

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals and the Law #11

May 22, 2014

S. 4322

A. 6421

By: Senator Ranzenhofer

By: M. of A. Brennan

Senate Committee: Corporations, Authorities and
Commissions

Assembly Committee: Corporations, Authorities and
Commissions

Effective Date: Immediately

AN ACT to amend the agriculture and markets law, in relation to aggravated cruelty to animals.

SECTION AND LAW REFERRED TO: Section 1 of the bill amends Section 1502 of the Not-for-Profit Corporation Law to add a new definition of pet cremated remains. Section 2 of the bill amends Section 1510 of the Not-for-Profit Corporation Law to provide the option of interment of pet cremated remains in a cemetery intended for burial of humans when incidental to the burial of human remains, with the written authorization of the cemetery corporation. The provisions of the bill do not apply to incorporated or unincorporated cemeteries operated, supervised or controlled by a religious association or society, and covered cemeteries are not required to allow interment of pet cremains.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

S.4322/A.6421 amends Article 15 of the Not-for-Profit Corporation Law to provide cemetery corporations the option of offering the interment of cremated pet remains, or cremains. The option can only be exercised when the burial of pet cremains is done in conjunction with the burial of human remains. This bill makes this option available to cemetery corporations that are not operated or controlled by religious organizations, but it does not require that such cemetery corporations provide the option of interment of pet cremains.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

Currently, Article 35-C of the General Business Law regulates the disposal of deceased pets by individual cremation, group cremation, individual burial or group burial. This section of law sets forth the requirements for pet cemeteries where pet remains can be buried. There are just seven licensed pet cemeteries in New York State; most pet owners choose to have their animals cremated, and the cremains are typically provided to the owners in a small urn. The sponsors of this bill noted that with the majority of Americans owning a pet, many people wish to make arrangements to be buried with their pets. In September 2013, the Department of State amended the regulations for pet cemeteries to allow them to accept the cremains of a pet's owner and bury them with the pet, if the owner had expressed a desire to be cremated and have their ashes buried with their pets. However, in seeking to limit this practice, the regulation provides that the pet cemetery may not advertise that it will accept and bury human remains with a pet, and may not charge any additional fee for that additional burial.

However, human cemeteries are not currently permitted to accept pet cremains for burial because the Not-for-Profit Corporation Law does not currently provide for the interment of pet remains in a human cemetery. This bill will provide cemeteries the ability to accommodate owner's requests to have their pet interred with them. The cemetery may refuse the request for the burial of pet remains in the cemetery if, for example, the cemetery has other burial plot owners who object to the burial of pet cremains in the cemetery where they will be buried.

However, this bill may inadvertently cause another problem. Once pets are allowed to be buried with their owners, some owners may decide to have perfectly healthy pets euthanized and cremated at the time of their own death in order to have those pet cremains interred with them upon their burial. Veterinarians are already faced with this request from elderly owners, next-of-kin of a decedent, or the executor of an estate who had been advised, before death, that the owners wished their pets euthanized and cremated in order to be buried with them. This provision also appears from time to time in the wills of decedents. Executors who have challenged the testamentary provision to euthanize an animal in order to have it cremated and buried with the deceased owner usually prevail in court. However, the request to have a healthy, living animal euthanized simply in order to have it buried with its owner is not one that should be encouraged.

To avoid situations where people may have healthy and otherwise adoptable pets euthanized to be interred with them, the Committee respectfully requests that the sponsors amend the bill to allow pets to be interred with their deceased owner only when the pets predecease the owner and have already been cremated before the owner dies.

This law would have no fiscal implications and will take effect immediately.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation.

Chair of the Committee: Amy L. Chaitoff, Esq.