

# THE ANIMAL COUNCIL

P.O. Box 168, Millbrae CA 94030

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Via Facsimile 916-327-2433

June 21, 2006

Senator Liz Figueroa  
Chair, Senate Committee on Business, Professions & Economic Development  
State Capitol, Room 2053  
Sacramento CA 94814

Attention: Committee Bill Consultant

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

Dear Ms. Figueroa and Committee Members:

We oppose AB 2862, as written, that would create criminal offenses based on a wide range of operations in animal sales and request inclusion on the listed opposition for the Bill Analysis for your Committee. 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 amended repeatedly – now 4 times -- as to its operative provision, the definition of what businesses are to be covered, moving from the original “retail animal outlet” to “pet store” with shifting terminology within that definition. 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 the effect is still confusing.

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A *criminal* statute in the guise of business regulation without a regulatory means of identification of operators requires greater certainty as to who would be covered than a civil statute.

**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,

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

Very truly yours,

Cc: Committee Members, Author