
THIRD READING

Bill No: AB 1138
Author: Maienschein (R)
Amended: 4/17/17 in Assembly
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-0, 6/19/17
AYES: Hill, Fuller, Dodd, Galgiani, Glazer, Hernandez, Newman, Pan, Wilk

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 7/11/17
AYES: Anderson, Bradford, Jackson, Mitchell, Stone, Wiener
NO VOTE RECORDED: Skinner

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 69-0, 5/18/17 (Consent) - See last page for vote

SUBJECT: Sale of cats or dogs

SOURCE: American Society for the Prevention of Cruelty to Animals

DIGEST: This bill makes it unlawful for specified people and entities, in specified advertising mediums, including the Internet, to advertise, call attention to, or give publicity to the sale or transfer of a dog or cat for which the statements about, or the pictures of the dog or cat are made or presented without the actual intent to sell or offer the exact dog or cat advertised, or the statements about the dog or cat being advertised or offered for sale are known to be untrue or misleading.

ANALYSIS:

Existing law:

- 1) Protects, generally, consumers from unlawful, unfair and fraudulent business practices. (Business and Professions Code (BPC) § 17200, *et seq.*)

- 2) Provides that it is unlawful for any person, as specified, to dispose of real or personal property or to perform services or to induce the public to enter into any obligation and to make or disseminate or cause to be made or disseminated to the public in any newspaper or other publication, or any other advertising device, or in any other manner or means, including over the Internet, any statement concerning that real or personal property or those services concerning any circumstances or matter of fact connected with the proposed performance or disposition thereof which is untrue or misleading, and which is known or should be known to be untrue or misleading. Also provides that it is unlawful for any person, as specified, to make or disseminate or cause to be made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. 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)
- 3) Specifies a number of violations that are separately articulated due to specific public policy need and extends the prohibition on untrue or misleading advertising to all media platforms, including online advertisement, and furthermore specifies unfair or deceptive acts or practices which are deemed unlawful when they result in the sale or lease of goods or services to any consumer, including providing misrepresentation of the source, quality, and characteristics of the personal property being advertised. (BPC § 17500 *et seq.* and Civil Code (CC) § 1770)
- 4) Requires a person seeking to bring a dog into California for resale or change or ownership to obtain a health certificate from a licensed veterinarian, dated within 10 days prior to the dog's arrival, and submit the certificate to the county health department, as specified. (Health and Safety Code (HSC) § 121720-121723)
- 5) 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. (HSC §§ 122125-122220)
- 6) 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)

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

This bill:

- 1) Makes it unlawful for any person, firm or corporation to advertise, call attention to, or give publicity to, in any advertising medium as specified, including over the Internet, the sale or transfer of a dog or cat for which any of the following apply:
 - a) Statements about the dog or cat being advertised or offered for sale are known to be untrue or misleading; or,
 - b) Statements about or pictures of the dog or cat are made or presented without the intent to sell the exact dog or cat so advertised, pictured, or offered.
- 2) Provides that in addition to any other penalty provided by law, 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 imprisonment and a fine.

Background

This bill is sponsored by the American Society for the Prevention of Cruelty to Animals (ASPCA). According to the ASPCA, the incidents of advertising false or misleading information regarding the health, appearance, characteristics, source, and in some cases, the very existence of the pet being advertised for sale has proliferated with the use of the Internet. The sellers of pets, which may include out-of-state pet breeders, puppy mills and pet brokers, are using widely disseminated and accessible sales platforms to advertise the sale of dogs and cats. “While California broadly regulates false and misleading advertising practices, these cases stand apart in that the ‘goods’ at issue are each highly unique, the harm to the ‘good[s]’ results in unethical cruelty to an animal, and a consumer may be put in a position of absorbing exorbitant, unanticipated costs as a result of undisclosed health conditions and/or other falsified characteristics of the pet. Unscrupulous sellers depend on advertisements to hook new, naïve, and emotional buyers that are seeking that special companion. Absent an explicit law calling out

this highly unethical practice, malicious sellers are advertising without fear of recourse under existing false advertising statutes. Many consumers do not seem to understand that they have remedies under the law for deceptive marketing. AB 1138 would clarify this so that deceived buyers know they have a remedy under California law and so that sellers think twice about utilizing deceptive practices.”

Untrue or Misleading Advertising of Pets. According to the author, while the Internet has made life easier in so many ways, it has also exposed the public to myriad opportunities for unethical business practices. Historically, pet sales were primarily local in nature, with a buyer having an opportunity to personally view and inspect a puppy or kitten prior to purchasing the new pet. However, pet breeders and puppy mills are increasingly using the Internet to advertise the sale of dogs and cats. In these cases, the geographic distance between buyer and seller often prevents an inspection of the facility and the animal from occurring. As such, advertising practices that leverage the lack of transparency have proliferated. Correspondingly, the number of scams associated with pet sales has multiplied.

As indicated by the author, in 2016, a Federal Trade Commission official stated in an interview that there had been “tens of thousands of complaints filed” with the FTC about online dog scams. A quick online search of the Internet bears this out. There are innumerable articles about victims and perpetrators, and blogs, and warnings posted by groups such as the American Association of Retired People and the Better Business Bureau and numerous animal welfare organizations. The stories of abuse range from standard “bait and switch” scams in which consumers are asked to wire money in order to purchase a dog or cat that doesn’t likely exist, to posting false information, such as the source, characteristics, or photos of pets that are actually for sale, but in which the consumer ultimately gets a pet different than what they anticipated.

The author states that the worst of these are cases are those in which sellers fail to disclose significant health conditions of the dog or cat being sold. In several highly publicized cases, dogs with the highly contagious parvovirus have been shipped to unwitting buyers. The Parvovirus causes the animal to experience extreme cases of vomiting and diarrhea creating situations in which animals are forced to endure unspeakable cruelty during shipping. And, when the buyers have received their new pet, they are immediately put in a crisis situation that requires them to expend hundreds or even thousands of dollars to try to save their new pet. In several cases, the animals have been euthanized.

The author further states that the Internet has allowed unethical out-of-state sellers to access California consumers in a way that wasn’t feasible prior to the medium.

The act of advertising is the hook that allows these sellers to flourish in the California market in a manner that it otherwise would not be able to. The fraud, animal cruelty, and other illegal acts are contingent upon accessing the market through false advertising. While the incidents of false advertising are generally addressed under existing law, the Code does call out numerous very specific examples of where additional protections have been deemed necessary. In some cases, the provisions of regulation are extensive. Some examples include advertising related to: the location of floral arrangement providers, door to door sales, recreation therapists, goods labeled as produced by the blind, funeral caskets, unassembled toys, refurbished picture tubes for T.V.s, energy conservation products, grant deed copy services, and the composition of music groups. The harm created by false advertising related to pet sales rises to the level of public importance of any of these areas of specific regulations for a number of reasons, including:

- The potential harm and suffering of an animal.
- Immediate costs associated with health issues.
- Inability to expect what is not a uniform product.
- Consumer choice – unfair competition.

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 specifically addresses certain forms of false advertising for the sale of dogs and cats and applies 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 to consumers. 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 certain remedies such as return of the animal if ill to the pet store or to obtain reimbursement for veterinary costs and civil penalties against the pet store for violating the provisions.

The ASPCA also sponsored legislation (AB 1809, Maienschein, Chapter 498, Statutes of 2014) to deal with the importation of dogs into California for the purpose of resale or change of ownership and requires the person seeking to bring

a dog into this state for that purpose to obtain a health certificate from a licensed veterinarian and submit that certificate to the local county health department. A person who violates this requirement can be subject to an infraction, punishable by a fine not to exceed \$250 for each dog for which a violation has occurred.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/22/17)

American Society for the Prevention of Cruelty to Animals (source)
Best Friends Animal Society
Humane Society Veterinary Medical Association
San Diego Humane Society
San Francisco SPCA
State Humane Association of California
The Humane Society of the United States

OPPOSITION: (Verified 8/22/17)

None received

ARGUMENTS IN SUPPORT: The ASPCA as the sponsor, and the State Humane Association of California (SHAC) are both concerned that online pet sales are allowing for the proliferation of inhumane breeding practices that are detrimental to both the animal and to consumers. They both argue that the Internet has allowed for an explosion of unscrupulous sellers marketing and selling pets to unsuspecting consumers. While the ASPCA is unable to definitively inventory the number of online sellers, an informal search yielded a myriad of advertisements selling pets, sight unseen. These sellers range from standalone “puppy brokerage” Web sites like Puppyfinder.com and Nextdaypets.com, which purport to link their network of “responsible breeders” to consumers, providing payment and shipping services to individuals advertising pets on generic marketplace sites like Oodle, Inc. and eBay classifieds. Sites like Craigslist and Facebook have implemented some limitations on pet sales, but these rules can easily be skirted and often are.

The ASPCA and SHAC indicate that while California broadly regulates false and misleading advertising practices, unscrupulous breeders regularly post false or misleading information regarding the health, appearance, and characteristics of the pet being advertised for sale. These advertisements are a classic “bait and switch” in which the consumer does not get the animal that they have seen advertised and may purchase a pet with significant undisclosed health issues that result in costly veterinary bills. The ASPCA and SHAC believe that this bill could help to deter

false and deceptive advertising practices related to pet sales and would provide a specific remedy for unwitting consumers that fall victim to these unscrupulous practices.

The Humane Society of the United States (HSUS), the San Diego Humane Society, Best Friends Animal Society and San Francisco SPCA are also in support of this bill for the reasons as stated above and are concerned that many people fall prey to online advertising which promises more than it delivers. Commercial operations where large number of breeding animals are kept in wire cages with limited opportunities to engage in their natural behavior market themselves as home-based, family businesses and imply the kind of love and care that pet lovers want to believe goes into bringing every purpose-bred kitten and puppy into the world. There are ample examples all over the Internet of Web sites and advertisements that describe an idyllic situation, as argued by these animal groups, but where local or federal authorities have needed to intervene to stop criminal animal neglect and abuse. Because purchases of pets in these situations occur sight-unseen in many instances, 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 disclosure. AB 1138 addresses this issue head-on by explicitly prohibiting deceptive advertising, requiring that photos and descriptions used be for the exact pet.

ASSEMBLY FLOOR: 69-0, 5/18/17

AYES: Acosta, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bocanegra, Bonta, Brough, Burke, Caballero, Cervantes, Chávez, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dababneh, Dahle, Daly, Eggman, Flora, Fong, Gallagher, Cristina Garcia, Eduardo Garcia, Gomez, Gonzalez Fletcher, Gray, Grayson, Harper, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood

NO VOTE RECORDED: Aguiar-Curry, Calderon, Chau, Frazier, Friedman, Gipson, Gloria, Holden, Mullin, Santiago, Rendon

Prepared by: Bill Gage / B., P. & E.D. /
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