

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1881 (Santiago)
Version: June 14, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Animal welfare: Dog and Cat Bill of Rights

DIGEST

This bill requires a notice containing statements of what cats and dogs deserve to be made available by various facilities and subjects violations to civil fines.

EXECUTIVE SUMMARY

The COVID-19 pandemic ushered in a massive spike in pet adoptions. The author and sponsor cite concerns that many of these new owners are faced with unforeseen responsibilities and may not appreciate what an appropriate standard of care is for their new family members.

This bill requires certain facilities, including public animal control shelters and rescue groups, to make a notice available through one of three specified methods. The notice must list a series of statements regarding what cats and dogs deserve, including that they deserve to be free from exploitation, cruelty, neglect, and abuse and deserve daily mental stimulation and appropriate exercise considering the age and energy level of the dog or cat.

Failure to so post a notice subjects a facility in violation to a fine of up to \$250 to be sought in a civil action brought by a public prosecutor. The bill makes clear that it does not provide for private enforcement or create a new crime.

This bill is sponsored by Social Compassion in Legislation. It is supported by various groups, including Direct Action Everywhere. It is opposed by a number of groups, including the California Animal Welfare Association (CalAnimals) and the Humane Society of the United States that object to the bill specifically targeting shelters and pet adopters. This bill passed out of the Senate Business, Professions and Economic Development Committee on a 10 to 2 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime. (Pen. Code § 597(a).)
- 2) Provides that any person having the charge or custody of any animal, either as owner or otherwise, that subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather is, for each offense, guilty of a crime. (Pen. Code § 597(b).)
- 3) Requires every person who keeps an animal confined in an enclosed area to provide it with an adequate exercise area. (Pen. Code § 597t.)
- 4) Governs the operation of animal shelters by, among other things, setting a minimum holding period for stray dogs, cats, and other animals, and requiring animal shelters to ensure that those animals, if adopted, are spayed or neutered and, with exceptions, microchipped. (Food & Agr. Code §§ 30501 et seq.; 31108.3; 31751 et seq.; 32000 et seq.)
- 5) Prohibits a pet store operator from selling a live dog, cat, or rabbit in a pet store unless the animal was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group that is in a cooperative agreement with at least one private or public shelter, as specified. (Health & Saf. Code § 122354.5)

This bill:

- 1) Requires each public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group to make a copy of the notice specified in subdivision (c) available through at least one of the following methods:
 - a) posting the notice on the facility's website in a clear and conspicuous manner;
 - b) posting a written copy of the notice in the facility where it is accessible to public view; or
 - c) including the notice on the application for adoption in a clear and conspicuous manner.
- 2) Requires the notice to read as follows: "Dogs and cats deserve to be free from exploitation, cruelty, neglect, and abuse. Dogs and cats deserve a life of comfort,

free of fear and anxiety. Dogs and cats deserve daily mental stimulation and appropriate exercise considering the age and energy level of the dog or cat. Dogs and cats deserve nutritious food, sanitary water, and shelter in an appropriate and safe environment. Dogs and cats deserve regular and appropriate veterinary care. Dogs and cats deserve to be properly identified through tags, microchips, or other humane means. Dogs and cats deserve to be spayed and neutered to prevent unwanted litters.”

- 3) Prohibits a fine from being assessed for a first time offense for failure to comply or within 60 days of that offense. Thereafter, the Attorney General, district attorney, or city attorney “in which the violation has occurred” may bring a civil action to enforce each additional violation and seek a fine not exceeding \$250.
- 4) Clarifies that it does not create or imply a private right of action or create a crime or a penalty other than that provided.

COMMENTS

1. Stated intent of the bill

According to the author:

One in five American households adopted a dog or a cat since the start of the COVID-19 pandemic, in part because of the social and emotional companionship dogs and cats can provide. Now that the state is relaxing some of its COVID-19 restrictions and owners are returning to normal life, we must ensure that our dogs and cats are still receiving the love and attention they need. That’s why AB 1881 will inform potential adopters of the needs of dogs and cats that go beyond just food, water, and shelter, so that all of our dogs and cats may live long, healthy lives after all pandemic restrictions have lifted.

An American Society for the Prevention of Cruelty to Animals report estimated that approximately 23 million American households acquired a cat or dog in the period from the beginning of the pandemic to May 2021.¹ Some media reports indicate that new owners are faced with unforeseen challenges in caring for their pets as the pandemic restrictions lift: “If you had your pet before the pandemic, you had a routine, you knew what you were doing . . . Whereas, if you adopted your pup during the pandemic,

¹ Press Release, *New ASPCA Survey Shows Overwhelming Majority of Dogs and Cats Acquired During the Pandemic Are Still in Their Homes* (May 26, 2021) ASPCA, <https://www.aspc.org/about-us/press-releases/new-aspc-survey-shows-overwhelming-majority-dogs-and-cats-acquired-during>. All internet citations current as of June 11, 2022.

you're building this routine together now, and you're learning about leaving your dog alone."²

2. A Bill of Rights for dogs and cats

This bill establishes the "Dog and Cat Bill of Rights." Pursuant to the bill, that includes the following:

Dogs and cats deserve to be free from exploitation, cruelty, neglect, and abuse. Dogs and cats deserve a life of comfort, free of fear and anxiety. Dogs and cats deserve daily mental stimulation and appropriate exercise considering the age and energy level of the dog or cat. Dogs and cats deserve nutritious food, sanitary water, and shelter in an appropriate and safe environment. Dogs and cats deserve regular and appropriate veterinary care. Dogs and cats deserve to be properly identified through tags, microchips, or other humane means. Dogs and cats deserve to be spayed and neutered to prevent unwanted litters.

While the terminology "Bill of Rights" is used, the bill does not actually create any enforceable rights for dogs or cats, or extend any existing protections. What it does require is that certain facilities make a copy of a notice of these "rights" available by either posting the notice on their website or in their facility where it is in public view. These facilities can also meet the requirement by including the notice in adoption applications in a clear and conspicuous manner.

Social Compassion in Legislation, the sponsor of this bill, asserts that the bill will "help promote the mental, physical, and emotional well-being of dogs and cats by informing potential adopters of the animal's needs before they adopt." It states: "With the passage of AB 1881, we will continue to elevate the emotional and mental needs of our pets while reiterating the basic needs such as food, water, and shelter."

The bill subjects repeat offenders to a civil fine of up to \$250. No fine can be imposed for a first violation, or any violation 60 days thereafter. The fine may only be imposed by public prosecutors, as provided. This provision of the bill includes language that is a bit unclear; the author has agreed to amendments to clarify it:

Amendment

Amend Section 31800(d) as follows:

² Jacob Bogage, *Americans adopted millions of dogs during the pandemic. Now what do we do with them?* (January 7, 2022) The Washington Post, <https://www.washingtonpost.com/business/2022/01/07/covid-dogs-return-to-work/>.

The Attorney General, or the district attorney or city attorney in whose jurisdiction the violation is alleged to have occurred ~~in which the violation has occurred~~ may bring a civil action to enforce a violation of subdivision (a).

The only entities the posting requirement in this bill applies to are public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups. It should be noted that no evidence has been provided that these entities are failing to provide adequate information regarding proper pet care to adoptees or that these facilities, over other sources of acquiring cats and dogs such as private breeders, are the best target for this type of regulation.

The author asserts that this requirement is critical because “[a]nimal shelters and adoption agencies are not currently required to inform the potential adopter of the standards of care dogs and cats deserve. To ensure dogs and cats are treated appropriately, potential owners must understand that dogs and cats deserve certain standards of treatment before committing to adoption.”

However, groups in opposition object to this specific targeting. CalAnimals and the Humane Society of the United States write in joint opposition:

This bill does not solve a problem. The sponsor of this bill thinks that “bad” people are adopting animals from shelters, behaving irresponsibly, and then returning them. There is no data to support this. In fact, adoption returns are down. What *is* happening in many shelters right now, is that adoptions have been slow and animals are staying longer. This is stressful for both shelters and rescue organizations as staff and volunteers struggle to find placement for homeless pets.

The sponsors of this bill allege that our sheltering professionals are not properly counseling or communicating with adopters about the expectations to provide quality care. As a result, the state must step in and provide us with a notice to post in our facilities.

Our shelters are staffed by trained professionals and dedicated volunteers that work each and every day to help animals in need. They work with adopters to help them select the right pet, provide counseling to help ensure a smooth transition to the new home, and provide ongoing support.

When pets are returned to the shelter, it is usually because the pet is not the right match, or the adopter [is] experiencing some unexpected financial or housing hardship. People should not be shamed for having to make the difficult decision to return a pet.

It should be noted that according to the ASPCA study cited above, most new pet owners are not having any buyer's remorse and continue to adequately care for their animals:

This incredibly stressful period motivated many people to foster and adopt animals, as well as further cherish the pets already in their lives, and our recent research shows no significant risk of animals being rehomed by their owners now or in the near future as a result of the lifting of pandemic-related restrictions," said Matt Bershader, ASPCA President and CEO. "Pets are still providing their families with joy and comfort, regardless of changes in circumstances, and loving owners continue to recognize and appreciate the essential role pets play in their lives."

As COVID-19 restrictions continue to be lifted across the country, the majority of surveyed pet owners are incorporating pets into their lifestyles with little reported concern about having enough time to spend with their pet or wanting to travel more but feeling limited by an animal. Although some pet owners expressed general concerns, 87 percent of respondents shared that they are not considering rehoming their animal, suggesting that pet owners remain committed to caring for their cats and dogs.

Writing in opposition, The No Kill Advocacy Center states that while it agrees with the content of the notice provided for in the bill, it objects to what it calls "its mandate for compelled speech."

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." The First Amendment places restrictions on compelled speech. However, the case law generally affords a wide berth to laws that regulate commercial speech and that involve disclosure requirements that involve conveying factual information that has sound public policy justification, such as food labeling.³ Specifically, the courts acknowledge that they have generally "applied a lower level of scrutiny to laws that compel disclosures in certain contexts, including cases analyzing the required disclosure of factual, noncontroversial information in . . . commercial speech."⁴

SUPPORT

Social Compassion in Legislation (sponsor)

A Passion for Paws - Akita Rescue

Animal Alliance Network

³ See *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n* (1980) 447 U.S. 557; *Zauderer v. Office of Disciplinary Counsel of Supreme Court* (1985) 471 U.S. 626.

⁴ *Am. Bev. Ass'n v. City & Cty. of S.F.* (9th Cir. 2019) 916 F.3d 749, 755.

Ashley and Hobie Animal Welfare INC
Bella and Buddies Animal Rescue
Castillo Animal Veterinary Corp
Compassionate Bay
Direct Action Everywhere
Grassroots Coalition
Los Angeles Alliance for Animals
Our Honor
Plant-based Advocates - Los Gatos
Poison Free Malibu
Project CounterGlow
Recycled Love Dog Rescue
Scientists for a Better Future
Starfish Animal Rescue
Start Rescue
Take Me Home
Women United for Animal Welfare
363 individuals

OPPOSITION

California Animal Welfare Association
Hangtown Kennel Club of Placerville, CA
The Human Society of the United States
San Diego Humane Society

RELATED LEGISLATION

Pending Legislation:

AB 1781 (Blanca Rubio, 2022) establishes safe transportation standards for dogs and cats in the care of public or private shelters or animal control agencies. This bill is currently in Engrossing and Enrolling.

AB 2606 (Carrillo, 2022) prohibits a person from performing surgical claw removal, declawing, or a tendonectomy on any cat or otherwise altering a cat's toes, claws, or paws to prevent or impair the normal function of the cat's toes, claws, or paws, except for a therapeutic purpose. The bill subjects a person that violates that prohibition to specified civil penalties. This bill is currently in the Senate Business, Professions and Economic Development Committee.

AB 1901 (Nazarian, 2022) requires dog trainers, as defined, to disclose in writing certain information to a purchaser of dog training services. AB 1901 is currently in this Committee and is set to be heard the same day.

AB 2723 (Holden, 2022) establishes additional requirements on animal shelters regarding the release of a dog or cat required to be microchipped to an owner. Specifies that the owner of a dog or cat, not the shelter or rescue agency, shall be registered with the microchip registry as the primary owner of the dog or cat. This bill is currently on the Senate Floor.

Prior Legislation: AB 702 (Santiago, 2021) was substantially similar to this bill. It died in the Assembly Business and Professions Committee.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 10, Noes 2)

Assembly Floor (Ayes 53, Noes 13)

Assembly Appropriations Committee (Ayes 12, Noes 3)

Assembly Business and Professions Committee (Ayes 14, Noes 0)
