breed discrimination to insurance companies which issue homeowners' policies in New York. It will become illegal for such insurers to decide, solely based upon applicant's or policy

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holder's ownership of or harboring of a dog of a particular breed, whether to issue, renew or cancel policies, or to make their premium determinations based solely upon that criteria. The result is that insurers will be prevented from making across-the-board decisions based upon a dog species classification, and they will be required to evaluate applicants or policy holders and their resident dogs, whatever breeds they may be, on an individual basis, and underwrite the risk accord to actual loss experience related to the dog.

The sponsors note that many of the dog breeds cited by insurance companies as grounds for their refusal to issue or renew policies or to justify charging higher premiums for liability coverage often are the same breeds which may assist in preventing theft caused by would-be burglars, eliminating the insurance theft claims that would result. So, while an insurance company may potentially benefit from the presence of a particular breed of dog in reducing burglaries, it may also seek to charge a higher liability premium simply based upon the presence of such dog. The inherent paradox of this situation is obvious.

Not so obvious, however, is the disproportionate impact upon financially distressed homeowners by breed discrimination in homeowners' insurance. Not all homeowners with those breeds of dogs will have the resources to finance a premium increase, or to do the research necessary to find an insurer willing to issue a policy at a reasonable premium. By contrast, people with more substantial financial resources are much less likely to be faced with the heart wrenching choice of getting rid of a family pet because an insurer wishes to increase a policy premium, or refuses to write a policy. This bill would eliminate a practice that disproportionately impacts individuals with fewer financial resources.

It is important to note that this legislation does not seek to inject the state into insurance companies' underwriting of particular risks; to the contrary, it allows insurers latitude in evaluating insurance for such risks. It does so by stating that the harboring of a particular breed of dog cannot be the *sole* (emphasis added) basis for its underwriting decisions. Furthermore, subsection 2 of the legislation specifies that an insurer is not prohibited from canceling, refusing to issue or renew or increasing premiums for the household in which a resident dog *of any breed* (emphasis added) has been found to be a dangerous dog under the provisions of section 123 of the Agriculture and Markets Law. It also specifically reserves to the insurance companies the use of sound underwriting and actuarial principles reasonably related to actual losses or loss experience. This legislation strikes a reasonable balance between insurers' underwriting autonomy and the ill-effects of insurance companies treating all dogs of certain breeds as bad dogs and punishing all who live with them.

Finally, this law would have no fiscal implications.

This law becomes effective 90 days after passage, thereby impacting all homeowners' insurance policies issued after that date.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation.

Chair of the Committee: Amy L. Chaitoff, Esq.