

Date of Hearing: March 12, 2024

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

AB 2248 (Maienschein) – As Introduced February 8, 2024

**SUBJECT:** CONTRACTS: SALES OF DOGS AND CATS

**KEY ISSUE:** SHOULD CONTRACTS FOR THE PURCHASE OF A DOG OR CAT BE DEEMED AGAINST PUBLIC POLICY IF THE CONTRACT REQUIRES A NON-REFUNDABLE DEPOSIT AND OMITTS SPECIFIED INFORMATION ABOUT THE DOG OR CAT?

**SYNOPSIS**

*California has been a national leader in the effort to promote pet adoption and to shut down “puppy mills.” In 2017, California banned the purchase of new pets at pet stores. As a result of this effort, a robust and unregulated online marketplace has emerged to sell puppies and kittens to California consumers. Given the lack of oversight of these websites, Californians are frequently required to remit non-refundable deposits for a pet, but have no guarantees regarding the pet’s health, lineage, or other claims made about the pet. Seeking to curtail this practice, this bill would prohibit contracts that require non-refundable deposits for the purchase of a pet and would require all purchase contracts to disclosure information about the pet and the breeder. Any consumer who signs a contract in violation of this bill would be entitled to recover all of their costs from the seller.*

*This measure is sponsored by the American Society for the Prevention of Cruelty to Animals who note that the pet sale websites targeted by this bill frequently deceive consumers and undercut California’s efforts to eliminate inhumane pet breeding operations. This measure has no known opposition.*

**SUMMARY:** Prohibits contracts for the sale of dogs and cats that require non-refundable deposits and do not identify information about the prospective pet and breeder. Specifically, **this bill:**

- 1) Provides that on or after January 1, 2025, a contract to transfer ownership of a dog or cat is void as against public policy if all of the following are met:
  - a) The buyer is in California;
  - b) The contract requires a nonrefundable deposit; and
  - c) The contract does not identify the original source of the dog or cat, including, but not limited to, the breeder.
- 2) Requires that if money has been exchanged pursuant to a contract that is void pursuant to 1), the seller to refund the money to the buyer within 30 days of receiving notice that the contract is void pursuant to 1).
- 3) Prohibits a person from offering a contract that violates 1).

- 4) Authorizes a court to issue injunctive relief to prevent the enforcement of a contract that violates 1).

**EXISTING LAW:**

- 1) Prohibits the following provisions to be contained within contracts:
  - a) Those contrary to a provision of law;
  - b) Those contrary to the express policy of existing law, even if not expressly prohibited; and
  - c) Those otherwise contrary to good morals. (Civil Code Section 1667.)
- 2) Provides that contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. (Civil Code Section 1668.)
- 3) Provides that if a court finds, as a matter of law, a contract or any clause of a contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (Civil Code Section 1670.5.)
- 4) Provides that a provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made. (Civil Code Section 1671 (b).)
- 5) Prohibits a pet store from adopting out, selling, or offering for sale a dog, cat, or rabbit unless the animals are displayed by either a public animal control agency or shelter, or animal rescue group. (Health and Safety Code Section 122354.5 (a)-(b).)
- 6) Provides that a violation of 5) may be enforced by a district attorney or city attorney and may result in the awarding of injunctive relief. (Health and Safety Code Section 122354.4 (g).)
- 7) Prohibits an online pet retailer, as defined, from offering, brokering, making a referral for, or otherwise facilitating a loan or other financing option for the adoption or sale of a dog, cat, or rabbit. (Health and Safety Code Section 122191.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** Reflecting its status as a national leader in the “Adopt Don’t Shop” movement to promote the adoption of shelter pets over the purchase of pets from breeders, California has banned the purchase of animals from pet stores, unless the sale is conducted through a partnership with an animal shelter to place an adoptable pet into a home for a fee. This has essentially driven animal breeders out of most of the California market. While some small-scale, non-commercial breeders exist, most persons in California seeking purebred puppies and kittens now need to look out of state. This market dynamic, however, has given rise to an online pet sales marketplace whereby Californians seeking puppies from out of state breeders are being forced to put down significant, often non-refundable, deposits for animals they have never seen.

The author notes that, too frequently, these online markets (and associated apps) are deceiving customers and taking advantage of California consumers. This bill would combat these bad actors by prohibiting non-refundable deposits for the purchase of dogs and cats; and requiring online pet sellers to disclose information about a pet's breeder in the initial sales contract. In support of this measure the author states:

While retail pet stores are unlawful in California, the pet sales industry has shifted online. Online sales allow puppy mills to continue to service California customers through the cloak of sanitized imagery and obfuscated information. Third-party sellers operate online storefronts featuring hundreds of puppies available to be shipped to customers.

Most sellers offer only minimal initial information and require nonrefundable deposits before providing any specific information regarding a puppy's origin and the commercial breeder they came from. In short, these businesses collect hundreds of dollars from consumers for just the opportunity to ask questions about the puppy they are interested in. If a consumer learns the name of the seller and has concerns, they must move forward with the contract or lose their deposit. AB 2248 invalidates contracts for online dog or cat purchases if they require a nonrefundable deposit or fail to disclose the breeder of the animal.

***California has been a national leader in the “Adopt Don’t Shop” movement to ensure shelter pets find loving homes.*** Given that many of California animal shelters are frequently filled to capacity, a Los Angeles-based non-profit called Last Chance for Animals created the “Adopt Don’t Shop” movement to promote the adoption of shelter pets over the purchase of animals from pet stores and large-scale breeders. (<https://wagabonding.com/why-i-stopped-saying-adopt-dont-shop/>.) The Legislature subsequently adopted policies to promote the adoption of animals, including by prohibiting the sale of animals in pet stores, unless the animals were from an animal shelter. (AB 485 (O'Donnell) Chap. 740, Stats. 2017.) As a result of these actions, several online retailers developed platforms seeking to bypass the prohibitions of AB 485. Amid the pet buying frenzy spurred by pandemic-era stay-at-home orders, several of these retailers developed complex financing mechanisms to prey on consumers seeking to buy purebred puppies. Seeking to better protect consumers from these predatory schemes, the Legislature enacted AB 2380 (Maienschein) Chap. 548, Stats. 2022, prohibiting online pet retailers from offering consumer loans for the purchase of a dog or cat. Despite these protections, online pet retailers continue to seek to undermine California's efforts to promote pet adoption.

***As a result of California's efforts to promote pet adoption, unsavory online breeders have started to enter the California market.*** As noted above, since California banned pet stores from selling puppies and kittens, an online market has emerged to sell pets to Californians. This largely unregulated market has caused significant problems for California consumers. According to the proponents of this measure, online sellers frequently post generic pictures of a dog or cat and try to pass it off as the animal for adoption. Based on consumer reviews shared with the Committee, these websites also frequently do not share specific information about an animal until a non-refundable deposit is given, and even then, consumers are not provided information about the dog's or cat's medical condition, family lineage, or the specific breeder of the pet. Consumer complaints about these websites also include poor customer service and their refusal to refund deposits when a pet purchase is cancelled as a result of the seller's actions. As a result of these practices, California consumers are at risk of paying thousands of dollars to unscrupulous actors with little recourse should the transaction go awry.

***This bill protects those seeking to get animals from out-of-state breeders.*** Seeking to protect California consumers who seek to purchase pets online, this bill would deem any sales contract for a pet void and against public policy if the contract requires a non-refundable deposit and does not identify the source, typically the breeder, of a prospective pet. The bill also provides that any money exchanged pursuant to such a contract must be refunded within 30 days. Finally, the bill authorizes both contract damages as well as injunctive relief to stop a website or an out-of-state breeder from offering pet sales in California that are not in accordance with the provisions of this bill.

***The bill uses contract remedies as the primary method of enforcement.*** This bill adopts two methods for enforcing the prohibition against contracts with non-refundable deposits. The primary enforcement method would be a contract action, filed by a prospective buyer, to negate an unlawful contract. Due to the size of these contracts, the actions would almost certainly be dealt with in small claims court. A plaintiff's primary recovery would likely be the value of the deposit or any other funds paid under the contract. This bill also authorizes a person to seek an injunction against a pet seller to prevent them from continuing to operate in violation of this bill. However, it seems unlikely that an individual consumer would take on the financial burden of trying to enjoin unlawful conduct on the behalf of all Californians. *Accordingly, as the bill advances the author may wish to consider adding public prosecutors to the bills enforcement provisions.* Unlike an individual consumer, a city attorney or county counsel would have the resources needed to pursue such an action on behalf of the public.

***Because of the market dynamics for pets in California, this bill does not discriminate against out-of-state breeders and should not implicate the Dormant Commerce Clause.*** As a result of California banning the sale of dogs and cats many pet breeding operations in California have shut down. Accordingly, this bill would primarily impact out-of-state pet sellers and may implicate the dormant commerce clause prohibition of discriminating against out-of-state businesses. (see, e.g. *West Lynn Creamery, Inc. v. Healy* (1994) 512 U.S. 186.) However, this bill is likely to withstand scrutiny, notwithstanding its disproportionate impact on out-of-state businesses. For example, while many California breeders no longer operate, any breeding is not per se banned in California. Indeed, many farms and ranches have small breeding operations ancillary to their primary business. This bill would apply equally to those operations, as well as out-of-state breeders. Additionally, this bill would also apply to non-breeders. Should a family pet unexpectedly have puppies or kittens and that family sought to sell the pets, they could not seek a non-refundable deposit. Accordingly, while this bill may impact more non-California businesses due to the state's efforts to promote pet adoption, it does not treat those businesses any differently than in-state actors and thus should not run afoul of the dormant commerce clause.

***ARGUMENTS IN SUPPORT:*** This bill is supported by the American Society for the Prevention of Cruelty to Animals. In support of the bill they write:

For decades, the ASPCA has worked to limit the puppy mill pipeline, a predatory industry that makes cruel, out-of-state breeding conditions profitable by misleading consumers with wholesome images and manipulative financial tactics. California itself has been a leader in this area, prohibiting the sale of cats and dogs at retail pet stores to limit the sale of commercially bred animals in the state. Unfortunately, though, the puppy mill pipeline is still alive and well in California, online.

According to data of publicly available shipping transactions, California is the #1 importer of dogs and cats in the nation. Online sales allow puppy mills to continue to service California customers through the cloak of sanitized imagery and obfuscated information. Sellers such as Little Puppies Online, Premier Pups and Puppy Spot operate online storefronts featuring hundreds of puppies available to be shipped to customers. These sites display bright photos and provide minimal information beyond a puppy's age and breed.

A visitor to the site chooses a specific puppy's picture and then is prompted to pay in full or "reserve" the puppy by placing a deposit. This payment is required before the company will provide anything other than generic information to the consumer. Deposits vary from site to site but one popular site charges nonrefundable deposits of \$599, and another recently changed their nonrefundable deposit structure to 25%-100% of the total cost of the puppy. Consumers who do not complete payment within 72 hours forfeit their deposit entirely.

AB 2248 addresses these practices by voiding contracts that have required a nonrefundable deposit and failed to disclose the original source of a dog or cat. The bill also requires sellers to return money to the buyers within 30 days if the contract is voided.

**REGISTERED SUPPORT / OPPOSITION:****Support**

American Society for the Prevention of Cruelty to Animals

**Opposition**

None on file

**Analysis Prepared by:** Nicholas Liedtke / JUD. / (916) 319-2334