

Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
AB 554 (Gabriel) – As Amended March 15, 2023

SUBJECT: Corporations for the prevention of cruelty to animals: enforcement of laws

SUMMARY: Specifies that a nonprofit corporation established for the prevention of cruelty to animals may file specified civil actions to enjoin behavior affecting animals.

Specifically, **this bill:**

- 1) Provides that a nonprofit corporation established for the prevention of cruelty, or humane officer thereof may bring it as a civil action for specific or injunctive relief, including to enjoin possession, to enforce any law relating to or affecting animals that would be a basis for a complaint under existing animal welfare laws.
- 2) Makes various findings and declarations about the need to clarify existing law to ensure the protection of animals from unlawful abuse.

EXISTING LAW:

- 1) Establishes the Nonprofit Public Benefit Corporation Law and provides for the rules and regulations of corporations established for a public or charitable purpose. (Corporations Code Section 5110 et seq.)
- 2) Provides that corporations for the prevention of cruelty to animals may be formed under the Nonprofit Public Benefit Corporation Law by groups of 20 or more persons who are residents of the State of California. (Corporations Code Section 10400.)
- 3) Requires all magistrates, sheriffs, and officers of police, as may be required, to assist a public benefit corporation established for the prevention of cruelty to animals, as well as its officers, members, and agents, in the enforcement of all laws relating to or affecting animals. (Corporations Code Section 10405.)
- 4) Authorizes a public benefit corporation established for the prevention of cruelty to animals to proffer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in the prosecution of the offender before the court or magistrate. (Corporations Code Section 10404.)

FISCAL EFFECT: None. This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

- 1) Purpose.

According to the author:

AB 554 would strengthen California's animal protection laws by clarifying that Societies for the Protection of Cruelty to Animals (SPCAs) can seek injunctive

relief to enforce civil protection laws. This bill would clarify the existing path for private enforcement of animal protection laws while conserving judicial resources. California enacted its animal cruelty laws in 1872 and has enacted many other important and groundbreaking animal protection laws in recent years. However, civil enforcement of these laws is often necessary to ensure the desired effect. Statutory clarification that incorporated SPCAs have standing to civilly enforce animal protection laws would ensure a consistent statewide standard, while saving the courts' time and resources adjudicating standing and related procedural issues.

2) Nonprofit Public Benefit Corporations and Animal Welfare Organizations

The majority of the registered nonprofit corporations in California are organized as public benefit corporations. Under California law, a public benefit corporation must be formed for public or charitable purposes and may not be organized for the private gain of any person. A public benefit corporation cannot distribute profits, gains, or dividends to any person. Public benefit corporations often qualify for exemption from income tax. However, the failure of a public benefit corporation to qualify for income tax exemption does not necessarily free the organization and its responsible directors or officers from accountability of charitable assets.

While public benefit corporations can form for a host of different charitable purposes, California law explicitly identifies and differentiates a corporation for the prevention of cruelty to animals, which is provided a quasi-governmental function. The Nonprofit Public Benefit Corporation Law grants these nonprofit organizations the power to "proffer" complaints against a person for the violation of any law relating to or affecting animals and may aid in the prosecution of the offender before the court. Separately, Corporations Code Section 14500 authorizes Societies for the Preventions of Cruelty to Animals (SPCAs) to appoint humane officers who assist in the enforcement of California's animal protection laws. Humane officers exercise the powers of a peace officers and help in the prevention and investigation of animal abuse as well as the apprehension of suspected animal abusers.

Animal welfare organizations use the enforcement authority granted to them under the Corporations Code. In 2017, an SPCA filed lawsuit against a California business owner for operating an illegal puppy mill. According to the Animal Legal Defense Fund (ALDF), the property held as many as 50 dogs, and generated complaints from neighbors about odors, dog bites, and unsanitary conditions. The SPCA brought the lawsuit under California Corporations Code section 10404, the code section that is the subject of this bill.

While SPCAs are granted special status under the Corporations Code, the process for forming them has undergone changes specifically intended to promote the formation of nonprofits and reduce burdens on the courts. SB 1417 (Cox), Chapter 652, Statutes of 2010, repealed Corporations Code Sections 10401 and 10402, eliminating the requirement that the organization's articles of incorporation be endorsed either by the Department of Justice or by the judge of the superior court in the county. Following the enactment of SB 1417, a corporation for the prevention of cruelty to animals can be formed without the need to obtain endorsement of its articles or other special restrictions.

3) What this bill does.

AB 554 specifies that a SCPA, or its humane officer, proffering a complaint under current law may bring it as a civil action for specific or injunctive relief to enforce any law relating to or affecting animals that would otherwise be a basis for a complaint under current law. According to supporters, AB 554 clarifies an enforcement authority that already exists, and the bill was previously heard in Assembly Judiciary Committee, where it passed out 11-0.

Since passing Assembly Judiciary Committee on a bipartisan basis, a collection of agriculture groups have come out in opposition, arguing that AB 554 expands Corporations Code Section 10404 to establish a new private right of action for SPCAs. Supporters and opponents have now offered the committee their interpretation of case law and the legislative intent of this nearly 120 year old law.

Opponents appear most worried about the possibility of activist organizations forming SPCAs for the purpose of engaging in frivolous and burdensome legal activism. As part of their argument, they point to how easily a group of individuals can form a SPCA (especially given legislative reforms in 2010), and they also contend the two cases cited by AB 554's sponsors aren't as clear cut as represented.

The debate about what current law does or does not authorize a SPCA to do is relevant to the Legislature's decision on AB 554, and both opponents and supporters have submitted materials to the committee to support their respective cases. On balance, it does appear that case law supports the author's argument that AB 554 is strengthening an existing path for private enforcement of animal protection laws. However, the author may wish to obtain an opinion from Legislative Counsel, who can help referee the disagreement between the two parties to provide the Legislature further guidance.

Importantly, this disagreement about the contours of current law also distracts from what should be the debate around AB 554: is it good policy to empower SPCAs to *more effectively* enforce animal protection laws, either by clarifying their existing authority (as argued by supporters) or by creating a new authority (as argued by opponents)?

The cases cited by both supporters and opposition show that SPCA actions directly resulted in the further prevention of animal cruelty. In one dog hoarding case, the local city attorney's office lacked the resources to engage in the litigation required to prevent further neglect, and in another case a preliminary injunction was entered that prevented the further sale of sick and underage puppies. In a world of limited law enforcement resources and a need to prioritize those resources, SPCAs can play a crucial role in ensuring animals are protected.

4) Support

This bill is supported by ALDF, who writes:

Under current law, California Corporations Code §10404, SPCAs, formed under California Corporations Code section 10400, are authorized to “proffer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in the prosecution of the offender before the court or magistrate.”

While the intent of the legislation authorizes SPCAs to file complaints seeking a wide range of remedies such as injunctive relief (i.e. a court order requiring a person to do or cease doing a specific action instead of monetary damages) to prevent animal cruelty, this has not always been the case in practice due to a lack of clarity in the original language. The authority to "proffer a complaint" is not explicitly defined, and the remedy for injunctive relief is not as clear as it could be. Defendants frequently take advantage of this ambiguity, wasting court resources and creating additional legal hurdles for those seeking to protect animals.

...SPCAs will more effectively be able to privately enforce animal protection laws, which is especially important when government agencies do not have resources to do so. Providing a clear path for private enforcement through injunctive relief (i.e. specific or preventive relief instead of monetary damages) takes pressure off the justice system to be the sole avenue for enforcement of animal cruelty

5) Opposition

Groups representing agricultural interests, such as the California Farm Bureau, California Poultry Association, California Cattlemen's Association, and the Milk Producers Council, oppose AB 554, arguing it creates a new private right of action and would encourage a wave of unwarranted lawsuits from activist groups. These groups argue that AB 554 is ripe for abuse by bad actors and that no civil cause of action is necessary in light of existing criminal authorities. The coalition argues:

Prosecutions in criminal court under § 10404 have an important safeguard for the accused: the direct involvement of the state in advancing such prosecutions. The complaint must be proffered to a court or magistrate, and while an SPCA humane officer "may aid in the prosecution of the offender before the court or magistrate" (Corp. Code § 10404), that prosecution will still be brought by a government prosecutor on behalf of the People. In this context, prosecutors vet any allegations made by an SPCA or humane officer, ensuring both that a legally-cognizable 'wrong' has been perpetrated and that there is sufficient evidence to successfully prosecute the case.

State actors acting as a 'buffer' against ill-founded prosecutions would be absent in the filing of a civil complaint, however, rendering AB 554 ripe for abuse by ill-intentioned actors, including extremist animal rights groups. Well-funded organizations could bring spurious or frivolous claims of 'abuse' against humanely-operating livestock producers, zoos, fairs, and other businesses in an effort to tarnish their reputations, to force the expenditure of significant time and monetary resources in their defense, or to exact civil settlements from these businesses. Such plaintiffs need not win at trial on the legal merits of these cases; merely filing and pursuing a civil lawsuit can achieve their end of irreparably damaging businesses engaged in the production, stewardship, and care of animals.

REGISTERED SUPPORT / OPPOSITION:

Support

American Kennel Club, INC.
Animal Legal Defense Fund
Center for Biological Diversity
Social Compassion in Legislation

Oppose

Agricultural Council of California
Association of California Egg Farmers
California Agricultural Teachers Association
California Cattlemen's Association
California Farm Bureau
California Grain and Feed Association
California Pork Producers Association
California Poultry Federation
Milk Producers Council
Pacific Egg & Poultry Association
Professional Bull Riders
Professional Rodeo Cowboys Association
Western Justice
Western United Dairies

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