

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1138 (Maienschein) – As Amended April 17, 2017

SUBJECT: Sale of cats or dogs

SUMMARY: Prohibits false or misleading advertising related to the sale of dogs and cats. Specifically, **this bill:**

- 1) Prohibits any person, firm or corporation from advertising the sale or transfer of a dog or cat for which any of the following apply:
 - a) Statements about the dog or cat are known to be untrue or misleading; or,
 - b) Statements about or pictures of the dog or cat are made without the intent to sell the exact dog or cat advertised, pictured, or offered.
- 2) Violations of these provisions are considered a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding \$2,500, or by both that imprisonment and fine.
- 3) Declares that no reimbursement is required because the only costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, changes the penalty for a crime or infraction, or changes the definition of a crime, as specified.

EXISTING LAW:

- 1) Generally protects consumers from unlawful, unfair and fraudulent business practices. (Business and Professions Code (BPC) Section 17200, *et seq.*)
- 2) Generally protects consumers and competitors against false or misleading advertising. Violations of this provision can result in a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding \$2,500 or both. (BPC 17500, *et seq.*)
- 3) Establishes the Lockyer-Polanco-Farr Pet Protection Act, related to the retail sale of dogs and cats. Requires that pet dealers possess a permit in order to sell dogs and cats and provide consumers disclosures related to the pet, including breeder information, health records, and any known health condition. Requires that breeders maintain facilities and care requirements for pets. Specifies civil penalties for violating these sections. (Health and Safety Code (HSC) Section 122125-122220)
- 4) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, related to the sale of dogs by breeders. Defines a dog breeder as a person, firm, partnership, corporation that has sold, transferred or given away 20 or more dogs within one year that were bred and reared on the premises. Specifies information to disclose to the consumer, including records of diseases or

illness. Requires dog breeders to maintain the health and safety of the dogs and prohibits them from knowingly selling a dog that is ill. (HSC 122045-122110)

- 5) Prohibits pet stores from selling dogs or cats that are less than eight weeks old. (HSC 122359)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the bill:** This bill is intended to raise consumer awareness of misleading animal sale practices by prohibiting false advertising specifically as it relates to the sale of cats and dogs. AB 1138 is sponsored by the American Society for the Prevention of Cruelty to Animals (ASPCA).
- 2) **Author's statement:** According to the author, "Despite laws prohibiting false advertising, online buyers of dogs and cats commonly fall victim to it. The internet has made it much easier for sellers to use deceptive practices, including the source and health of the pet and, at times, even the existence of the pet. Buyers are saddled with unanticipated veterinary costs and are devastated when a happy event turns to a costly and emotional outcome. Many consumers do not seem to understand that they have remedies under the law for deceptive marketing. AB 1138 would clarify the law to ensure that deceived buyers know that they have a remedy under California laws."
- 3) **False advertising of pets:** According to the author, unscrupulous breeders often post false or misleading information about the health, appearance, and source of pets being advertised for sale. Some advertisements use "bait and switch" tactics which could result in the unintended purchase of animals with significant health issues. The Federal Trade Commission (FTC) and the Better Business Bureau (BBB) have issued several statements warning consumers about online pet scams. The FTC recommends not using a money transfer service, asking for detailed information, and doing a reverse image search of the photo to see if it appears in older ads. Consumers can find information about company names or websites of online pet scammers on the BBB website and on the International Pet and Animal Transportation Association website.

In California, news outlets have reported several online pet purchasing scams. Several stories documented legal action against the perpetrator while others described money lost to online scammers. In November 2016, the Sacramento Bee reported that a Sacramento-area woman had been sentenced to one year in jail for operating an online business selling malnourished dogs. The woman was sentenced for felony animal cruelty, operating without a license and multiple other charges related to selling puppies from South Korea.

In 2016, thirteen California consumers registered complaints with the BBB documenting online scams related to pet purchases. Eleven consumers reported paying for pets that never arrived. While it is clear that some consumers have fallen victim to these unscrupulous tactics, no comprehensive data has been identified or provided to document the full extent of the problem.

- 4) **Current legal remedies:** Under current law, false or misleading advertising of pet sales can be prosecuted as a misdemeanor, punishable by up to six months in county jail, a fine of up to \$2,500 or both. This bill would specifically address certain forms of false advertising arguably

already covered by existing law, and would apply an identical penalty.

Additionally, other measures exist to protect the health and safety of pets. The Polanco-Lockyer Pet Breeder Warranty Act and Lockyer-Polanco-Farr Pet Protection Act, provisions within the Health and Safety Code, outline specific health and safety standards for the housing and sale of pets. The Pet Protection Act ensures purchaser protection for the sale of ill or sick animals and provides disclosures to individuals about where the animal was bred. These laws protect animals, inform consumers, and specify penalties for violating the provisions.

Legal action has been taken in California against a pet store accused of selling sick dogs. In September 2011, the Animal Legal Defense Fund filed a class action lawsuit against Barkworks, a southern California pet store. The lawsuit alleges that the company violated consumer protection laws by tricking consumers into buying sick dogs.

- 5) **Arguments in support:** According to several groups in support, “Many internet pet purchases occur sight-unseen, either because there is a geographical distance between the buyer and seller or due to the unwillingness of the breeder to let the customer meet the pet on their property before buying them. As a result, the customer usually has to rely on the accuracy of the breeder’s advertisement. And too often, marketing includes photos and descriptions that are purposefully misleading- in spite of a general California law against fraudulent advertising and pet lemon laws aimed at requiring accurate disclosures.”

“AB 1138 addresses this issue head-on by explicitly prohibiting deceptive advertising, requiring that photos and descriptions used by for the exact pet that is being offered for sale, and providing customers with a remedy in the case these provisions are violated.”

- 6) **Related legislation:** AB 1491 (Caballero) prevents pet leasing contracts, a form of rent-to-own leasing, from being valid on or after January 1, 2018. This bill is pending vote on the Assembly Floor.

AB 485 (O’Donnell) prevents a pet store operator from selling a dog, cat or rabbit unless the animal was obtained from a public animal control agency, shelter, or humane society. This bill is currently pending in the Assembly Appropriations Committee.

- 7) **Previous legislation:** AB 1347 (Caballero) Chapter 703, Statutes of 2007, established the Pet Store Animal Care Act, which created procedures for the care and maintenance of animals in the custody of a pet store and placed limitations on the sale of animals suspected to have a contagious condition.

AB 2862 (Ridley-Thomas, 2006) which was vetoed by Governor Schwarzenegger, would have required the Department of Consumer Affairs to adopt regulations to regulate the care and handling of animals sold to the general public at retail outlets.

REGISTERED SUPPORT / OPPOSITION:

Support

American Society for the Prevention of Cruelty to Animals (ASPCA) (sponsor)
 Best Friends Animal Society
 San Diego Humane Society

San Francisco SPCA
State Humane Association of California
The Humane Society of the United States

Opposition

None on file.

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