
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No: AB 1138 **Hearing Date:** July 11, 2017
Author: Maienschein
Version: April 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: NG

Subject: *Sale of Cats or Dogs*

HISTORY

Source: American Society for the Prevention of Cruelty to Animals

Prior Legislation: AB 1491(Caballero) in Senate & Senate Judiciary Committee, 2017
AB 485 (O'Donnell) in Senate Committee Business, Professions, and
Economic Development, 2017
AB 1347 (Caballero) Chapter 703, Statutes of 2007
AB 2826 (Ridley-Thomas) Voted by Governor, 2006

Support: Best Friends Animal Society; Humane Society of the United States; Humane
Society Veterinary Medical Association; San Francisco Society for the Prevention
of Cruelty to Animals; San Diego Humane Society; State Humane Association of
California

Opposition: None known

Assembly Floor Vote: 69 - 0

PURPOSE

The purpose of this bill is to prohibit untrue or misleading advertising related to the sale of dogs and cats, and prohibits advertisement without the intent to sell advertised dogs or cats.

Existing law generally protects consumers against unlawful, unfair, fraudulent business act or practice, and unfair, deceptive, untrue, or misleading advertisement. (Business and Professions Code § 17200, *et seq.*)

Existing law states that false advertising, with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, 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 advertised is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$2,500, or by both that imprisonment and fine. (Business and Professions Code § 17500)

Existing law establishes the Lockyer-Polanco-Farr Pet Protection Act, related to the retail sale of dogs and cats. The Act requires that pet dealers possess a permit in order to sell dogs and cats. (Health & Safety Code (HSC) § 122125, subd. (a) & (b).)

Existing law requires pet dealers to disclose information, in written format, regarding a cat or dog's health condition, breed, date of birth, physical characteristics, existing record of any veterinarian treatment, as specified, among others, to the purchaser of each dog or cat at the time of a sale. (HSC § 122140)

Existing law requires pet dealers to maintain a healthy and sanitary condition for dogs and cats, as specified. (HSC § 122155)

Existing law provides a civil penalty for violating the Lockyer-Polanco-Farr Pet Protection Act punishable up to one thousand dollars per violation. (HSC § 122150, subd. (a).)

This bill provides that is unlawful for any person, firm, or corporation, in any newspaper, magazine, circular, form letter, or any open publication, published, distributed, or circulated, including over the Internet, or any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale or transfer of a dog or cat for which any of the following apply:

- Statements about the dog or cat being advertise or offered for sale are known, or reasonably should be known, to be untrue or misleading; and
- Statements about or pictures of the dog or cat are made or presented without the actual intent to sell or offer the exact dog or cat advertised, pictured, or offered.

This bill provides that, in addition to any other penalty provided by the law, the violation of the any section of the bill constitutes a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$2,500, or by both that imprisonment and fine.

COMMENTS

1. Need for This Bill

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.

In 2016, a Federal Trade Commission official stated in an interview that there had been “tens of thousands of complaints filed” with the FTC 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 AARP, BBB, 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 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 to 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 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 these 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

2. What this Bill Does

Current law provides that false or misleading advertising can generally be prosecuted as a misdemeanor, punishable by up to six months in county jail, or a fine of up to \$2,500, or both. This bill creates a new misdemeanor by specifying that particular forms of false advertisement regarding the sale of dog or cats are unlawful, and would apply an identical penalty as existing law.

3. Argument in Support

The Humane Society of the United States, the San Diego Human Society, the Best Friends Animal Society, and the San Francisco Society for the Prevention of Cruelty to Animals jointly state, in support:

Too often, especially in online/internet advertising, photos and descriptions of pets marketed for sale are deceptively inaccurate. It is not uncommon, unfortunately, for large-scale “puppy mills” in particular, to market available puppies using photos of dogs other than those individuals being offered for sale. Such deceptive advertising is used to draw customers in, preying on an emotional response, taking their money and then delivering a dog that bears little resemblance to the photographed animal, who may have other behavioral or medical issues that do not match descriptions provided in advertisements, and leaving the customer without realistic recourse...

Many internet pet purchases occur sight-unseen, either because there is a significant geographical distance between the buyer and seller or due to the unwillingness of the breeder to let the customer meet the pet on their property before buying them. As a result, 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 that is being offered for sale, and providing customers with a remedy in the cases these provisions are violated.

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