

Memorandum Urging Approval

COMMITTEE ON ANIMALS AND THE LAW

Animals #26-GOV

September 21, 2018

S. 7415-C
A. 10082-B

By: Senator Marcellino
By: M. of A. Titone
Senate Committee: Judiciary
Assembly Committee: Codes
Effective Date: 90th day after it shall have become a law

AN ACT to amend the General Business Law, in relation to certain lease agreements concerning dogs and cats.

LAW & SECTION REFERRED TO: New Section 753-e of the General Business Law is added; subdivision 1-a of Section 755 of the General Business Law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL**

This bill would amend the General Business Law, Article 35-D, Sales of Dogs and Cats, by adding a new Section 753-e prohibiting a lease-to-own arrangement for the sale of a dog or cat to offset the upfront cost of the pet. The new section specifically prohibits contracts for the purchase of a dog or cat from containing provisions that authorize the use of the dog or cat as collateral against missed or defaulted payments. The new section further prohibits contract provisions whereby a dog or cat could be subject to repossession by the seller or the lender, if and when the purchaser failed to make payments under that contract. Purchases made with personal, *unsecured* loans, provided they do not permit the dog or cat to serve as collateral, are not prohibited. Additionally, the statute's existing "penalties and enforcement" provision, Section 755, is amended to add language to Subdivision 1-a, specifying that violations of the new section could result in the denial, suspension, or revocation of a pet dealer's license under Agriculture & Markets Law Article 26. All other laws protecting consumers who purchase dogs and cats and the sellers are not limited by this new provision.

This legislation is consistent with the Legislature's intent in enacting General Business Law Art. 35-D, which regulates the sale of dogs and cats by pet dealers, and is expressed in the language of Section 751, which states: "[i]t is hereby determined and declared that supervision by the state of the sale of dogs or cats by pet dealers is within the public interest and for the purpose of safeguarding the public and insuring the humane treatment of such animals...."

As the Assembly version of the bill's justification section point out, pet leasing is a predatory practice that preys on people who cannot always afford a companion animal. Pet dealers offering lease agreements knowingly capitalize on the potential for a consumer to fall in love with an irresistibly cute puppy or kitten. The emotional decision to purchase the pet, without the ability to afford the high up-front cost, has become more prevalent through the use of "retail

installment-sales contracts" that combine predatory high-interest financing and large fees with onerous default penalties. Amidst the excitement of having an option to purchase a pet, consumers may not understand that the finance agreement is actually a two- or three-year lease that will cost far more than the original purchase price.

Worse, the adopting family *may not realize that they do not actually legally own their new pet*. Pet dealers anxious to close a deal may fail to disclose that the financing arrangement is actually a lease. Consequently, and because these pet-leasing contracts contain provisions similar to retail installment-plan contracts for used cars and dining-room sets, the penalty for failure to make every payment on time, even after two or three years, results in repossession of the collateral, i.e. the now-beloved family member. There may even be a balloon payment in order to obtain legal title. A recent case in the news is illustrative: a Baldwin, New York woman made 23 monthly payments of \$149.19 for the family's golden retriever. After paying \$3,431.37, in the final month, the financing company threatened to repossess the dog if she did not make a final payment of \$338.07.

Not only is the repossession of "leased " dogs or cats traumatic for the family that falls behind in monthly payments, but also the potential for significant harms imposed on the animal cannot be ignored. Much like their owners, pets develop dependencies and attachments to their adopted family. According to the Tuft's University, College of Veterinary Medicine¹, even when pets are placed in excellent shelters, the change of environment and familiar routines can result in stress-related physical and emotional illness. Returning a pet to a pet store or debt collector logically provides a similar degree of concern. In cases of repossession, the cute puppy purchased via the lease contract is now a two- or three-year -old dog that has depreciated in value, and in fact has no value except to the family devastated by its return to the dealer. If the dealer or lender cannot find a new home, presuming there is even an attempt to do so, there are no provisions in the lease that prevent the dealer or lender from having the pet euthanized or placed in a shelter. And, because the pet's family is not the legal owner during the pendency of the lease, such contracts may also interfere with major decisions concerning medical care and other important issues. The American Kennel Club (AKC), in its recent "Canine Legislation Position Statement, Protection for Puppy Purchasers" stated: "AKC supports a ban on predatory pet leasing schemes that victimize potential owners, undermine a lifetime commitment to a pet, and do not confer the rights and responsibilities associated with legal ownership of a pet."

The use of closed-end lease arrangements to finance a dog or cat purchase has increased in prevalence since 2013² because it exploits a loophole whereby actual interest, of 170% and more, may exceed statutory usury limits. Thus, it preys upon sub-prime borrowers whose other credit options may be limited. Yet it also misleads all purchasers because of large hidden fees underlying what appear to be low, "affordable" monthly payments. As noted in the July 11, 2018 New York Department of Financial Services (NYDFS) On-line Lending Report, "high-interest lenders, often headquartered outside the State, pose a significant threat to New York consumers because they can evade New York's regulations and strong usury laws by operating exclusively on-line." Thus, these harmful lease arrangements deceive pet purchasers because: i) they unwittingly end up paying double the price or more; ii) they must also pay a balloon payment at the end of the lease in order to obtain legal title to their pet; and iii) the abusive leverage to enforce compliance with the contract is the very real risk of repossession of the family pet.

¹ <https://centerforshelterdogs.tufts.edu/dog-welfare/transition-and-stress/>

² See "I'm Renting a Dog? Can purebreds on leases democratize credit? The Nevadan behind Wags Lending thinks so." by Patrick Clark, Bloomberg, March 2, 2017.

In addition to amending Section 755, Subdivision 1-a to provide for loss of pet dealer licensure, Section 755 (1) provides for injunction by the attorney general and civil penalties of not less than one hundred dollars and not more than one thousand dollars for violations. Consequently, this legislation eliminates the harmful practice of repossessing beloved family members as well as the threat of such unsavory debt collection practices for on-line financing where the pet dealer and lender are out-of-state. Because Section 754's notice requirements require posting of the provisions of Art. 35-D, this new section, and its prohibition against repossession, will become a part of that notice requirement, and cannot, pursuant to the statute, be restricted or diminished by contract. Thus, even if a family were unwittingly to fall victim to the scheme, or if the pet is purchased on-line, this legislation will render such contracts and debt collection efforts unenforceable.

Rhode Island, Nevada and California have already outlawed this unsavory financial scheme. This legislation would put to an end the deceptive practice of pet leasing in New York State. Because the legislation protects against two harmful practices: predatory high-interest lending and repossession of a beloved family member, we urge the governor to sign this legislation into law.

Dogs and cats are not used cars or dining room sets and these closed-end lease contracts, intentionally designed to circumvent usury laws, are harmful to the family that loses its pet, and also cruel and inhumane to the dog or cat who is suddenly removed from its loving family. We applaud this important legislation for the stated reasons: i) purchasers of dogs and cats are particularly vulnerable because, while believing they are adopted a new member of their family, the reality is that the leasing entity is the legal owner of the animal until all terms of the lease are met; and ii) contracts authorizing security interests and repossession of a dog or cat are repugnant and violate the legislative intention of General Business Law Section 751.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** this legislation and **URGES ITS APPROVAL** by the Governor.