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COMPANION ANIMALS AND THE LAW: EXPLORING PUPPY MILLS

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Kentucky Bar Association

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I. INTRODUCTION

Large-scale commercial dog-breeding operations that raise dogs in inhumane conditions are often referred to as "puppy mills." It is estimated that as many as 15,000 operations exist in the United States alone,¹ resulting in the sale of more than 2 million puppies each year.² Although there is no standard legal definition for the term "puppy mill,"³ indiscriminate breeding, minimal to non-existent veterinary care, lack of sanitation and waste control, continuous confinement of breeding dogs, and lack of adequate food and shelter are common characteristics that are present in these operations. Resulting welfare problems can include a multitude of hereditary and congenital diseases for the puppies bred in these facilities, and a lifetime of suffering for breeding dogs. As puppy mill dogs are often sold in pet stores, consumers may not be aware of the origins of the animals purchased in pet stores or the reasons for any health problems that present themselves.

Commercial dog breeders in the United States are regulated by the federal Animal Welfare Act ("AWA").⁴ Enforced by the United States Department of Agriculture ("USDA"), the AWA establishes minimum care standards for dogs. Until very recently, only operations that sold animals to brokers or pet stores for resale were regulated, while operations selling animals directly to the public (including a significant number of breeders selling animals over the Internet) were not. While a new rule adopted in 2013 closes this loophole, the AWA requirements nevertheless establish only basic standards of care.

Increased awareness and attention to the problem of puppy mills has led to public pressure for legislative and regulatory changes at the federal, state and local level to create more stringent care standards. As a result, many state and local jurisdictions have enacted legislation and regulations that exceed AWA standards. While Kentucky has basic anti-cruelty statutes, it remains in the minority of states with no specific laws to regulate puppy mills.

¹ See United States Department of Agriculture, Regulatory Impact Analysis and Final Regulatory Flexibility Analysis, Final Rule, APHIS-2011-0003, Revision of the Definition of Pet Store at 45 (Jun. 2013), *available at* http://www.aphis.usda.gov/publications/animal_welfare/2013/APHIS-2011-0003-15371%20RIA.pdf.

² See The Humane Soc'y of the U.S., Puppy Mill Facts and Figures (Jan. 2015), *available at* http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy-mills-facts-and-figures.pdf.

³ *But see* Avenson v. Zegart, 577 F.Supp. 958, 960 (D. Minn. 1984) ("A 'puppy mill' is a dog breeding operation in which the health of the dogs is disregarded in order to maintain a low overhead and maximize profits.").

⁴ 7 U.S.C. §2133.

II. FEDERAL LEGISLATIVE AND REGULATORY LANDSCAPE

A. The AWA and Regulations (7 U.S.C. §2133 *et seq.*; 9 C.F.R. §1 *et seq.*).

1. History (1966-2013).

- a. The AWA was enacted in 1966 with the goal of ensuring humane handling, care, treatment of transportation of various animals sold at wholesale and retail, including pets, through licensing and inspection.⁵
- b. Retail pet stores (mostly traditional "brick and mortar" stores at the time) were exempt from regulations on the basis that buyers were able to visit their place of business and personally observe the animals prior to purchase.
- c. Small-scale residential breeders were also exempt from regulation.
- d. With the rise of technology in the 1990s more pet dealers began selling dogs sight unseen over the Internet. These online stores operated as "retail pet stores" not subject to regulation.

2. 2013 amendments.

- a. All dealers, including those who sell directly to the public, are required to be licensed, with certain exemptions (see "Key exemptions," *infra* Part II.A.2.c.).
- b. The definition of "retail pet store" has been revised to require retailers engaging in sight unseen sales to be regulated. It now means "a place of business or residence at which the seller, buyer, and the animal available for sale are physically present so that every buyer may personally observe the animal prior to purchasing and/or taking custody of that animal after purchase, and where only the following animals are sold or offered for sale, at retail, for use as pets: dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchillas, domestic ferrets, domestic farm animals, birds, and coldblooded species"⁶

⁵ *Id.* at §2131.

⁶ 9 C.F.R. §1.1.

- c. Key exemptions.
 - i. Retailers who sell dogs face to face.⁷
 - ii. Facilities with four or fewer breeding female dogs born and raised on the dealer's premises.⁸
 - iii. Breeders who sell working dogs (e.g. hunting, breeding, security purposes).⁹
 - iv. Breeders deriving <\$500 of gross income from sales.¹⁰
 - v. State, county, and city owned and operated shelters, pounds, and humane societies.¹¹
- d. New importation rule (9 C.F.R. §2.151(a)(1)(v)).¹²
 - i. In November 2014, a new federal rule amending AWA regulations took effect. Under the new rule, dogs imported from abroad must be in good health, have received all necessary vaccinations and be at least six months of age.
 - ii. The new rule covers dogs imported into the U.S. from any part of the world.

⁷ 9 C.F.R. § 2.1(a)(3)(i).

⁸ *Id.* at §2.1(a)(3)(iii).

⁹ *Id.* at §1.1.

¹⁰ *Id.*

¹¹ Activities of these organizations fall under local or state jurisdiction.

¹² Import permit requirements listed in §2.150(c) include the following information be disclosed: "(1) The name and address of the person intending to export the dog(s) to the continental United States or Hawaii; (2) The name and address of the person intending to import the dog(s) into the continental United States or Hawaii; (3) The number of dogs to be imported and the breed, sex, age, color, markings, and other identifying information of each dog; (4) The purpose of the importation; (5) The port of embarkation and the mode of transportation; (6) The port of entry in the United States; (7) The proposed date of arrival in the continental United States or Hawaii; and (8) The name and address of the person to whom the dog(s) will be delivered in the continental United States or Hawaii and, if the dog(s) is or are imported for research purposes, the USDA registration number of the research facility where the dog will be used for research, tests, or experiments."

B. USDA Office of Inspector General Audit Report¹³

1. In 2010, the Office of Inspector General of the USDA conducted an audit of Animal and Plant Health Inspection Service Animal Care Unit (which is responsible for enforcing the AWA).
2. The audit focused on the Animal Care Unit's inspections of problematic dealers with a history of violations in the last three years.
3. The review was conducted on the heels of significant media coverage of inhumane treatment of animals in large scale breeding operations.
4. The review contained multiple findings, including:
 - i. The agency was "not aggressively pursuing enforcement actions against violators of AWA and that it assessed minimal monetary penalties against them."¹⁴
 - ii. Education programs were not always successful in preventing AWA violations from problematic dealers.
 - iii. Inspectors did not properly cite or document violation to support enforcement actions.
 - iv. Minimal penalties were assessed.
 - v. "Good faith" reductions in penalties were applied without merit.
 - vi. Some large breeders circumvented the AWA by selling over the Internet.

C. Proposed Legislation

1. Puppy Uniform Protection and Safety (PUPS) Act (H.R. 847/Sen. 395): Legislation previously under consideration in the 113th Congress¹⁵ that would achieve the following:
 - a. Define "high volume retail breeder" as a person who "has an ownership interest in or custody of one or more

¹³ Gil H. Harden, USDA Office of Inspector General Audit Report 33002-4-SF (May 2010), available at <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf>.

¹⁴ *Id.* at 1.

¹⁵ Similar legislation was introduced in previous sessions. See Puppy Uniform Safety Act, 112th Cong. (2011); S. 3424, 111th Cong (2010); S. 3519, 110th Cong. (2008); PAWS bill, S. 1139, 109th Cong. (2005); Puppy Protection Act of 2001, S. 1478, 107th Cong. (2001).

breeding female dogs and who sells via any means of conveyance (including the Internet, telephone or newspaper), more than fifty of the offspring of such breeding female pets in any one-year period."

- b. Consider the breeder of the dogs to be a dealer.
 - c. Require the Secretary of Agriculture to promulgate certain exercise requirements for dogs at facilities owned or operated by a dealer.
 - d. Require dealers to disclose the total number of dogs exempt from exercise on the dealer's premises.
2. Prevent Animal Cruelty and Torture (PACT) Act (H.R. 2293): Legislation introduced in May, 2015.
- a. Allows for the criminal prosecution of persons (including puppy mill operators) who intentionally torture or otherwise cause serious bodily injury to dogs.
 - b. Related to a current federal law that prohibits the trade in "crush" videos of animals being killed and tortured in inhumane ways.
 - c. The PACT Act would be applicable across state lines, thereby addressing the reality that no federal statute exists to address the cruelty itself.
 - d. Complements recent actions by the FBI to begin to track crimes against animals in the Uniform Crime Reporting Program (UCR), "a nationwide cooperative statistical effort of nearly 18,000 city, university and college, county, state, tribal and federal law enforcement agencies voluntarily reporting data on crime brought to their attention."¹⁶

III. STATE AND LOCAL LAWS REGULATING PUPPY MILLS

A. Commercial Breeder-Specific Laws

The majority of states have laws that specifically regulate commercial breeders. Requirements often go beyond the requirements of the AWA, and contain one or more of the following elements:

¹⁶ U.S. Department of Justice, "Summary of the Uniform Crime Reporting Program," *available at* <http://www2.fbi.gov/ucr/killed/2009/aboutucr.html> (last visited May 25, 2015).

1. Restriction on the number of breeding dogs at the facility (e.g. Louisiana,¹⁷ Oregon,¹⁸ Washington,¹⁹ and Virginia²⁰).
2. Licensing requirements (varies by state in terms of which persons are required to obtain a license).
3. Inspection requirements (varies by state in terms of who is inspected, which authority or authorities conduct the inspection, how many times the inspection occurs, whether inspections are mandatory or discretionary, and other conditions of inspection).
4. Affirmative care standards (e.g. food, water, space, exercise, veterinary care, safety, environmental enrichment and grooming standards).
5. Prohibitions against common practices (e.g. wire flooring, stacked cages, tail and ear cropping, etc.).
6. Exemptions for small-scale "hobby breeders," hunting and other working dogs.

B. Consumer Protection Laws

Many states are enacting laws that protect consumers prior to or subsequent to the purchase of a dog. Often enforceable by the state's Attorney General's office, they commonly contain one or more of the following provisions:

1. Remedy for return of the animal for reimbursement of the purchase price in the instance of congenital or hereditary illness.
2. Remedy for reimbursement for veterinary fees incurred in purchasing a sick animal up to a specified amount.

¹⁷ La. Rev. Stat. Ann. §2772(H) ("No individual or business that breeds, buys, or sells dogs retail, wholesale, or to the public shall maintain more than seventy-five dogs over the age of one year at any time for breeding purposes.").

¹⁸ Or. Rev. Stat. §167.374(2) ("A person may not possess, control or otherwise have charge of at the same time more than 50 sexually intact dogs that are two years of age or older for the primary purpose of reproduction.").

¹⁹ Wash. Rev. Code §16.52.310(1). ("A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.").

²⁰ Va. Code Ann. §3.2-6507.2(1) ("Commercial dog breeders shall: Maintain no more than fifty dogs over the age of one year at any time for breeding purposes. However, a higher number of dogs may be allowed if approved by local ordinance after a public hearing. Any such ordinance may include additional requirements for commercial breeding operations.").

3. Remedy for exchange of the animal for another animal.
4. Disclosure of the source of the animal, and other relevant background details.
5. Requirements and restrictions for the advertising of dogs for sale.

C. Anti-Cruelty Laws

All fifty states have anti-cruelty laws, which may be applicable to puppy mills where violations occur. The requirements and prohibitions set forth in anti-cruelty statutes vary widely depending on how cruelty is classified in the state. However, violations common to puppy mills include the following:

1. Lack of adequate nourishment.
2. Lack of adequate shelter and protection from the elements.
3. Lack of adequate veterinary care, including humane euthanasia.
4. Lack of adequate exercise and grooming and other care that is necessary for the health and well-being of the animal.

D. Puppy Mill Ordinances

More than ninety jurisdictions in the United States and Canada have enacted puppy mill ordinances regulating or outright banning retail pet store sales of dogs altogether. Common findings for these ordinances are as follows:

1. Operating puppy mills is often associated with inhumane conditions.
2. Puppy mills contribute to the problem of pet overpopulation.
3. Puppy mills are a threat to public health and safety.
4. Puppy mills contribute to the problems of behavioral and other health issues as well as congenital and hereditary illness and disease.
5. Puppy mills harm consumers who may not know the origin or health history of the animal they have purchased.

E. Kentucky Laws

Kentucky does not have a law that regulates puppy mills specifically. However, the following statute is relevant where the treatment of animals in such facilities constitutes cruelty.

KRS 525.130: "(1) A person is guilty of cruelty to animals in the second degree when except as authorized by law he intentionally or wantonly: (a) Subjects any animal to or causes cruel or injurious mistreatment through abandonment, participates other than as provided in KRS 525.125 in causing it to fight for pleasure or profit (including, but not limited to being a spectator or vendor at an event where a four (4) legged animal is caused to fight for pleasure or profit), mutilation, beating, torturing any animal other than a dog or cat, tormenting, failing to provide adequate food, drink, space, or health care, or by any other means; (b) Subjects any animal in his custody to cruel neglect"

F. Other Potentially Relevant Laws

The operation of puppy mills often intersects with other areas of law, including the following:

1. Zoning laws (e.g. related to high density commercial breeding operations as a land use subject to regulation).
2. Animal vaccination laws (related to public and animal health).
3. Tax laws (related to potential tax evasion and/or records fraud in connection with collecting sales taxes for commercially bred dogs sold).
4. Environmental laws (related to pollution control and waste management).

IV. CASE EXAMPLES

A. Kerr v. Kimmel, 740 F.Supp. 1525 (D. Kan. 1990)

1. Facts.

Plaintiff, a dog kennel owner-operator, challenged the Kansas Animal Dealers Act, which imposed additional state regulation on animal breeders for the purpose of quality control and the humane treatment of animals. Plaintiff alleged that the Act violated the Commerce and Supremacy Clauses of the United States Constitution, the Fourteenth Amendment guarantee of equal protection under the law where it exempted greyhounds, and the Fourth Amendment prohibition on unreasonable searches and seizures.

2. Holding.

The District Court found that (1) the Act did not violate the commerce clause where quality control and the humane treatment of animals served a legitimate local public interest; (2) the Act was

an exercise of the state's traditional police power in relation to domestic animals; (3) the exclusion of greyhounds from coverage under the Act did not violate the equal protection clause of the Constitution, as the lack of a rational basis could not be established; (4) and no case or controversy existed in relation to the Fourth Amendment challenge.

B. Luper v. City of Wasilla, 215 P.3d 342 (Alaska 2009)

1. Facts.

Plaintiff raised approximately eighteen dogs over the age of four months on a property she owned in the City of Wasilla, Alaska. An applicable city zoning ordinance prohibited keeping more than three dogs without a permit. After the city sued the plaintiff to enforce its ordinance, she applied for an eighteen dog kennel, which the city denied on a number of grounds including the following factual findings: (1) there were twenty-four written comments in opposition to the permit application where the Wasilla Municipal Code required due deference by the applicant to neighbors' comments; (2) there were potential groundwater contamination and drainage issues and the Wasilla Municipal Code required appropriate drainage and minimal off-site impacts. Plaintiff appealed on a number of grounds including the argument that the ordinance was unconstitutional because it infringed on her property rights in her land and dogs.

2. Holding.

The Supreme Court of Alaska found that the city did not err in denying the permit application and that the zoning ordinance prohibiting the ownership of more than three dogs without a permit bore a fair and substantial relationship to the city's legitimate purposes of controlling dog noise, dog odor, pollution, certain diseases, and dogs at large.

C. Missouri Pet Breeders Association v. County of Cook, No. 14 C 6930, 2015 WL 2448332 (N.D. Ill. May 21, 2015)

1. Facts.

A Cook County, Illinois ordinance required pet shop owners to sell animals obtained only from breeders with a USDA class "A" license who owned or possessed five or fewer female dogs, cats, or rabbits capable of reproduction in any one year period or a not-for-profit or government run entity, among other requirements. The Missouri Pet Breeders Association and three pet shops sued Cook County and various county officials. They alleged that an ordinance regulating the sale of dogs, cats, and rabbits by pet stores in Cook County violated the United States and Illinois Constitutions for impermissibly burdening interstate and foreign

commerce, violating their equal protection rights, and being impermissibly vague. The plaintiffs also argued that the ordinance was preempted by state and federal law and that the county exceeded its home rule powers under the Illinois Constitution. Finally, the plaintiffs argued that the ordinance violated the Contract Clause of the U.S. Constitution, where it impermissibly interfered with building leases, franchise agreements, and contracts to purchase pets from particular breeders. Defendants moved to dismiss.

2. Holding.

The United States District Court for the Northern District of Illinois granted defendants' motion to dismiss on a number of grounds, including lack of standing. The Court found that the ordinance did not exceed home rule powers, run afoul of the guarantee of equal protection, or violate the Contracts Clause, where it was rationally related to a legitimate government interest in animal control and limiting the use of mass-breeding facilities, and where the government had broad authority to regulate breeding facilities. The Court also found that the Commerce Clause arguments were implausible and speculative and therefore dismissed the Commerce Clause claim. Finally, the Court found that the ordinance was not vague where a person of ordinary intelligence would reasonably be able to understand the requirements. The case is set for a status hearing in June 2015.

D. Perfect Puppy, Inc. v. City of East Providence, C.A. No. 14–257 S, 2015 WL 1474560, -- F.Supp.3d -- (D. R.I. Mar. 31, 2015).

1. Facts.

After members of the public raised concerns about puppy mills, the City of East Providence in Rhode Island passed an ordinance banning pet stores from selling dogs and cats unless the animals were owned by a city animal shelter or animal control agency, humane society, or non-profit rescue organization, and the pet store maintained those animals for the purpose of public adoption. Plaintiff pet store raised numerous constitutional challenges to the ordinance implicating the dormant Commerce Clause, the Contract Clause, and the Takings Clause. The plaintiff also asserted equal protection, due process claims and preemption claims.

2. Holding.

The District Court found that the ordinance did not run afoul of the dormant Commerce Clause where its restrictions were not "clearly excessive" compared to the ordinance's putative benefits. The Court also found that the ordinance did not violate the plaintiff's equal protection or due process rights where the government

demonstrated a rational interest in regulating inhumane practices and other problems associated with puppy mills. It also found that the ordinance was not preempted by state law where no state law contradicted the ordinance, and where the plaintiff failed to show that the ordinance impermissibly invaded an exclusively state-dominated field of law. Finally, it found that the ordinance did not violate the Contract Clause where the city held a legitimate interest in furthering the humane treatment of animals, addressing animal overpopulation and protecting consumers. The Takings Claim, which was found to be unripe, was remanded to the Rhode Island Superior Court.

V. LAW REVIEW ARTICLES

- A. Krysten Kenney, "A Local Approach to A National Problem: Local Ordinances as a Means of Curbing Puppy Mill Production and Pet Overpopulation," 75 Alb. L. Rev. 379 (2011)
- B. Sandra K. Jones, "Dealing Dogs: Can We Strengthen Weak Laws in the Dog Industry?," 7 Rutgers J. L. & Pub. Pol'y 442 (2010)
- C. Melissa Towsey, "Something Stinks: The Need for Environmental Regulation of Puppy Mills," 21 Vill. Envtl. L.J. 159, 164 (2010)
- D. Adam J. Fumarola, "With Best Friends Like Us Who Needs Enemies? The Phenomenon of the Puppy Mill, the Failure of Legal Regimes to Manage It, and the Positive Prospects of Animal Rights," 6 Buff. Envtl. L.J. 253, 262 (1999).

Cook County, IL Ordinance Language

PROPOSED ORDINANCE AMENDMENT

SUBSTITUTE TO ITEM 14-2408 (INTRODUCED 4/9/2014)

THE COOK COUNTY COMPANION ANIMAL AND CONSUMER PROTECTION ORDINANCE

WHEREAS, Pet stores selling live animals have traditionally been a sales outlet for young dogs, cats, and rabbits bred commercially in puppy mills, kitten mills, and rabbit mills both within the United States and abroad; and

WHEREAS, according to the Humane Society of the United States, it is estimated that 10,000 puppy mills produce more than 2,400,000 puppies a year in the United States and that nearly all pet store puppies, kittens and many pet store rabbits come from puppy, kitten and rabbit mills, respectively; and

WHEREAS, puppy mills are mass-breeding facilities that churn out puppies with an emphasis on profit over welfare. These mills usually house dogs in overcrowded and unsanitary conditions without adequate veterinary care, food, water and socialization. Puppy mill dogs do not get to experience treats, toys, exercise or basic grooming; and

WHEREAS, the inhumane conditions in puppy and kitten mill facilities lead to health and behavioral issues as well as congenital and hereditary illness and disease. Puppy mill puppies often arrive in pet stores and their new homes with various diseases including giardia, parvovirus, kennel cough, heartworm and distemper. These diseases can lead to excessive veterinary costs both upfront and down the line; and

WHEREAS, rabbits are often treated inhumanely in the breeding mills and because rabbits can multiply every twenty-eight days, rabbit mills are particularly prone to problems of overcrowding. These animals are often viewed as disposable, and after the Easter holiday it's estimated that as many as 80 percent of rabbits sold as Easter or springtime pets are abandoned by their owners; and

WHEREAS, the lack of enforcement resources at local, state and federal levels allow many inhumane puppy, kitten, and rabbit mills to operate with impunity. According to a spokesman from the United States Department of Agriculture, due to budget constraints, the Illinois Department of Agriculture employs only seven inspectors that are charged with overseeing more than 1,300 dog dealers, kennel operators and pet shop operators; and

WHEREAS, every year millions of cats and dogs are euthanized in our nation's animal shelters because there are more pets than there are responsible homes for them. Puppy and kitten mills contribute to pet overpopulation and cause countless animals lifetimes of suffering in squalid wire cages; and

WHEREAS, according to information obtained from the Illinois Department of Agriculture regarding publicly run animal care and control facilities located within Cook County, in 2011 these facilities impounded 19,442 dogs and cats that were not reclaimed by the owner, and euthanized 6,618 of these animals (roughly 34 percent of total). In 2012 these facilities impounded 22,679 dogs and cats that were not reclaimed by the owner, and euthanized 8,035 of these animals (roughly 39 percent of total); and

WHEREAS, between 2011 and 2012 there was an increase of 3,237 dogs and cats impounded and not reclaimed by the owner and a 5 percent increase in the rate of euthanasia; and

WHEREAS, this Ordinance specifically addresses the retail sale of dogs, cats and rabbits in pet stores and will not affect a consumer's ability to obtain a dog or cat of his or her choice directly from a breeder, a breed-specific rescue organization or a shelter; and

WHEREAS, across the country, thousands of independent pet stores as well as large chains operate profitably with a business model focused on the sale of pet services and supplies and not on the sale of dogs and cats. Many of these stores collaborate with local animal shelters and rescue organizations to offer space and support for showcasing adoptable homeless pets in need of a forever home; and

WHEREAS, on March 5, 2014, the Chicago City Council overwhelming approved a similar ordinance that allows for the commercial sale of dogs, cats and rabbits in the City of Chicago only if they are sourced from shelters and other humane adoption centers, effectively ending the sale of pets from animal mills in the interest of the health and well-being of animals and local consumers alike; and

WHEREAS, in the United States and Canada alone, over forty cities have enacted ordinances addressing the sale of puppy and kitten mill dogs and cats, including: Chicago, Illinois; Los Angeles, California; San Diego, California; Albuquerque, New Mexico; Austin, Texas; Brick, New Jersey; and Toronto, Canada; and

WHEREAS, current Federal and State of Illinois laws and regulations do not properly address the sale of commercially bred dogs, cats and rabbits in the County's business establishments; and

WHEREAS, the Cook County Board of Commissioners believes it is in the best interests of the County to adopt reasonable regulations to protect the citizens of the County who may purchase dogs, cats or rabbits from a pet store, help prevent inhumane breeding conditions, promote community awareness of animal welfare, and foster a more humane environment in the County;

NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 10, Animals, Article I, In General, Sections 10-1 through 10-3 of the Cook County Code of Ordinances is hereby amended as follows:

Sec. 10-1. Purpose.

The purpose of this chapter is to provide harmonious relationships in the interaction between man and animal by:

(1) Protecting the citizens of the County from rabies by specifying such preventive and control measures as may be necessary;

(2) Protecting animals from improper use, abuse, neglect, inhumane treatment and health hazards, particularly rabies;

(3) Providing security to residents from annoyance, intimidation, and injury from cats, dogs and other animals;

(4) Encouraging responsible pet ownership;

(5) Promoting community and consumer awareness of animal control and welfare; and

~~(5)~~ (6) Providing for the assessment of penalties for violators and for the enforcement and administration of this chapter;

Sec. 10-2. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the licensed veterinarian appointed by the County Board, pursuant to the Illinois Animal Control Act (510 ILCS 5/1 *et seq.*) or authorized representative.

Animal means any live vertebrate creature except man.

Animal capable of transmitting rabies means all animals classified as mammals.

Animal control warden means an employee of the County appointed by the Administrator to powers in the enforcement of this chapter.

Bird means any flying vertebrate that is covered with feathers.

Bite means seizure of a person with the jaws or teeth of any cat, dog or other animal capable of transmitting rabies so that the person so seized has been wounded or pierced and further includes contact of the saliva of cat, dog or other animal with any break or abrasion of the skin.

Cat means all members of the classification, *Felis catus*.

Confined means the restriction of the cat, dog or other animal at all times by the owner in a manner that will isolate the cat, dog or other animal from the public and other cats, dogs or other animals.

Control means any owned animal that is either secured by a leash or lead, or within the premises of its owner, or confined within a crate or cage, or confined within a vehicle, or within the premises of another person with the consent of that person.

Dangerous or vicious animal means any animal which has known vicious propensities or which has been known to attack or injure any person who was peacefully conducting themselves in any place where they may lawfully be.

Dog means all members of the classification, *Canis familiaris*.

Domestic animal means any animal which has been domesticated by man so as to live and breed in a tame condition.

Guard dog means a dog used in a commercial business or by a municipal or police department for the purposes of patrol and protection.

Inoculation against rabies means the injection of a rabies vaccine approved by the Illinois Department of Agriculture and administered by a licensed veterinarian in accordance with the company's recommendations for the vaccine used.

Offer(s) for sale means to display, sell, deliver, offer for sale or adoption, advertise for the sale of, barter, auction, give away or otherwise dispose of a dog, cat or rabbit.

Owner means any person having the right of property in an animal, who keeps or harbors an animal, who has it in their care, acts as its custodian or who knowingly permits an animal to remain on or about any premises occupied by them unless possession is prohibited by Federal or State laws. Native wildlife remaining on or about any premises shall not be included in this definition.

Pet shop operator means as provided in 225 ILCS 605/2 of the Animal Welfare Act.

Pound means any facility licensed by the Illinois Department of Agriculture and approved by the Administration for the purpose of enforcing this chapter and used as a shelter for seized, stray, homeless, abandoned or unwanted animals.

Rabbit means all members of the classification, *Oryctolagus cuniculus*.

Rescue organization means any not-for-profit organization that has tax exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue and placement of dogs, cats or rabbits.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Stray animal means any owned animal that is not controlled.

Tethering means to restrain a dog by tying the dog to any object or structure, including without limitation a house, tree, fence, post, garage, shed, [or] clothes line by any means, including without limitation a chain, rope, cord, leash or running line.

Tow chain or log chain means any chain that is more than one-quarter of an inch in width.

Sec. 10-3. Violations.

(a) Any person violating any provision of this chapter or counterfeiting or forging any certificate, permit or tag, or resisting, obstructing or impeding any authorized officer in enforcing this chapter is guilty of a misdemeanor punishable by a fine not exceeding \$500.00 or by imprisonment for a period not exceeding six months or both such fine and imprisonment. Each person shall be guilty of a separate offense for every day in which any violation of any of the provisions of this chapter is committed or permitted to continue and shall be punished as provided in this chapter. Any person violating or failing to comply with Sec. 10-13 of this chapter shall be subject to a fine of \$500.00 for each violation. Each sale or act in violation of Section 10-13 shall constitute a separate and distinct violation. Violations of Sec. 10-13 shall be adjudicated pursuant to Chapter 2, Administration, Article IX, Administrative Hearings, of this Code.

(b) The Administrator or State's Attorney or any citizen of the County may maintain a complaint in the Circuit Court of Cook County to enjoin all persons in the control of a dangerous animal from allowing or permitting such animal to leave their premises when not under the control of a leash and muzzle or other recognized methods of physical restraint.

(c) If any owned animal injures another animal which is under control, the owner of the attacking animal is liable for the full amount of the injuries sustained.

(d) If any owned animal, without provocation, attacks or injures any person who is peacefully conducting himself in any place where he may lawfully be, the owner of such animal is liable for damages to such person for the amount of the injury sustained.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that Chapter 10, Animals, Article I, In General, Section 10-13 of the Cook County Code is hereby enacted as follows:

Sec. 10-13. Prohibiting the sale of Commercially Bred Dogs, Cats and Rabbits in Pet Shops.

(a) A pet shop operator may offer for sale only those dogs, cats or rabbits obtained from:

(1) an animal control center, animal care facility, kennel, pound or training facility operated by any subdivision of local, state or federal government; or

(2) a humane society or rescue organization.

(3) animal obtained from breeders. No pet shop operator may offer for sale any dog, cat or rabbit obtained from a breeder unless the following requirements are met:

(i) the breeder holds a valid USDA class "A" license as defined by the Animal Welfare Act, as found in the Code of Federal Regulations, listing all site addresses where regulated animals are located; and

(ii) the breeder owns or possesses no more than five (5) female dogs, cats or rabbits capable of reproduction in any twelve (12) month period; and

(iii) no more than five (5) female dogs, cats or rabbits capable of reproduction are housed at the site address where the retail animal was born or housed, including animals owned by persons other than the breeder; and

(iv) in addition to any disclosures required by subsection (c) or otherwise required by law, the following information shall be maintained and provided for each animal:

- (a) the active USDA license number(s) of the animal's breeder;
- (b) any previous USDA license number(s) held by the animal's breeder in the last five (5) years;
- (c) the name, mailing and site address location(s) of the breeder as they appear on the breeder's active USDA license;
- (d) all names the breeder is doing business as;
- (e) the total number of female dogs, cats or rabbits capable of reproduction owned or possessed by breeder;
- (f) the sire and dam of the animal;
- (g) the name and address of the location where the animal was born;
and
- (h) the name(s) and address of any other location(s) where the animal was housed by the breeder after birth.

(b) Exemptions. The restrictions on pet shop operators set forth in subsection (a) of this section shall not apply to any entity listed in paragraphs (1) or (2) of subsection (a) of this section, or to any veterinary hospital or clinic licensed pursuant to the Veterinary Medicine and Surgery Practice Act of 2004, codified at 225 ILCS 115.

(c) Disclosures required. Any pet shop operator that offers for sale a dog, cat or rabbit shall make the following disclosures to the customer about such animal:

(1) for each dog or cat: a written disclosure meeting all of the requirements set forth in Sections 3.5 or 3.15, as applicable, of the Animal Welfare Act, codified at 225 ILCS 605; and,

(2) for each rabbit: (i) the breed, approximate age, sex and color of the animal; (ii) the date and description of any inoculation or medical treatment that the animal received while under the possession of the pet shop operator; (iii) the name and address of the location where the animal was born, rescued, relinquished or impounded; and (iv) if the animal was returned by a customer, the date of and reason for the return.

(d) The disclosures required under this subsection (c) shall be provided by the pet shop operator to the customer in written form and shall be signed by both the pet shop operator and customer at the time of sale. The pet shop operator shall retain the original copy of such disclosure and acknowledgement for a period of 2 years from the date of sale. Upon request by an authorized Administrator or Animal control warden, the original copy of such disclosure and acknowledgement shall be made immediately available for inspection by such authorized official. The pet shop operator shall post, in writing, in a conspicuous place on or near the cage of any dog, cat or rabbit offered for sale all of the information about a dog, cat or rabbit required under this subsection and other applicable law.

(e) Applicability of this section. This section shall apply to all areas within Cook County, Illinois, except those areas which are governed by an ordinance of another governmental entity (which by law may not be superseded by this section).

(f) Enforcement, Department and Sheriff. The department of Animal Control is authorized to enforce this section, and the Sheriff is authorized to assist the department in said enforcement.

Effective date: This ordinance shall take effect on October 1, 2014.

West Virginia Commercial Breeder Bill Language (2013)

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 437

(Senators Unger, Beach and Yost, original sponsors)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-20-26, relating to protecting dogs by creating regulations for commercial dog-breeding operations; providing definitions; providing exceptions; allowing commercial breeders to sell dogs only as household pets; requiring a business license if required by the locality; authorizing county commissions to charge a fee to a commercial dog breeder to obtain an annual permit to operate; limiting the amount of the fee; setting forth responsibilities of the commercial dog breeder; setting forth the requirements for maintaining adequate enclosures; providing for inspections; prohibiting a commercial dog breeder to operate if convicted of animal cruelty; providing no exemption for United States Department of Agriculture licensees; and providing criminal penalties or granting an improvement period.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-20-26, to read as follows:

ARTICLE 20. DOGS AND CATS.

§19-20-26. Commercial dog-breeding operations.

(a) As used in this section:

(1) "Advertisement" means any media used to promote the sale of dogs including, but not limited to, the Internet, newspapers, flyers, magazines, radio, television, bulletins and signs.

(2) "Commercial dog breeder" means any person who:

(A) Maintains eleven or more unsterilized dogs over the age of one year for the exclusive purpose of actively breeding;

(B) Is engaged in the business of breeding dogs as household pets for direct or indirect sale or for exchange in return for consideration; and

(C) Commercial dog breeder shall not include:

(i) Any person who keeps or breeds dogs exclusively for the purpose of herding or guarding livestock or farm animals, hunting, tracking or exhibiting in dog shows, performance events or field and obedience trials; and

(ii) With respect to greyhound dogs only, any person who holds an occupational permit from, and has registered a greyhound kennel name with, the West Virginia Racing Commission.

(3) "Class I Commercial Dog Breeder" means a commercial dog breeder that possesses eleven to thirty unsterilized dogs over the age of one year at any one time for the exclusive purpose of actively breeding.

(4) "Class II Commercial Dog Breeder" means a commercial dog breeder that possesses more than thirty unsterilized dogs over the age of one year at any time.

(5) "Housing facility" means a structure in which dogs are kept that provides them with shelter, protection from the elements and protection from temperature extremes.

(6) "Primary enclosure" means a structure that restricts a dog's ability to move in a limited amount of space, such as a room, cage or compartment.

(b) No commercial dog breeder may breed dogs without a business registration certificate in accordance with section three, article twelve, chapter eleven of this code and a valid business license issued by the locality in which the dog breeding operation is located, if the locality so requires.

(c) A commercial dog breeder shall:

(1) Obtain a permit annually to operate, as required by the county commission in which the commercial dog breeding operation is located. County commissions are authorized to charge a fee to commercial dog breeders and shall deposit the fees collected in a specially designated account to be used for animal shelters, animal rescue and spay neuter programs administered by county animal shelters or other humane organizations. The fee for a Class I commercial dog-breeding permit shall be an amount determined by the county commission, not to exceed \$250 per year. The fee for a Class II commercial dog breeding permit shall be an amount determined by the county commission, not to exceed \$500 per year;

(2) Breed female dogs only after the breeder has obtained an annual certification by a licensed veterinarian that the dog is in suitable health for breeding;

(3) Dispose of dogs only by gift, sale, transfer, barter or euthanasia by a licensed veterinarian;

(4) Maintain current, valid rabies certificates for every dog pursuant to article twenty-a of this chapter;

(5) Include the breeder's annual permit number on any advertisement for the sale of a dog;

(6) If selling directly to the public, post a conspicuous notice containing the breeder's name, address and annual permit number on each cage;

(7) Provide for the humane treatment of dogs in accordance with section nineteen, article eight, chapter sixty-one of this code;

(8) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris and is readily accessible to all dogs in the enclosure at all times unless otherwise directed by a veterinarian for the health of the dog;

(9) Provide veterinary care without delay when necessary;

(10) Maintain adequate staffing levels to ensure compliance with this section; and

(11) Maintain adequate housing facilities and primary enclosures that meet the following minimum requirements:

(A) Housing facilities and primary enclosures must be kept in a sanitary condition and in good repair; must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels and to prevent moisture condensation; must have a means of fire suppression, such as functioning fire extinguishers or a sprinkler system on the premises; and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

(B) Housing facilities and primary enclosures must enable all dogs to remain dry and clean;

(C) Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

(D) Housing facilities must provide sufficient shade to simultaneously shelter all of the dogs housed therein;

(E) A primary enclosure must have solid floors that are constructed in a manner that protects the dogs' feet and legs from injury;

(F) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

(G) Feces, hair, dirt, debris and food waste must be removed from primary enclosures and housing facilities at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests and odors;

(H) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision; and

(I) Sick dogs shall be isolated sufficiently so as not to endanger the health of other dogs.

(d) To ensure compliance with state animal care laws and regulations, commercial dog breeding locations are subject to biannual inspections by animal control officers or law-enforcement officers.

(e) It is unlawful for a commercial dog breeder to operate if he or she has been convicted of animal cruelty in any local, state or federal jurisdiction.

(f) Any commercial dog breeder who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 per violation. In any proceeding brought pursuant to the provisions of this section, a circuit judge or magistrate may grant a person accused of violating this section an improvement period not to exceed one year upon such terms and conditions as the judge or magistrate may determine. Upon successful completion of the improvement period the judge or magistrate shall dismiss the charges.

(g) Nothing in this section exempts a facility licensed by the United States Department of Agriculture from compliance.

(h) Nothing in this section prevents any local, state or federal law-enforcement agency from investigating animal cruelty in commercial dog breeding operations.

NOTES

