

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #24

July 6, 2020

S. 7924

By: Senator Martinez

A. 723

By: M. of A. Glick

Senate Committee: Insurance

Assembly Committee: Codes

Effective Date: 90th day 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.

LAW & SECTION REFERRED TO: The Insurance Law is amended by adding a new Section 3421 entitled "Homeowners' Liability Insurance; Dogs."

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

S.7924 / A.723 would add a new Section 3421 to the Insurance Law 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 to charge an increased premium for a policy. Subdivision 1 of the new section would prevent 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 or mixed breed of dog. Subdivision 2 of the new section would set forth the parameters and limitations of the new law pertaining specifically to the application of this new law to "dangerous dogs" of all breeds as defined under current New York Agriculture and Markets Law, section 123.

Current New York State law (Section 107(5) of the Agriculture and Markets Law) already prohibits breed discrimination by state or local statute. It provides 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. Under existing New York State law, each dog must be judged independently, based upon its own temperament and behavior, regardless of its breed.

Banning ownership of a particular breed of dog is illegal under current New York State law. However, currently that is the practical effect if an owner of a particular breed of dog cannot obtain homeowner's insurance (which is required for any home with a mortgage) or cannot afford an increased premium for such insurance. That person is banned from owning a dog of that breed. This legislation would resolve that problem by extending the existing prohibition against breed discrimination to insurance companies that issue homeowners' policies in New York.

This legislation will make it illegal for such insurers, based solely upon an applicant's or policy holder's ownership of or harboring of a dog of a particular breed, to make their premium determinations or to decide whether to issue, renew or cancel policies. In sum, insurers will be prevented from making across-the-board decisions based upon a dog species classification. Instead, they will be required to evaluate applicants or policy holders and their resident dogs, whatever breeds they may be, on an individual basis, and to underwrite the risk according to actual loss experience related to the dog. Such an approach is in accordance with sound underwriting principles.

The bill's sponsors note that many of the dog breeds frequently cited by insurance companies when they refuse to issue or renew policies, or to justify charging higher premiums for liability coverage, often are the same (large) breeds which may assist in preventing theft caused by would-be burglars, thereby eliminating the insurance 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 currently also seek to charge a higher liability premium simply based upon the presence of such dog. The inherent paradox of this situation is obvious.

However, not as readily apparent is the disproportionate impact upon financially distressed homeowners posed by breed discrimination in homeowners' insurance. Not all homeowners with those breeds of dogs will have the resources needed to finance a premium increase or to do the research necessary to find an insurer willing to issue a policy at a reasonable premium. Those owners may be forced to sell, give away or surrender the family pet to a shelter if they cannot afford the increased insurance cost. By contrast, people with more substantial financial resources are much less likely to be forced to face the heart wrenching decision 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. This legislation simply states that the harboring of a particular breed of dog cannot be the *sole* (emphasis added) basis for its underwriting decisions. Furthermore, subdivision two of the legislation specifically reserves insurers' latitude to cancel, refuse to issue or renew or to increase 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 with a particular dog. As such, it strikes a reasonable balance between insurers' underwriting autonomy and the various ill effects of insurance companies treating all dogs of certain breeds as "bad dogs" and punishing the people who live with them.

For the foregoing reasons, the NYSBA's Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.