
STATE OF NEW YORK
Department of
AGRICULTURE AND MARKETS
Albany, New York 12235

ARTICLE 26-A
of the Agriculture & Markets Law
Relating to
CARE OF ANIMALS BY PET DEALERS

DIVISION OF ANIMAL INDUSTRY

Amended August 2017

**ARTICLE 26-A
CARE OF ANIMALS BY PET DEALERS**

Section 400. Definitions

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§ 400. Definitions.

- 1. "Animal" means a dog or a cat.
- 2. "Consumer" means any individual purchasing an animal from a pet dealer. A pet dealer shall not be considered a consumer.
- 3. "Person" means any individual, corporation, partnership, association, municipality, or other legal entity.
- * 4. "Pet Dealer" means any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals; provided that a breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeder's residential premises shall not be considered a pet dealer as a result of selling or offering to sell such animals. Such definition shall further not include duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption whether or not a fee for such adoption is charged.

*** NB Effective until November 12, 2017**

- * 4. "Pet Dealer" means any person who engages in the sale or offering for sale of more than nine animals per year for profit to the public. Such definition shall include breeders who sell or offer to sell animals; provided that it shall not include the following:
 - (a) Any breeder who sells or offers to sell directly to the consumer fewer than twenty-five animals per year that are born and raised on the breeder's residential premises;

(b) Any municipal pound or shelter dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged, established and maintained pursuant to subdivision one of section one hundred fourteen of this chapter; and

(c) Any duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society, duly incorporated animal protective association or other duly incorporated animal adoption or animal rescue organization dedicated to the care of unwanted animals which makes such animals available for adoption whether or not a fee for such adoption is charged that is exempt from taxes pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended, that is registered with the department pursuant to section four hundred eight of this article.

§ 401. Minimum standards of animal care. Pet dealers shall comply with the following minimum standards of care for every animal in their custody or possession.

1. Housing. (a) Animals shall be housed in primary enclosures or cages, which shall be constructed so as to be structurally sound. Such enclosures shall be maintained in good repair to contain the animal housed inside and protect it from injury. Surfaces shall have an impervious surface so as not to permit the absorption of fluids and which can be thoroughly and repeatedly cleaned and disinfected without retaining odors.

(b) Primary enclosures or cages housing the animals shall provide sufficient space to allow each animal adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around, and lie down with its limbs outstretched. If the flooring is constructed of metal strands, such strands must either be greater than one-eighth inch in diameter (nine gauge wire) or shall be coated with a material such as plastic or fiberglass, and shall be constructed so as not to allow passage of the animal's feet through any opening in the floor of the enclosure. Such flooring shall not sag or bend substantially between structural supports.

(c) Housing facilities shall be adequately ventilated at all times to provide for the health and well-being of the animal. Ventilation shall be provided by natural or mechanical means, such as windows, vents, fans, or air conditioners. Ventilation shall be established to minimize drafts, odors, and moisture condensation.

(d) The temperature surrounding the animal shall be compatible with the health and well-being of the animal. Temperature shall be regulated by heating and cooling to sufficiently protect each animal from extremes of temperature and shall not be permitted to fall below or rise above ranges which would pose a health hazard to the animal. This shall include supplying shade from sunlight by natural or artificial means.

(e) The indoor facilities housing the animals shall be provided with adequate lighting sufficient to permit routine inspection and cleaning and be arranged so that each animal

is protected from excessive illumination which poses a health hazard to the animal.

(f) The indoor and outdoor facilities housing the animals, including the primary enclosure or cage, shall be designed to allow for the efficient elimination of animal waste and water in order to keep the animal dry and prevent the animal from coming into contact with these substances. If drains are used they shall be constructed in a manner to minimize foul odors and backup of sewage. If a drainage system is used it shall comply with federal, state, and local laws relating to pollution control.

(g) In the event that a pet dealer has a pregnant or nursing dog on his or her premises, the pet dealer shall provide a whelping box for such dog.

(h) Pet dealers shall designate and provide an isolation area for animals that exhibit symptoms of contagious disease or illness. The location of such designated area must be such as to prevent or reduce the spread of disease to healthy animals.

2. Sanitation. Housing facilities, including primary enclosures and cages, shall be kept in a clean condition in order to maintain a healthy environment for the animal. This shall include removing and destroying any agents injurious to the health of the animal and periodic cleanings. The primary enclosure or cage shall be constructed so as to eliminate excess water, excretions, and waste material. Under no circumstances shall the animal remain inside the primary enclosure or cage while it is being cleaned with sterilizing agents or agents toxic to animals or cleaned in a manner likely to threaten the health and safety of the animal. Trash and waste products on the premises shall be properly contained and disposed of so as to minimize the risks of disease, contamination, and vermin.

3. Feeding and watering. (a) Animals shall be provided with wholesome and palatable food, free from contamination and of nutritional value sufficient to maintain each animal in good health.

(b) Animals shall be adequately fed at intervals not to exceed twelve hours or at least twice in any twenty-four hour period in quantities appropriate for the animal species and age, unless determined otherwise by and under the direction of a duly licensed veterinarian.

(c) Food receptacles shall be provided in sufficient number, of adequate size, and so located as to enable each animal in the primary enclosure or cage to be supplied with an adequate amount of food.

(d) Animals shall be provided with regular access to clean, fresh water, supplied in a sanitary manner sufficient for its needs, except when there are instructions from a duly licensed veterinarian to withhold water for medical reasons.

4. Handling. Each animal shall be handled in a humane manner so as not to cause the animal physical injury or harm.

5. Veterinary care. (a) Any pet dealer duly licensed pursuant to this article shall designate an attending veterinarian, who shall provide veterinary care to the dealer's animals which shall include a written program of veterinary care and regular visits to the pet dealer's premises. Such program of veterinary care shall include:

(i) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this article;

(ii) The use of methods determined to be appropriate by the attending veterinarian to prevent, control, and respond to diseases and injuries, and the availability of emergency, weekend, and holiday care;

(iii) Daily observation of all animals to assess their health and well-being; provided, however, that daily observation of animals may be accomplished by someone other than the attending veterinarian who has received the guidance identified in subparagraph (iv) of this paragraph; and provided, further, that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(iv) Adequate guidance to personnel involved in the care and use of animals regarding handling and immobilization; and

(v) Pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

(b) All animals shall be inoculated as required by state or local law. Veterinary care appropriate to the species shall be provided without undue delay when necessary. Each animal shall be observed each day by the pet dealer or by a person working under the pet dealer's supervision.

(c) Within five business days of receipt, but prior to sale of any dog or cat, the pet dealer shall have a duly licensed veterinarian conduct an examination and tests appropriate to the age and breed to determine if the animal has any medical conditions apparent at the time of the examination that adversely affect the health of the animal. For animals eighteen months of age or older, such examination shall include a diagnosis of any congenital conditions that adversely affect the health of the animal. Any animal diagnosed with a contagious disease shall be treated and caged separately from healthy animals.

(d) If an animal suffers from a congenital or hereditary condition, disease, or illness which, in the professional opinion of the pet dealer's veterinarian, requires euthanasia, the veterinarian shall humanely euthanize such animal without undue delay.

(e) In the event an animal is returned to a pet dealer due to a congenital or hereditary

condition, illness, or disease requiring veterinary care, the pet dealer shall, without undue delay, provide the animal with proper veterinary care.

6. Humane euthanasia. Humane euthanasia of an animal shall be carried out in accordance with section three hundred seventy-four of this chapter.

7. Exercise requirements. Pet dealers shall develop, maintain, document, and implement an appropriate plan to provide dogs with the opportunity for daily exercise. In developing such plan, consideration should be given to providing positive physical contact with humans that encourages exercise through play or other similar activities. Such plan shall be approved by the attending veterinarian, and must be made available to the department upon request.

§ 402. Records of purchase and sale. Each pet dealer shall keep and maintain records for each animal purchased, acquired, held, sold, or otherwise disposed of. The records shall include the following:

1. The name and address of the person from whom each animal was acquired. If the person from whom the animal was obtained is a dealer licensed by the United States department of agriculture, the person's name, address, and federal dealer identification number. If the person from whom the animal was obtained is a dealer licensed by the department, the person's name, address, and state dealer identification number. In the case of cats, if a cat is placed in the custody or possession of the pet dealer and the source of origin is unknown, the pet dealer shall state the source of origin as unknown, accompanied by the date, time, and location of receipt. Notwithstanding the provisions of this subdivision, no pet dealer shall knowingly buy, sell, exhibit, transport, or offer for sale, exhibition, or transportation any stolen animal. No pet dealer shall knowingly sell any cat or dog younger than eight weeks of age.

2. The original source of each animal if different than the person recorded in subdivision one of this section.

3. The date each animal was acquired.

4. A description of each animal showing age, color, markings, sex, breed, and any inoculation, worming, or other veterinary treatment or medication information available. Records shall also include any other significant identification, if known, for each animal, including any official tag number, tattoo, or implant.

5. The name and address of the person to whom any animal is sold, given, or bartered or to whom it is otherwise transferred or delivered. The records shall indicate the date and method of disposition.

6. Records for each animal shall be maintained for a period of two years from the date of sale or transfer, whichever occurs later. During normal business hours, the records

shall be made available to persons authorized by law to enforce the provisions of this article.

§ 403. Licenses. 1. No person shall operate as a pet dealer unless such person holds a license issued therefor by the commissioner. Notwithstanding the foregoing, a pet dealer, in operation on or before the effective date of this section, who has filed an application for an initial license under this article shall be authorized to operate without such license until the commissioner grants or, after notice and opportunity to be heard, declines to grant such license. Each application for a license shall be made on a form supplied by the department and shall contain such information as may be required by the department. Renewal applications shall be submitted to the commissioner at least thirty days prior to the commencement of the next license year.

2. The commissioner may delegate his or her authority pursuant to this section to issue pet dealer licenses to the county or city where the pet dealer seeking licensure is located. Such delegation shall be pursuant to an agreement entered into by the commissioner and such city or county.

3. Each application for a license shall be accompanied by a nonrefundable fee of one hundred dollars, except that those pet dealers who engage in the sale of less than twenty-five animals in a year, shall pay a nonrefundable fee of twenty-five dollars.

4. The moneys received by the commissioner pursuant to this section shall be deposited in the "pet dealer licensing fund" established pursuant to section ninety-seven-rr of the state finance law.

5. Where the authority to issue pet dealer licenses is delegated to the county or city pursuant to subdivision two of this section, that county or city shall, on or before the fifth day of each month, remit to the appropriate municipal financial officer one hundred percent of all license fees collected during the preceding month. The remittance shall be accompanied by a report of license sales made during such month. A copy of such report shall simultaneously be sent to the commissioner. All license fees so remitted shall be the property of the municipality, and shall be used solely for the purpose of carrying out and enforcing the provisions of this article and of article thirty-five-D of the general business law.

6. Inspection in accordance with section four hundred five of this article, the results of which establish compliance with the provisions of this article and with the provisions of article thirty-five-D of the general business law regarding recordkeeping and consumer disclosure requirements for pet dealers, shall precede issuance of a license or renewal thereof under this section.

7. Upon validation by the commissioner or the county or city authorized under this section to issue pet dealer licenses, the application shall become the license of the pet dealer.

8. The commissioner shall provide a copy of the license to the pet dealer. The commissioner shall also retain a copy of the license. In those counties where the commissioner has delegated the licensing authority to the county or city that county or city shall, provide a copy of the license to the pet dealer and a copy to the commissioner. The county or city shall also retain a copy of the license in its own records.

9. No pet dealer shall publish or advertise the sale or availability of any dog or cat unless the publication or advertisement is accompanied by the pet dealer's license number. Notwithstanding the foregoing, a pet dealer, in operation on or before the effective date of this section, who has filed an application for an initial license under this article may publish or advertise the sale or availability of any dog or cat without the publication or advertisement being accompanied by the pet dealer's license number until the commissioner grants or, after notice and opportunity to be heard, declines to grant such license.

10. Such license shall be renewable annually, together with the payment of a nonrefundable fee of one hundred dollars, or upon payment of a nonrefundable fee of twenty-five dollars for those pet dealers who engage in the sale of less than twenty-five animals in a year.

11. Pet dealers shall conspicuously display their license on the premises where the animals are kept for sale so that they may be readily seen by potential consumers.

§ 404. License refusal, suspension, or revocation. The commissioner may decline to grant or renew or may suspend or revoke a pet dealer license, on any one of the following grounds:

1. Material misstatement in the license application.

2. Material misstatement in or falsification of records required to be kept pursuant to this article, or under any regulation promulgated thereunder, or failure to allow the commissioner or his or her authorized agents to inspect records or pet dealer facilities.

3. Violation of any provision of this article or conviction of a violation of any provision of article twenty-six of this chapter or regulations promulgated thereunder pertaining to humane treatment of animals, cruelty to animals, endangering the life or health of an animal, or violation of any federal, state, or local law pertaining to the care, treatment, sale, possession, or handling of animals or any regulation or rule promulgated pursuant thereto relating to the endangerment of the life or health of an animal.

4. Before any license shall be suspended or revoked, the commissioner, or any hearing officer he or she may designate, shall hold a hearing, upon due notice to the licensee, in accordance with any regulations promulgated by the department and in accordance with articles three and four of the state administrative procedure act. Where a licensee has three consecutive inspections in which the licensee has failed to correct

deficiencies of a critical nature, pursuant to this section, the commissioner shall hold a hearing to consider the suspension or revocation of the pet dealer license. Nothing in this section shall prohibit the commissioner from taking additional actions as otherwise permitted by this section regarding such licenses prior to the occurrence of three consecutive inspections in which the licensee has failed to correct deficiencies of a critical nature.

5. Any action of the commissioner shall be subject to judicial review in a proceeding under article seventy-eight of the civil practice law and rules.

§ 405. Inspection of pet dealers. 1. The commissioner or his or her authorized agents shall, at a minimum, make yearly inspections of pet dealers' facilities to ensure compliance with the provisions of this article and with the provisions of article thirty-five-D of the general business law, except for those pet dealers who engage in the sale of less than twenty-five animals in a year, in which case inspections shall be made whenever in the discretion of the commissioner or his or her authorized agents, a complaint warrants such investigation.

2. The commissioner may, pursuant to an agreement entered into with a county or city delegate the authority to conduct inspections of pet dealers and to respond to complaints concerning pet dealers to such county or city where the pet dealer is located; provided however such delegation of inspection authority shall only be permitted where the commissioner has delegated his or her authority to issue licenses pursuant to section four hundred three of this article.

3. Any person conducting an inspection of a pet dealer or responding to a complaint concerning a pet dealer shall be specifically trained in the proper care of cats and dogs and in the investigation and identification of cruelty to animals.

§ 406. Violations. 1. In addition to the penalties provided for elsewhere in this section, a pet dealer who violates any provisions of this article may be subject to denial, revocation, suspension, or refusal of renewal of his or her license in accordance with the provisions of section four hundred four of this article.

2. Violation of any provision of this article, is a civil offense, for which a penalty of not less than one hundred dollars and not more than one thousand dollars for each violation may be imposed.

3. The provisions of this article may be enforced concurrently by the department and by the county or city to which the commissioner has delegated his or her licensing and inspection authority pursuant to section four hundred three and four hundred five of this article, and all moneys collected thereunder shall be retained by such municipality or local government.

§ 407. Construction with other laws. Nothing in this article shall be construed to (a) limit or restrict agents or officers of societies for the prevention of cruelty to animals or the police from enforcing other provisions of article twenty-six of this chapter or any other law relating to the humane treatment of, or cruelty to, animals, (b) limit or restrict any municipality from enacting or enforcing any authorized local law, rule, regulation or ordinance of general application to businesses governing public health, safety or the rights of consumers, or (c) limit or restrict any municipality from enacting or enforcing a local law, rule, regulation or ordinance governing pet dealers, as such term is defined in this article, including a law, rule, regulation or ordinance governing the health or safety of animals acquired or maintained by pet dealers, the source of animals sold or offered for sale by pet dealers, and the spay or neuter of such animals; provided, however, that any such local law, rule, regulation or ordinance shall be no less stringent than the applicable provisions of this article and may not result in essentially banning all sales of dogs or cats raised and maintained in a healthy and safe manner. Where any penalty may be authorized for the violation of such a local law, rule, regulation or ordinance, the authorized penalty in such local law, rule, regulation or ordinance may not exceed a civil penalty of up to five hundred dollars. Where a municipality adopts such a local law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article, such municipality shall have sole responsibility for enforcement of such law, rule, regulation or ordinance that is more stringent than the applicable provisions of this article.

§ 408. Exemption of certain entities from the definition of pet dealer; registration required. 1. Any person eligible for exemption from the definition of pet dealer pursuant to paragraph (c) of subdivision four of section four hundred of this article shall be registered by the department pursuant to the provisions of this section. Such registration shall be renewable annually and be accompanied by a fee of one hundred dollars.

2. Application for registration as set forth in this section shall be made annually to the commissioner on a form prescribed by the commissioner. The applicant shall satisfy the commissioner of his or her character and responsibility and shall set forth such information as the commissioner shall require, including but not limited to the following:

(a) Proof of the applicant's tax exempt designation pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue Code, as from time to time amended;

(b) Proof of the applicant's incorporation as a not-for-profit organization in this state pursuant to the not-for-profit corporation law, provided further that such organization is in good standing with the attorney general and the department of state;

(c) Proof of the applicant's registration with the attorney general pursuant to article seven-A of the executive law;

(d) The name of the applicant and the name or names under which the applicant offers

its services to the public, any name under which the applicant has offered its services to the public during the past five years, and whether the applicant has ever held a license issued pursuant to this article;

(e) The address and telephone number of the applicant and for any other premise owned or leased by such applicant's organization to carry out the purposes for which it was incorporated and by which it may be eligible for a licensing exemption pursuant to this section;

(f) The website and email address of the applicant;

(g) The number of animals taken in, adopted, placed into permanent or temporary homes, or otherwise transferred into, out of, or within the state by the applicant during the prior calendar year;

(h) The number of animals currently harbored by the applicant;

(i) The species of animal the applicant typically harbors for adoption, placement or transfer;

(j) A description of facilities by which the applicant carries out the purposes for which it was incorporated, including a statement regarding whether the applicant harbors the animals in its care in its own physical animal shelter or utilizes foster homes, commercial boarding kennels or other arrangements; and

(k) A sworn statement, signed by the applicant, declaring eligibility for a pet dealer licensing exemption pursuant to subdivision four of section four hundred of this article.

3. Upon approval by the commissioner, the registration shall be issued to the applicant and an exemption from the definition of pet dealer as defined in section four hundred of this article shall be granted. Written approval of such registration shall be provided to the applicant by the commissioner and shall be accompanied by a pet dealer exemption identification number, which shall be prominently displayed on the registrant's websites and accompany such registrant's publications or advertisements made available to the public following registration approval.

4. The commissioner may deny any application for registration as set forth in subdivisions one and two of this section or revoke any registration already granted, after written notice to the applicant or registrant and an opportunity to be heard, when:

(a) Any statement made on the application or to the commissioner found to be false or misleading;

(b) The applicant or registrant, or an officer or director has failed to comply with any of the provisions of this section or rules and regulations promulgated pursuant to subdivision six of this section;

(c) The applicant or registrant, or an officer or director has been convicted of a misdemeanor or felony animal cruelty offense by a court of the United States or any state or territory thereof, without subsequent pardon by the governor or other appropriate authority of the state or jurisdiction in which such conviction occurred, or receipt of a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law;

(d) The applicant or registrant is determined by the commissioner to be in violation of the department's dog and cat importation regulations pursuant to 1 NYCRR Part 65;

(e) The applicant or registrant is determined by the commissioner to be in violation of section twenty-one hundred forty-one of the public health law or any rule or regulation promulgated thereunder by the commissioner of health; and

(f) The applicant or registrant, or an officer or director has been responsible in whole or in part for any act on account of which an application for registration may be denied or a registration cancelled pursuant to the provisions of this article.

5. Any person receiving an exemption pursuant to this section shall be subject to the provisions prescribed in subdivision two of section four hundred six of this article for any violation of this section, provided further that whenever there shall be a violation of this section, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not less than one hundred dollars and not more than one thousand dollars. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

6. The commissioner is hereby authorized to promulgate rules and regulations concerning the application, registration and revocation process described in this section.

*** NB Effective November 12, 2017**