

NEW YORK STATE BAR ASSOCIATION

LEGALEase

Animal Law in
New York State



This pamphlet is dedicated to Lorraine Power Tharp, founder of the Special Committee on Animals and the Law. Her vision recognized not only the role that animals play in our society in general but also their importance, specifically to New Yorkers, in all walks of life. With sincere gratitude and in memory of Ms. Tharp, we remain Committed to Making a Difference for Animals and People.

Introduction

This pamphlet is presented by the New York State Bar Association's Committee on Animals and the Law. It is intended as a basic introduction to animal law and animal-related issues in New York State for both the public and lawyers. Each section will provide general information about the topic covered as well as the relevant New York State and federal laws that may apply. Always remember to check your local municipal laws or codes, as your municipality may have its own laws regarding a topic.

“The greatness of a nation and its moral progress can be judged by the way its animals are treated.”

— Mahatma Gandhi

New York Laws that Provide Penalties for Animal Cruelty/Abandonment/Neglect are Found in the Agriculture and Markets Law starting with § 350 Definitions

§ 350 (1) “Animal,” as used in this article, includes every living creature except a human being;

§ 350 (2) “Torture” or “cruelty” includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted;

§ 350 (5) “Companion animal” or “pet” means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. “Pet” or “companion animal” shall not include a “farm animal” as defined in this section.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the

New York State Assembly website at:
<http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 353 **Overdriving, Torturing and Injuring Animals**

§ 353. Overdriving, torturing and injuring animals; failure to provide proper sustenance.

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a Class A misdemeanor.

Agriculture and Markets Law § 353 applies to all animals, including farm animals and wildlife.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 353-a **Aggravated Cruelty to Animals**

Popularly known as “Buster’s Law,” **Agriculture and Markets Law § 353-a** provides that a person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, “aggravated cruelty” shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner. Aggravated cruelty to animals is a felony.

Civil Practice Law as well as the Family Court Act provides that any orders of protection may also cover companion animals owned by the victim(s).

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 353-b Appropriate Shelter for Dogs Left Outdoors

Agriculture and Markets Law § 353-b requires that any person who owns or has custody or control of a dog that is left outdoors provide them with appropriate shelter. Appropriate shelter is currently defined as a structurally sound housing facility that is: insulated; has a waterproof roof; and is large enough to allow the dog to stand up, lie down, and turn around. The law also requires that there be a shaded area away from direct sunlight that is accessible to the dog. Violations can trigger a series of escalating fines, which the court can reduce by an amount the owner or custodian proves he or she has spent to correct the deficiencies in the dog's shelter.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 353-d Confinement of Companion Animals in Vehicles in Extreme Temperatures

Agriculture and Markets Law § 353-d states that a person shall not confine a companion animal in a motor vehicle during extreme hot or cold temperatures without proper ventilation or other protection from the temperatures, when doing so places the companion animal in imminent danger of death or serious physical injury as a result of the exposure.

If the owner cannot be promptly located, the law authorizes police officers or peace officers to take necessary steps to remove the animal(s) from the vehicle. If so removed, the officer must place written notice on or in the vehicle with the name of the officer and the department or agency where the animal(s) will be taken. Any such officer acting under this statute is protected by law from criminal or civil liability for their actions taken reasonably and in good faith when enforcing this law.

Multiple violations of this law trigger escalating fines.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 353-e **§ 353-e. Companion animal grooming facilities; prohibited practices.**

1. As used in this section: (a) “Cage and box dryer” means a product that is attached to or near a cage or box for the purpose of drying or aiding in the drying of a companion animal contained in a cage or box, and which is capable of functioning without a person manually holding a dryer.

(b) “Companion animal grooming facility” means an establishment where a companion animal may be bathed, brushed, clipped or styled for a fee.

2. No person shall use a cage or box dryer which contains a heating element with the heating element turned on for the purpose of drying or aiding in the drying of a companion animal.

3. Any violation of this section shall be punishable by a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for each violation.

4. Nothing contained in this section shall limit or abrogate any claim or cause of action any person may have under common law or by statute. The provisions of this section shall be in addition to any such common law and statutory remedies.

Agriculture and Markets Law § 353-f **§ 353-f. Companion animal piercing and tattooing prohibited [Effective April 14, 2015].**

1. No person shall pierce or cause to have pierced a companion animal unless such piercing provides a medical benefit to the companion animal. Such piercing shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian. Nothing in this section shall be construed to apply to ear tags on rabbits and cavies.

2. No person shall tattoo or cause to have tattooed a companion animal unless such tattoo: (a) is done in conjunction with a medical procedure for the benefit of the companion animal and to indicate that such medical procedure has been done, provided that such tattoo is not for design purposes; or

(b) is done for the purpose of identification of the companion animal and not for design purposes, and such tattoo includes only such numbers and/or letters allotted by a corporation that, in the regular course of its business, maintains an animal tattoo identification registry.

3. For the purposes of this section, “tattoo” shall mean a mark on the body made with indelible ink or pigments injected beneath the outer layer of the skin.

4. Tattooing done in conjunction with a medical procedure for the benefit of a companion animal that indicates that such medical procedure has been done shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian.

5. Any person who knowingly violates the provisions of this section shall be guilty of a violation punishable pursuant to the penal law.

Agriculture and Markets Law § 354

§ 354. Sale of baby chicks and baby rabbits.

1. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits unless such person provides proper brooder facilities where appropriate for the care of such baby chicks, ducklings or other fowl or baby rabbits during the time they are in the possession of such person. For the purposes of this section, a baby rabbit shall be a rabbit of less than two months of age.

2. No person shall sell, offer for sale, barter or display living baby chicks, ducklings or other fowl or baby rabbits which have been dyed, colored or otherwise treated so as to impart to them an artificial color.

2-a. No provision of subdivision two shall be interpreted or applied to prevent or restrict teachers and qualified instructors of youth under the guidance and supervision of the New York

state cooperative extension service from using eggs for non-profit educational purposes or from observing fowl hatched from such eggs for non-profit educational purposes.

3. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits under two months of age in any quantity less than six.

4. A violation of the provisions of this section is a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

Abandonment of Animals

Under **Agriculture & Markets Law § 355**, an owner or person having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows such animal, if it becomes disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. In addition, under **Agriculture & Markets Law § 331**, an animal is deemed to be abandoned when it is placed in the custody of a veterinarian, veterinary hospital, boarding kennel owner or operator, stable owner or operator, or any other person for treatment, board, or care and is not removed at the end of the specified period for care or boarding. Notice must be mailed to the person who had placed such animal in his custody within ten days thereafter by means of registered mail to the last known address of such person. An animal may also be deemed abandoned if, after having been placed in such custody for an unspecified period of time, it is not removed within 20 days after notice to remove the animal has been given to the person who placed the animal in such custody, by registered mail to the last known address of such person. The giving of notice shall be deemed a waiver of any lien on the animal for the treatment, board or care of the animal, but shall not relieve the owner of the animal for such treatment, board or care furnished.

Under **Agriculture & Markets Law § 332**, any person having in his care, custody, or control of any abandoned animal, as defined in § 331 of this chapter, and after giving the required notice, may deliver the abandoned animal to any humane

society or society for the prevention of cruelty to animals (SPCA), having facilities for the care and eventual disposition of the animal. However, the person with whom the animal was abandoned must on the day of divesting himself of possession of the animal, notify the person who had placed such animal in his custody of the name and address of the animal society or pound to which the animal has been delivered, by registered mail to the last known address of the person intended to be so notified.

Under **Agriculture & Markets Law § 373**, any police officer or agent who has found any lost, strayed, homeless or abandoned animal in any street, road or other public place, is authorized to take lawful possession of the animal. The officers also are authorized to lawfully take into their possession any unwanted animal from a person in possession or custody of such animal.

If the animal has been confined or kept in a crowded or unhealthy condition or unhealthful or unsanitary surroundings or not properly cared for without necessary sustenance, food or drink for more than twelve consecutive hours, a police officer may lawfully take possession and custody of the animal with a proper warrant issued upon a showing of just and reasonable cause.

Agriculture & Markets Law § 373(4) provides that when a person arrested while in charge of any animal or has an animal in their vehicle when arrested, the arresting officer may take charge of such animal and deliver it to the possession and custody of the police or sheriff of the county wherein such arrest was made. Any necessary expenses incurred in taking charge of the animal shall be charged to the person from whom the animal is taken.

Furthermore, this section specifically provides that it does not restrict the rights and powers related to the seizure of unlicensed dogs and the disposition to be made of such animals, nor those rights derived from any other general or special law relating to the seizure of other taking of dogs or other animals.

Obviously, any animal seized and impounded under violation of this statute, **§ 353-d** of this article, or **§ 375** of this article, has to be cared for by an “impounding organization” until the ultimate disposition of the criminal case. Under **Agriculture**

& Markets Law § 373(6), the “impounding organization” may petition the court for the posting of a security bond, in an amount sufficient to secure payment for all reasonable expenses expected to be incurred in caring and providing for the animal pending disposition of the charges. For purposes of this section, an “impounding organization” shall mean the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof. “Reasonable expenses” shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days taking into account all of the facts of the case.

The “petition” is filed with the court, and then served upon the defendant and the district attorney as well as any other interested person having a pecuniary interest in the animal. The “petition” shall be brought at the time of arraignment. A hearing on the petition shall be held within 10 days of filing. The petitioner has the burden of proof by a preponderance of the evidence, and the court has discretion to waive the posting if respondent shows good cause.

If the court orders the security, it must be posted with the clerk of the court within five business days. The impounding organization may then draw the amount incurred from the security.

If the person fails to post bond, the court can order immediate forfeiture of the animal to the impounding organization. The animal shall be made available for adoption or euthanized in accordance with the applicable provisions of this article.

The person who posted the security is entitled to a refund in whole or part for any expenses not incurred by the impounding organization upon determination of the charges. If the charges are dismissed or the person is acquitted, the person who posted security is entitled to a full refund, including reimbursement from the impounding organization as well as return of the animal. The court will order the refund and reimbursement to be made within a reasonable time from the acquittal or dismissal of charges.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Reporting Animal Cruelty

To report animal cruelty, please contact your local county SPCA, other humane enforcement agency, or contact your local police department.

The agency you call must have police powers to investigate, file a report, and arrest. Usually, each county has one agency that possesses these powers in addition to the police. Remember to give your local humane officers as much information as possible including names, addresses, witnesses, dates, times and pictures, if possible. You can also visit the ASPCA's website at <http://www.asPCA.org>.

Agriculture and Markets Law § 123 Dangerous Dogs

Any person who witnesses an attack or threatened attack upon a person or a companion animal, farm or domestic animal, may complain to a dog control officer or police officer, who shall immediately tell the complaining person of his right to start a legal action. If there is reason to believe the dog is a dangerous dog, the officer shall immediately begin an action himself. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog is a dangerous dog and, if so, shall issue an order to the dog control or police officer to immediately seize such dog and hold the same pending judicial determination as provided in this section.

Whether or not the judge finds probable cause for the seizure of the dog, he shall, within five days, with at least two days prior written notice to the dog's owner, hold a hearing on the complaint. At the judicial hearing, the person who brings the complaint must prove, by clear and convincing evidence, that the dog is a "dangerous dog." A dog shall not be declared dangerous if its conduct was justified because the person who was injured, threatened or killed, was then or had previously tormented, abused, assaulted, or physically threatened the dog or its offspring.

A dog shall not be declared dangerous if the conduct of the dog was justified because the dog was responding to pain or injury; was protecting itself, its people, its kennels or its offspring; or was

justified because the companion animal, farm animal or domestic animal that was injured, threatened or killed, was attacking or threatening to attack the dog or its offspring.

If the dog is found to be dangerous, the judge shall then order spaying and/or neutering of the dog, microchipping of the dog, and one or more of the following as deemed appropriate circumstances and as deemed necessary for the protection of the public:

- (a) evaluation of the dog by a certified behavioral expert, with the owner paying for the evaluation and any such training ordered;
- (b) secure humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to:
 - (1) prevent escape of the dog,
 - (2) protect the public from unauthorized contact with the dog,
 - (3) to protect the dog from the elements under § 353-b of this article, but shall not include lengthy periods of tying or chaining;
- (c) restraint of the dog on a leash by an adult whenever the dog is on public premises;
- (d) muzzling the dog whenever on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or
- (e) maintenance of a liability insurance policy in an amount determined by the court, up to \$100,000 for personal injury or death resulting from an attack by the dog.

However, if the dog is found dangerous, the judge can order humane euthanasia or permanent confinement of the dog, if one of the following aggravating circumstances is established in court:

- (a) the dog, without justification, attacked a person causing serious physical injury or death; or
- (b) the dog has a known vicious propensity evidenced by previous unjustified attacks on a person causing serious physical injury or death; or
- (c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years

caused similar unjustified attacks evidenced by a “dangerous dog” finding under this section. If the judge orders humane euthanasia, it shall not be carried out until expiration of the 30-day period provided for the filing of a notice of appeal, unless the owner of the dog has indicated to the judge in writing that he is waiving his right to appeal. If the owner files a notice of appeal, the order of euthanasia shall be automatically stayed pending the outcome of the appeal.

If the owner of the dog, through any act or omission, negligently permits his dog to bite a person, service dog, guide or hearing dog, causing physical injury or serious physical injury, the owner shall also be subject to civil penalty ranging from \$400 to \$1,500, in addition to the other applicable penalties. If the negligent owner permits his dog, which has previously been determined to be a “dangerous dog” under this article, to bite a person causing serious physical injury, the owner shall be guilty of a misdemeanor punishable by a fine and/or imprisonment in addition to the other applicable penalties.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at <http://assembly.state.ny.us/leg/>.

Note: Always remember to check your local municipal laws or codes as your county or city may have its own laws or codes regarding dangerous dogs.

Agriculture and Markets Law § 351 **Prohibition of Animal Fighting**

Agriculture and Markets Law § 351 defines “animal fighting” as any fight between cocks or other birds, or between dogs, bulls, bears or any other animals, or between any such animal and a person or persons, except in exhibitions such as rodeos.

A person who engages in any of the following conduct is guilty of a felony punishable by imprisonment for up to four years, or by a fine of up to \$25,000, or both:

- (a) causes any animal to engage in animal fighting for amusement or gain;
- (b) trains any animal under circumstances evincing intent that such animal engage in animal fighting for amusement or gain;
- (c) breeds, sells or offers for sale any animal under circumstances evincing intent that such animal engage in animal fighting;
- (d) permits any of the three previous activities to occur on premises under his control; or
- (e) owns, possesses or keeps any animal trained for fighting on premises where an exhibition of animal fighting is being conducted under circumstances evincing intent that such animal engage in animal fighting.

Any person who owns, possesses or keeps any animal under circumstances evincing an intent that such animal engage in animal fighting is guilty of a misdemeanor punishable by imprisonment for up to one year, or a fine not to exceed \$15,000, or both.

The mere presence of a knowing spectator at the exhibition, even without having paid an admission fee or wager, is guilty of a violation punishable by a fine of up to \$500. Any knowing spectator having paid an admission fee or having made a wager at any place where an exhibition of animal fighting is being conducted is guilty of a misdemeanor punishable by imprisonment for up to one year, or a fine not to exceed \$1,000, or both. However, any such knowing spectator convicted of either such conduct within the past five years, is guilty of a misdemeanor punishable by imprisonment of up to one year, or by a fine not to exceed \$1,000, or both.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Agriculture and Markets Law § 366

Companion animal stealing

It shall be unlawful for any person:

1. To remove or cause to be removed the collar, identification tag or any other identification by which the owner may be ascertained from any dog, cat or any other companion animal as defined in subdivision five of section three hundred fifty of this chapter, or to entice any identified dog, cat or other such companion animal into or out of any house or enclosure for the purpose of removing its collar, tag or any other identification, except with the owner's permission;
2. To entice, seize or molest any companion animal, while it is being held or led by any person or while it is properly muzzled or wearing a collar with an identification tag attached, except where such action is incidental to the enforcement of some law or regulation;
3. To transport any companion animal, not lawfully in his possession, for the purpose of killing or selling such companion animal.

Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not to exceed six months, or by both.

Important Federal Law

"Animal Welfare Act" as Amended

(7 USC, 2131-2159)

The Animal Welfare Act is administered by the United States Department of Agriculture and regulates the purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research, exhibition, or holding them for sale as pets or for any such purpose or use. The act also establishes minimum standards for animal care including, but not limited to, handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds it necessary for humane handling, exercise for dogs, and for a physical environment adequate to promote the psychological well-being of primates.

Note: Please see the Animal Welfare Act in its entirety by visiting the United States Department of Agriculture website: <http://www.usda.gov>.

Access Rights of Individuals with Disabilities and their Service Animals

Legal Protection for Service Animals

The rights of persons with disabilities to use service animals are protected under a network of federal, state and local laws and regulations. Federal regulations under the Americans with Disabilities Act (ADA) specify that a “[s]ervice animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability.” 28 CFR 35.104

The New York Civil Rights Law specifically protects individuals who use guide dogs, hearing dogs and service dogs. Discrimination against persons with disabilities is prohibited under other New York laws, which may protect service animals in addition to service dogs.

Both New York State and federal laws protect the rights of individuals with disabilities to bring a service animal into the workplace.

New York State law and the ADA forbid places of public accommodation from discriminating against individuals with disabilities. These laws provide that service animals must be permitted in all areas of a facility where customers are generally permitted.

In May 2017, The New York City Bar Association and the New York State Bar Association jointly released a guide intended to clarify the legal rights and obligations of individuals and institutions in connection with the use of service animals in the state. The Guide to the Use of Service Animals in New York State recognizes that various federal, state and local laws address service animal use in differing manners. The Guide is intended to clarify the existing

laws for: individuals with disabilities who use service animals; those who train service animals; and those who must accommodate them, such as employers, landlords, merchants and places of public accommodation. It also offers guidance to lawmakers, government officials, attorneys and the courts. The Guide provides a review of rights and remedies under comparative federal, state and local human rights laws.

Note: Please see A Guide to the Use of Service Animals in New York State in its entirety at www.nysba.org/serviceanimalguide.

Transportation

Title II of the ADA forbids discrimination against individuals with disabilities from using public services accompanied by their service animals, including public transportation.

Enforcement

Criminal and civil sanctions apply to violations of the access rights of individuals with disabilities using service animals.

Companion Animals and Housing Issues

It is not always readily apparent when a person can keep a companion animal in a home. While people who keep a companion animal in a house are not usually challenged unless the animal seriously provokes a neighbor; people living in apartments and condominium-type communities face different challenges. For example, many leases prohibit pets, and often house rules in a co-op or condominium ban pets, without written board permission. But just as a lease doesn't allow a landlord to withhold essential services such as heat and hot water, or allow a co-op to unlawfully discriminate; a no-pet clause also is not always enforceable. For example, in New York City and in Westchester County, laws commonly referred to as the "Pet Law" prohibit the enforcement of a "no pet" clause, even if there is an applicable "no pet" clause in the lease, if a landlord fails, within three months of his knowledge of a tenant's harboring of a pet, to enforce the "no pet" provision. The law applies to both owners and renters, in apartment complexes, co-ops and condos, whether privately owned or government subsidized.

Just as a landlord must accommodate a disabled tenant who requires a wheelchair, a companion animal must similarly be permitted. The only limitations are generally that the disability substantially interfere with a major life activity (work, social activities, etc.) and that the pet is under control (i.e. it would be reasonable to allow the pet).

These disability laws are set forth in the Federal Fair Housing Act, as well as the ADA, and in state and local human rights laws. Some federal laws allow pets for all people over 62 years of age in federal or federally-funded housing. Other laws allow animals trained as “service animals” to reside with their companion human.

Note: Please see the above-referenced “Pet Law” in its entirety under the (Administrative Code of the City of New York § 27-2009.1) by visiting <http://assembly.state.ny.us/leg/> and in Westchester County under the Laws of Westchester County § 695.11). The United States Code Title 42 which contains the Federal Fair Housing Act and the ADA can be found by visiting <http://www.gpo.gov>.

Estate, Powers and Trusts § 7-8.1

Trusts For Pets

(a) A trust for the care of a designated domestic or pet animal is valid. The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual, or by a trustee. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive.

(b) Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of all covered animals.

(c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor.

(d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use.

The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.

(e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at <http://assembly.state.ny.us/leg/>.

Education § 809

Instruction in the Humane Treatment of Animals

1. The officer, board or commission authorized or required to prescribe courses of instruction shall cause instruction to be given in every elementary school under state control or supported wholly or partly by public money of the state, in the humane treatment and protection of animals and the importance of the part they play in the economy of nature as well as the necessity of controlling the proliferation of animals which are subsequently abandoned and caused to suffer extreme cruelty. Such instruction shall be for such period of time during each school year as the board of regents may prescribe and may be joined with work in literature, reading, language, nature study or ethnology. Such weekly instruction may be divided into two or more periods. A school district shall not be entitled to participate in the public school money on account of any school or the attendance at any school subject to the provisions of this section, if the instruction required hereby is not given therein.

2. Study and care of live animals. Any school which cares for or uses animals for study shall ensure that each animal in such school be afforded the following: appropriate quarters; sufficient space for the normal behavior and postural requirements of the species; proper ventilation, lighting, and temperature control; adequate food and clean drinking water; and quarters which shall be cleaned on a regular basis and located in an area where undue stress and disturbance are minimized.

3. Application. The provisions of this section shall not be construed to prohibit or constrain vocational instruction in the normal practice of animal husbandry, or prohibit or constrain instruction in environmental education activities as established by the department of environmental conservation.

4. Dissection of animals. Any student expressing a moral or religious objection to the performance or witnessing of the dissection of an animal, either wholly or in part, shall be provided the opportunity to undertake and complete an alternative project that shall be approved by such student's teacher; provided, however, that such objection is substantiated in writing by the student's parent or legal guardian. Students who perform alternative projects who do not perform or witness the dissection of animals shall not be penalized. The board of education or trustees of a school district shall develop a policy to give reasonable notice to all students enrolled in a course that includes the dissection of an animal and students' parents or legal guardians about their rights under this subdivision. Such notice shall be made available upon request at the school and distributed to parents and students enrolled in a course that includes dissection at least once at the beginning of the school year.

5. Treatment of live vertebrate animals.

a. Except as provided for in this subdivision, no school district, school principal, administrator, or teacher shall require or permit the performance of a lesson or experimental study on a live vertebrate animal in any such school or during any activity conducted under the auspices of such school whether or not the activity takes place on the premises of such school where such lesson or experimental study employs:

- (i) micro-organisms which cause disease in humans or animals,
- (ii) ionizing radiation,
- (iii) known cancer producing agents,
- (iv) chemicals at toxic levels,
- (v) drugs producing pain or deformity,
- (vi) severe extremes of temperature,

- (vii) electric or other shock,
- (viii) excessive noise,
- (ix) noxious fumes,
- (x) exercise to exhaustion,
- (xi) overcrowding,
- (xii) paralysis by muscle relaxants or other means,
- (xiii) deprivation or excess of food, water or other essential nutrients,
- (xiv) surgery or other invasive procedures,
- (xv) other extreme stimuli, or
- (xvi) termination of life.

b. Notwithstanding any inconsistent provision of this section, the commissioner may, upon the submission of a written program plan, issue to such school a written waiver of such restrictions for students subject to the following provisions:

- (i) the student shall be in grade ten, eleven, or twelve; and
- (ii) the student shall be under the supervision of one or more teachers certified in science; and
- (iii) the student shall be pursuing an accelerated course of study in the sciences as defined by the commissioner in preparation for taking a state or national advanced placement examination. The commissioner shall issue a waiver of such restrictions for any teacher certified in science instructing such student. The written program plan shall include, but not be limited to:
 - (i) the educational basis for requesting a waiver;
 - (ii) the objective of the lesson or experiment;
 - (iii) the methods and techniques to be used;
 - and (iv) any other information required by the commissioner.

6. Report. On or before the first day of January next succeeding the effective date of this amended section, the commissioner shall annually submit a report to the governor and the legislature which shall include, but not be limited to, the number of written program plan proposals submitted by schools and the number of such proposals subsequently approved by the commissioner. In those cases where a program plan proposal has been approved by the commissioner, such plan shall be

appended to and become a part of the commissioner's annual report.

Note: Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at: <http://assembly.state.ny.us/leg/>.

Feral Cats

Unlike dogs, which are regulated by the government with licensing requirements, New York animal care and control and municipal animal shelters, are not required by law to take in cats whether they be domestic or otherwise.

Public Health Law § 2140(13) defines “Feral animal” as

any cat . . . born in the wild . . . and is not socialized; is the offspring of an owned or feral cat . . . and is not socialized; or is a formerly owned cat . . . that has been abandoned and is no longer socialized.

Environmental Conservation Law § 11-0103(6)(e) states that “Wild animal” shall not include “companion animal” as defined in **Agriculture and Markets Law § 350**. Wild animal includes, and is limited to, any or all of the following orders and families:

- (1) Nonhuman primates and prosimians;
- (2) Felidae and all hybrids thereof, with the exception of the species *Felis catus* (domesticated and feral cats, which shall mean domesticated cats that were formerly owned but have been abandoned and that are no longer socialized, as well as their offspring) and hybrids of *Felis catus* that are registered by the American Cat Fanciers Association or the International Cat Association provided that such cats be without any wild felid parentage for a minimum of five generations.

As the human population has grown over time, so has the number of free roaming cats that are left outdoors unspayed and unchecked. An unspayed free roaming female cat can have several thousand kittens over her lifetime. Once surviving kittens reach maturity, this cycle is then multiplied exponentially when her kittens breed and give birth to their own litters and on and on. Because many of these outside cats are born and raised without human contact they are often fearful of humans and are often

referred to as “feral cats”. These cats often form what are known as “colonies” and live short lives falling victim to starvation, disease, freezing, cruelty and are commonly found hit by cars leaving a litter behind. In response to the overwhelming demand for assistance, many animal rescue organizations have initiated what are known as trap-neuter-release or (TNR) programs. Trap-Neuter Release has proven to be a most effective way of humanely reducing feral cat populations. Through TNR programs, stray and feral cats are humanely trapped and transported to veterinarians, where under anesthesia, they are spayed or neutered and ear tipped for future identification. Cats are often assessed to see whether they are social enough to be adopted, if not, they are transported back to their original location under the care of a cooperating neighborhood resident who will continue to provide a food source. Through TNR, feral cat populations are slowly decreased through attrition. Cats should always be kept indoors for their own safety.

Note: Always remember to check your local municipal codes as your municipality may have its own laws or codes regarding feral cats. Please see New York State Consolidated Laws for the above section in its entirety by visiting the New York State Assembly website at <http://assembly.state.ny.us/leg/>.

Conclusion

The New York State Bar Association’s Committee on Animals and the Law hopes that this pamphlet has been a useful guide to introducing you to the field of animal law. Due to space limitations, not every animal-related law or topic is covered. Many of the laws cited in this pamphlet have been abbreviated and/or paraphrased and should be viewed in their full statutory form. For more information regarding Animal Law, please visit the Committee on Animals and the Law on the New York State Bar Association’s website at: <http://www.nysba.org>.

This pamphlet, which is based on New York law, is intended to inform, not provide advice. No one should attempt to interpret or apply any law without the aid of an attorney. For counsel please contact your local bar association. This pamphlet is produced by the New York State Bar Association in cooperation with the Committee on Animals and the Law.



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