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COMMITTEE ON ANIMALS AND THE LAW

Memorandum in Opposition

Animals #31 April 27, 2026

S.3073-A
A.2555-A

By: Senator Gianaris
By: M. of A. McDonald
Senate Committee: Agriculture
Assembly Committee: Agriculture
Effective Date: 120 days after enactment

AN ACT to amend the agriculture and markets law, in relation to establishing a civil remedy for the protection of companion animals denied proper care

LAW AND SECTION REFERRED TO: Agriculture and Markets Law, new Article 26-D

THE COMMITTEE ON ANIMALS AND THE LAW

OPPOSES THIS LEGISLATION

S.3073-A/A.2555-A adds a new article 26-D of the Agriculture and Markets Law that proposes a civil process for forfeiture of a companion animal that a supreme court judge has deemed "mistreated or not properly cared for." While the Committee agrees with the intent of this bill – to ensure that animals do not languish in shelters pending the outcome of a lengthy trial, and to reduce the attendant costs of sheltering the animals - we are concerned that the bill as currently written strips owners of fundamental due process protections under the Fourteenth Amendment and the New York State Constitution, as well as search and seizure protections under the Fourth Amendment and the New York State Constitution.

In its current form, the legislation allows an "authorized agent" who is "any police officer or officer of a duly incorporated society for the prevention of cruelty to animals" who has "reason to believe" that a companion animal has been "mistreated" or "not properly cared for" to notify the owner or caretaker of their duty to provide care "at the owner or caretaker's expense" and "within a time period determined by such authorized agent's discretion." The authorized agent is allowed to petition the court for an *ex parte* emergency care and inspection order if the owner fails to provide care within the period determined by the authorized agent. An "animal care hearing" is scheduled on a mere five days' notice to the owner, without a requirement for personal service, and can result in a court's determination that the companion animal must be immediately forfeited because the owner or caretaker was "unable or unwilling" to provide adequate care and the companion animal was "mistreated or not properly cared for." The order of forfeiture allows the authorized agent to

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deliver the companion animal to an impounding organization, also known as a municipal animal shelter, for "adoption or other disposition." "Other disposition" can mean euthanasia.

Absolutely none of the critical terms are defined in any manner. Thus, "not properly cared for" could equate to not taking an animal for a veterinary visit for an extended period of time, even though the animal is healthy. It could mean that it is a neighbor's opinion that a dog is not "walked" enough. It could mean that an owner of a dog with separation anxiety, who barks or yelps during the day, could be accused of beating the dog. The definition or interpretation of "not properly cared for" is vague and limitless and leaves the door open for someone to lose their animal based on a false or exaggerated accusation.

The proposed bill provides for no due process for the accused, and ignores the possibility of false or exaggerated accusations that can be made by virtually anyone, but yet, such an accusation could constitute an "authorized agent" having "reason to believe" there was "mistreatment," if they receive such an accusation. The authorized agent then has tremendous power and control to petition the court, *ex parte*, to have the animal seized within a mere five days.

The notice provisions are lacking, as personal service with respect to the *ex parte* hearing request is not required. There are no guidelines for the court as to what "reason to believe that an animal is mistreated" means. There are no requirements for a licensed veterinarian, or other qualified expert, opinion to be required evidence with respect to an animal's actual condition. The standard of proof is a mere "preponderance of evidence," as opposed to at least "clear and convincing" evidence.

The bill actually prevents an owner who is accused under this statute from giving the animal to a family member or friend to care for pending proceedings. The bill prevents an owner from finding alternate housing pending an appeal. In other words, the bill will force an animal into a shelter environment even if a better alternative is readily available.

Although the owner is provided "the right to a full defense including, but not limited to, the right to cross-examine witnesses and to present witnesses and evidence," this clause is unrealistic, as an owner/caretaker with limited financial resources may not be able to afford an attorney to present a defense in the matter, and they are likely ill-equipped to represent themselves. Moreover, since this is a civil and not a criminal matter, the accused would not be provided with an attorney. Even for someone with financial means, they may not be able to retain an attorney in such a short, limited time period. Moreover, the bill requires the posting of bonds, which the financially challenged will not be able to do.

The bill has no provision for a situation that can be rectified with education or financial assistance. It fails to recognize that some animal owners may have no malice in their hearts, but mental health issues. The bill fails to take into account the existing overwhelming overpopulation of unwanted animals already languishing in shelters, some for years, that already exists. It fails to take into

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account that animals are euthanized in kill shelters regularly due to a shortage of space. It fails to take into account that sometimes accusations are not warranted. If there is any chance of keeping an animal in his or her home, and educating and helping the owner, then that should be the first option. This bill absolutely does not provide for that.

There are also procedural gaps in the bill. For example, the bill discusses the options available to the court if it finds that an owner/caretaker "has provided and will continue to provide adequate care," and makes reference to an "order to provide care," but there is no provision allowing a court to issue such an order until the sufficiency of care has been determined. Thus, there is a substantial gap in the procedural process set forth in this proposed bill.

The bill fails to distinguish between an owner who is "unable" and an owner who is "unwilling" to care for a companion animal, and that is a profound difference; it does not provide for an owner to be rehabilitated where lack of education, finances or mental health issues may have contributed to the situation. It fails to consider the human-animal bond and the importance of preserving that relationship, particularly in view of the increasing crisis of animal overpopulation and homelessness and lack of shelter resources. The bill affords far too much discretion to judges who may have no experience with animal care or no knowledge of the animal crisis, and who may not realize the importance or the human-animal bond.

Moreover, the bill gives far too much power and control to authorized agents, and the possibility of human error in these determinations is far too great. It unfairly impacts pet owners and caretakers who lack financial security and cannot obtain assigned counsel to represent them. That said, the bill unfairly impacts all pet owners because of the lack of due process.

We agree that the system is flawed, but this bill is not the answer.

For all of the foregoing reasons, and many others, the New York State Bar Association Committee on Animals and the Law OPPOSES this proposed legislation.

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