

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2248 (Maienschein)
Version: May 29, 2024
Hearing Date: June 18, 2024
Fiscal: No
Urgency: No
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SUBJECT

Contracts: sales of dogs and cats

DIGEST

This bill prohibits offering and makes void contracts that transfer ownership of a dog or cat where such contract requires a nonrefundable deposit or fails to identify the source of the dog or cat. The bill requires contracts for dogs or cats to state the prohibition on nonrefundable deposits and the requirement that the original source be identified.

EXECUTIVE SUMMARY

California has seen a steady trend of state laws aimed at unscrupulous practices in the breeding and selling of cats and dogs. Pet shops have been prohibited from selling them and those offering them up for adoption must meet specified criteria.

However, concerns have grown that problematic sales practices have simply moved online to skirt California's strong protections.

This bill seeks to address these practices and to provide some transparency by requiring contracts that provide for the transfer of ownership of a dog or cat to identify the original source of the dog or cat, including the breeder. The bill also prohibits a nonrefundable deposit to be charged in connection with such sales. Contracts must include notice of these requirements and any contracts, entered into on or after January 1, 2025, between a broker and a buyer are void if they violate either requirement. The bill authorizes a court to enjoin any person from offering a contract that violates these provisions.

This bill is sponsored by the ASPCA. It is supported by several animal advocacy groups, including Social Compassion in Legislation. No timely opposition was received by this Committee. The bill passed out of the Senate Business, Professions, and Economic Development Committee on a 13 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) 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. (Civ. Code § 1668.)
- 2) Prohibits a pet store from adopting out, selling, or offering for sale a dog, cat, or rabbit. A pet store may provide space for the display of these animals for adoption if displayed by a public animal control agency or shelter, or animal rescue group and provided the store receives no fees. (Health & Saf. Code § 122354.5.)
- 3) Prohibits displaying animals at a pet store, or an animal rescue group operating a retail establishment from offering dogs, cats, or rabbits, for adoption unless the animals are sterilized and the adoption fees do not exceed \$500, as provided. (Health & Saf. Code § 122354.5.)
- 4) Subjects those in violation to civil penalties and injunctive relief in an action brought on behalf of the people by a district attorney or a city attorney, as provided. (Health & Saf. Code § 122354.5.)
- 5) Requires every breeder of dogs to deliver to each purchaser of a dog a written disclosure containing certain information, including:
 - a) The breeders name and address and the license number if licensed.
 - b) The date of the dog's birth and the date the breeder received the dog.
 - c) The breed, sex, color, and identifying marks at the time of sale, if any.
 - d) If the dog is being sold as being capable of registration, the names and registration numbers of the sire and dam and litter number, if known.
 - e) Specified medical records for the dog. (Health & Saf. Code § 122050.)
- 6) Requires a breeder to maintain a written record on the health, status, and disposition of each dog for a period of not less than one year after the disposition of the dog. (Health & Saf. Code § 122055.)
- 7) Prohibits an online pet retailer, as defined, from offering, brokering or making a referral for a loan or other financing for the adoption or sale of a dog, cat, or rabbit. (Health & Saf. Code § 122191.)
- 8) Defines "service animal" as 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, or that is in training to do that work or perform those tasks. "Service animal" does not include any other

species of animals, whether wild or domestic, trained or untrained. (Health & Saf. Code § 113903.)

This bill:

- 1) Makes void, as against public policy, a contract entered into on or after January 1, 2025, to transfer ownership of a dog or cat that is offered, negotiated, brokered, or otherwise arranged by a “broker” and where the buyer is located in California, if any of the following circumstances apply:
 - a) The contract requires a nonrefundable deposit.
 - b) The contract does not identify the original source of the dog or cat, including, but not limited to, the breeder.
- 2) Requires a contract entered into on, or after, January 1, 2025, between a broker and a buyer who is located in California to indicate that the broker is required to disclose the original source of the dog or cat involved in the contract and is prohibited from requiring a nonrefundable deposit.
- 3) Requires, if money has been exchanged pursuant to a contract that is void pursuant hereto, the seller to refund the money to the buyer within 30 days of receiving notice that the contract is void.
- 4) Prohibits a person from offering a contract that contains a term in violation hereof. If a person offers a contract that contains such a term, a court may enjoin that person from offering that contract.
- 5) Provides that nothing therein shall be construed to limit a contract for the transfer of ownership of an animal trained as a service animal or a police dog.
- 6) Defines the following terms:
 - a) “Broker” means a person who buys, sells, or offers to sell dogs or cats for resale to another person or entity.
 - b) “Police dog” means a dog used by a peace officer in the discharge or attempted discharge of their duties and includes a search and rescue dog or a passive alert dog.
 - c) “Service animal” has the same meaning as that term is defined in Section 113903 of the Health and Safety Code.

COMMENTS

1. Regulating the sale of dogs and cats

The Legislature has taken a series of steps to move toward a more humane system for buying and selling pets. AB 485 (O'Donnell, Ch. 740, Stats. 2017) prohibited a pet store operator from selling a live cat, dog, or rabbit in a pet store unless they were obtained from a public animal control agency or shelter, specified nonprofit, or animal rescue or adoption organization, as defined. It also permitted shelters to enter into cooperative agreements with animal rescue or adoption organizations regarding rabbits; required dogs or cats sold in a retail pet store to comply with current spay and neuter laws; provided specified exemptions to the pet warranty law; and permitted an animal control officer, a humane officer, or a peace officer to enforce the pet store prohibition.

AB 2152 (Gloria, Ch. 96, Stats. 2020) went further and prohibited a pet store from selling dogs, cats, or rabbits outright. However, pet stores are allowed to provide space to display animals for adoption if the animals are displayed by either a shelter or animal rescue group, as defined, and establishes a fee limit, inclusive of the adoption fee, for animals adopted at a pet store.

2. Addressing new avenues for problematic sales of dogs and cats

According to the author:

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.

This bill seeks to shine the light on these shady practices by requiring any contract between a broker and buyer for the sale of a dog or cat to clearly identify the original source of the pet, including the breeder. To prevent onerous deposit schemes, the bill outright bans requiring a nonrefundable deposit in connection with such transactions.

The bill makes void, as against public policy, any contract that fails to meet these requirements between a broker and a buyer. Such contracts must also clearly state these legal parameters.

A broker is defined as a person who buys, sells, or offers to sell dogs or cats for resale to another person or entity.

The sponsor of the bill, the American Society for the Prevention of Cruelty to Animals, explains the need for the bill:

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.

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.

This is all completed prior to the consumer learning the source of an animal, with no way of knowing whether their future pet has been born in a commercial facility, or puppy mill. If a consumer learns the name of the seller and has concerns, they must move forward with the contract or lose their deposit.

Writing in support, the San Francisco SPCA states:

California has taken a strong public policy stance to protect consumers, to promote pet adoption and to shut down these high-volume commercial breeding operations, including banning the purchase of pets at pet stores. Despite this, puppies are being sold to Californians through this online marketplace.

At a time when California's animal shelters are overflowing with animals who need homes, it is imperative that the state continue its commitment to shutting down the pipeline of puppy mill pups into the state. By requiring source disclosure and eliminating predatory nonrefundable deposits, AB 2248 will help.

Outside of the contractual elements, the law authorizes a court to enjoin a person from offering a contract in violation of this bill. The author states that this is intended to allow consumers to take brokers to court to seek injunctive relief. To clarify this provision, the author has agreed to an amendment that makes this explicit and provides for a prevailing plaintiff's attorneys' fees and costs.

The bill also includes one exception. It states that it does not limit a contract for the transfer of ownership of an animal trained as a service animal or a police dog. The author may wish to consider narrowing this exception to ensure that it only applies to buyers that intend to use the dog as a service animal or police dog. Otherwise it could be exploited by crafty brokers claiming to train their dogs as such.

SUPPORT

American Society for the Prevention of Cruelty to Animals (sponsor)
Best Friends Animal Society
San Diego Humane Society
San Francisco SPCA
Social Compassion in Legislation

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 485 (O'Donnell, Ch. 740, Stats. 2017) *See* Comment 1.

AB 2152 (Gloria, Ch. 96, Stats. 2020) *See* Comment 1.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 13, Noes 0)

Assembly Floor (Ayes 73, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
