

THE ANIMAL COUNCIL

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April 12, 2006

Via Facsimile: 916-319-3306

The Honorable Gloria Negrete McLeod
Chair, California State Assembly
Committee on Business and Professions
1020 N Street, Room 124
Sacramento CA 95814

Re: AB 2862, Sale of animals at pet stores, as Amended April 6 –
OPPOSITION

Dear Ms. Negrete McLeod and Committee Members:

We oppose AB 2862, as written, that would create criminal offenses based on a wide range of operations in animal sales. We ask that your Committee address two basic issues – who is covered and the impact of criminal liabilities on these operators.

The Animal Council is California nonprofit, public benefit, tax-exempt [§501(c)(4)] corporation founded in 1991 to seek positive, humane solutions to animal public policy issues through study, analysis and application of animal husbandry, statistic, economics and law while preserving human benefit from all species, breeds and registries.

WHAT BUSINESSES AND INDIVIDUAL ARE SUBJECT TO LIABILITY: AB 2862 has been twice amended as to its operative provision, the definition of what businesses are to be covered, moving from the original “retail animal outlet” to “pet store” and now adding the term “retail outlet” as a final modifier of the catchall sentence in the “pet store” definition, i.e.

This term includes the keeping for transfer or the transfer of animals at temporary facilities, such as flea markets, mobile facilities, department stores, merchandise outlets, discount outlets, animal shows conducting a sale, and other types of ~~pet stores~~ *retail outlets* where the animals are intended as companions or household animals.

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Re-insertion of “retail outlet” underscores the uncertainty about who is included in what would be a criminal statute, especially when read in conjunction with other statutes involving pet stores or dealers where the criteria is only any business selling pet animals to the public that is required to possess a permit pursuant to Section 6066 of the Revenue and Taxation Code. In fact, there some are private sellers – some hobbyists and some businesses – who fit this definition but do not operate stores or in venues open to the public. Would they be subject to the SB 2862 provisions?

A criminal statute requires greater certainty as to who would be covered.

CRIMINAL LIABILITY FOR BUSINESS OPERATIONS: Should so many operating aspects of operating a pet sales business be the bases for criminal rather than civil offenses when no harm has occurred that would otherwise constitute a crime subject to provisions of the Penal Code? These crimes are chargeable as infractions or misdemeanors at prosecutor discretion making enforcement costs greater than officer citation for infractions. However, subsequent offenses are misdemeanors (jail time) whether or not animals are harmed. This penalty structure is extremely harsh and would appear to discourage engaging in or employment in this field.

CRIMINAL PENALTY PROVISIONS: AB 2862 allows only one infraction conviction before all violations become misdemeanors with jail time. Reference is made to prosecutorial discretion as to charging an infraction or misdemeanor but is applicable only on the first offense and likely meaningless since each animal constitutes a separate charge. For anyone operating or employed in an animal business, the stakes of conviction of any violations of animal laws are a long term bar to similar employment, obtaining any animal related permits and in some instances, even owning personal animals – in addition to the possibility of jail time and a criminal record. Obtaining criminal defense counsel is either a substantial personal expense or a public expense for defendants qualifying for court appointed counsel with additional public costs for jury trials and other expenses. We do not believe that prosecutorial discretion is sufficient to protect business owners and employees from overzealous investigation and prosecution for alleged harmless or trivial offenses when conduct that actually harms animals or purchasers is already subject to existing criminal or civil laws.

Accordingly, we respectfully ask that AB 2862 be either withdrawn, defeated or substantially amended.

Very truly yours,

Sharon A. Coleman, President
Cc: Committee Members, Author