

By: Thompson

H.B. No. 1451

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of commercial dog and cat breeders; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Title 4, Occupations Code, is amended to read as follows:

TITLE 4. PROFESSIONS RELATED TO ANIMALS [~~ANIMAL HEALTH~~]

SECTION 2. Title 4, Occupations Code, is amended by adding Chapter 802 to read as follows:

CHAPTER 802. COMMERCIAL DOG AND CAT BREEDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. SHORT TITLE. This chapter may be cited as the Commercial Dog and Cat Breeders Act.

Sec. 802.002. DEFINITIONS. In this chapter:

(1) "Adult animal" means an animal six months of age or older.

(2) "Animal" means a dog or a cat.

(3) "Cat" means a mammal that is wholly or partly of the species Felis domesticus.

(4) "Commercial breeder" means a person who possesses 11 or more adult intact female animals and is engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration.

(5) "Commission" means the Texas Commission of

1 Licensing and Regulation.

2 (6) "Controlling person" means an individual who:

3 (A) is a partner, manager, director, officer, or
4 member of a commercial breeder;

5 (B) possesses the authority to set policy or
6 direct management of a commercial breeder; or

7 (C) possesses a direct or indirect control of 25
8 percent or more of a commercial breeder.

9 (7) "Department" means the Texas Department of
10 Licensing and Regulation.

11 (8) "Dog" means a mammal that is wholly or partly of
12 the species Canis familiaris.

13 (9) "Facility" means the premises used by a commercial
14 breeder for keeping or breeding animals. The term includes all
15 buildings, property, and confinement areas used to conduct the
16 commercial breeding business.

17 (10) "Federal regulations" means the specifications
18 for the humane handling, care, treatment, and transportation of
19 dogs and cats set forth in 9 C.F.R. Part 3, Subpart A.

20 (11) "Intact female animal" means a female animal that
21 has not been spayed and is capable of reproduction.

22 (12) "Kitten" means a cat less than six months old.

23 (13) "Local animal control agency" means a municipal
24 or county animal control office with authority over the premises in
25 which an animal is kept or, in an area that does not have an animal
26 control office, the county sheriff.

27 (14) "Possess" means to have custody of or control

1 over.

2 (15) "Primary enclosure" means any structure used to
3 restrict an animal to a limited amount of space. The term includes
4 a room, pen, run, cage, or compartment.

5 (16) "Puppy" means a dog less than six months old.

6 (17) "Third-party inspector" means any of the
7 following entities with which the department contracts under
8 Section 802.062, including an employee of the entity:

9 (A) a state agency;

10 (B) a local law enforcement agency or fire
11 department; or

12 (C) a local animal control agency.

13 (18) "Veterinarian" means a veterinarian in good
14 standing and licensed to practice veterinary medicine in this
15 state.

16 Sec. 802.003. APPLICABILITY OF CHAPTER. (a) This chapter
17 does not affect the applicability of any other law, rule, order,
18 ordinance, or other legal requirement of the federal government,
19 this state, or a political subdivision of this state.

20 (b) This chapter does not prevent a municipality or county
21 from prohibiting or further regulating by order or ordinance the
22 possession, breeding, or selling of dogs or cats.

23 (c) This chapter does not apply to an animal regulated under
24 the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

25 [Sections 802.004-802.050 reserved for expansion]

26 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

27 Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. (a) The

1 department shall administer and enforce this chapter.

2 (b) The commission shall adopt rules necessary to
3 administer and enforce this chapter.

4 Sec. 802.052. FEES. The commission by rule shall establish
5 reasonable and necessary fees in amounts sufficient to cover the
6 costs of administering and enforcing this chapter. In setting the
7 fee for inspecting or licensing a facility, the commission may
8 consider the number of adult intact female animals at the facility.

9 Sec. 802.053. PERSONNEL. The department may employ
10 personnel necessary to carry out the functions and duties of the
11 department under this chapter.

12 Sec. 802.054. EXPENSES. The department may authorize
13 disbursements necessary to implement this chapter, including
14 disbursements for office expenses, equipment costs, and other
15 necessary facilities.

16 Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department
17 shall conduct a criminal background check on each applicant who
18 submits an application for a license under this chapter and on any
19 controlling person of the applicant. The department may, as
20 permitted by law:

21 (1) examine any criminal conviction, guilty plea, or
22 deferred adjudication of the applicant or controlling person; and

23 (2) obtain any criminal history or record of the
24 applicant or controlling person.

25 Sec. 802.056. DIRECTORY. (a) The department shall
26 maintain a directory of commercial breeders licensed, and
27 third-party inspectors registered, under this chapter.

1 (b) The department shall make the directory available to the
2 public.

3 Sec. 802.057. DISCIPLINARY DATABASE. (a) The department
4 shall maintain a database of commercial breeders who have been
5 subject to disciplinary action as provided by Subchapter F.

6 (b) The department shall make the information maintained in
7 the database available to the public.

8 Sec. 802.058. CONSUMER INTEREST INFORMATION. (a) The
9 department shall prepare information of consumer interest
10 describing:

11 (1) the functions performed by the department under
12 this chapter; and

13 (2) the rights of a consumer affected by this chapter.

14 (b) The information must describe the procedure by which a
15 consumer complaint is filed with and resolved by the department.

16 (c) The department shall make the information available to
17 the public.

18 Sec. 802.059. COMMERCIAL BREEDER TRAINING AND ENFORCEMENT
19 ACCOUNT. (a) The commercial breeder training and enforcement
20 account is an account in the general revenue fund. Administrative
21 penalties collected under Subchapter F shall be deposited to the
22 credit of the account.

23 (b) Funds in the account may be appropriated only to the
24 department for:

25 (1) promoting consumer awareness of this chapter and
26 rules adopted under this chapter;

27 (2) supporting educational seminars, training

1 activities, or other projects designed to benefit the department's
2 ability to administer this chapter;

3 (3) paying for information resulting in disciplinary
4 action against a person under Subchapter F; and

5 (4) taking any other action to improve the
6 department's ability to investigate violations of and enforce this
7 chapter.

8 (c) The commission by rule may provide for a system to pay
9 for information resulting in disciplinary action against a person
10 under Subchapter F. Rules adopted under this subsection must
11 ensure that a public purpose is accomplished through the use of the
12 payment system.

13 (d) The department may solicit and accept gifts, grants, and
14 other donations from any source for deposit into the account.

15 (e) The account is exempt from the application of Section
16 403.095, Government Code.

17 Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. The
18 commission by rule may establish:

19 (1) training requirements for a third-party
20 inspector;

21 (2) registration procedures for a third-party
22 inspector; and

23 (3) policies governing the acts of a third-party
24 inspector in conducting an inspection or investigation.

25 Sec. 802.061. REGISTRATION OF CERTAIN EMPLOYEES OF
26 COMMERCIAL BREEDERS. The commission by rule may establish
27 registration procedures for any person whose duties and

1 responsibilities include the handling of or caring for an animal in
2 a commercial breeder's facility.

3 Sec. 802.062. CONTRACTS FOR ENFORCEMENT. The department
4 may contract with a third-party inspector to enforce or assist in
5 the enforcement of this chapter and rules adopted under this
6 chapter, including the performance of inspections and
7 investigations required under this chapter.

8 Sec. 802.063. INSPECTIONS. (a) The department shall
9 inspect each facility of a licensed commercial breeder at least
10 once in every 12-month period and at other times as necessary to
11 ensure compliance with this chapter and rules adopted under this
12 chapter.

13 (b) The inspection must be conducted during the facility's
14 normal business hours, and the commercial breeder or a
15 representative of the commercial breeder may be present during the
16 inspection.

17 (c) The department or third-party inspector may not provide
18 advance notice to the commercial breeder or a representative of the
19 commercial breeder before arriving at the facility. The commercial
20 breeder or its representative shall, on request of an inspector,
21 assist the inspector in performing the inspection.

22 (d) In conducting an inspection under this section, an
23 inspector may not enter or access any portion of a private residence
24 of a commercial breeder except as necessary to access animals,
25 documents, records, or other property relevant to the inspection.

26 (e) The inspector shall submit an inspection report to the
27 department not later than the 10th day after the date of the

1 inspection on a form prescribed by the department and provide a copy
2 of the report to the commercial breeder or its representative.

3 Sec. 802.064. INVESTIGATIONS. On receipt of a complaint
4 alleging a violation of this chapter or a rule adopted under this
5 chapter, the department or a third-party inspector designated by
6 the department shall investigate the alleged violation.

7 Sec. 802.065. REPORTING ANIMAL CRUELTY. A person
8 conducting an inspection under Section 802.063 or 802.103 or an
9 investigation under Section 802.064 shall notify the appropriate
10 local law enforcement agency or local animal control agency not
11 later than 24 hours after discovering evidence of animal cruelty or
12 neglect during the inspection or investigation.

13 [Sections 802.066-802.100 reserved for expansion]

14 SUBCHAPTER C. LICENSING OF COMMERCIAL BREEDERS

15 Sec. 802.101. LICENSE REQUIRED. (a) A person may not act
16 as, offer to act as, or represent that the person is a commercial
17 breeder in this state unless the person holds a commercial breeder
18 license under this chapter for each facility that the person owns or
19 operates in this state. A commercial breeder license for a single
20 facility may cover more than one building on the same premises.

21 (b) The commission by rule may establish requirements for
22 issuance or renewal of a commercial breeder license under this
23 chapter.

24 Sec. 802.102. APPLICATION. An applicant for a license
25 under this chapter must:

26 (1) submit to the department a completed application
27 on a form prescribed by the department;

1 (2) submit to the department the number of the
2 applicant's sales tax permit issued by the comptroller;

3 (3) submit to the department any other information
4 regarding the applicant's facilities and operations requested by
5 the department;

6 (4) demonstrate that the applicant has satisfied the
7 requirements of this chapter and rules adopted under this chapter;
8 and

9 (5) pay to the department the required fee.

10 Sec. 802.103. PRELICENSE INSPECTION. (a) Except as
11 provided by Subsection (e), the department must inspect a facility
12 before a commercial breeder license is issued for the facility.

13 (b) The department may not issue a commercial breeder
14 license until the department receives a prelicense inspection
15 report from the inspector in a format approved by the department
16 certifying that the facility meets the requirements of this chapter
17 and rules adopted under this chapter.

18 (c) Before the prelicense inspection may be conducted, each
19 applicant must pay to the department the required inspection fee to
20 be used to pay third-party inspectors and the reasonable expenses
21 of the department related to its licensing and inspection duties
22 under this chapter.

23 (d) An applicant whose facility does not meet the
24 requirements of this chapter and rules adopted under this chapter
25 as revealed by a prelicense inspection may, after correcting
26 deficiencies noted in the inspection report, request another
27 prelicense inspection by paying the required fee to the department.

1 (e) The department may not require a prelicense inspection
2 of a facility for an applicant who:

3 (1) holds a current Class A animal dealers license
4 issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.);
5 and

6 (2) submits to the department:

7 (A) a copy of the license; and

8 (B) on a form prescribed by the department, a
9 statement certifying that the facility meets the requirements of
10 this chapter and rules adopted under this chapter.

11 Sec. 802.104. INITIAL LICENSE. The department shall issue
12 a commercial breeder license to each person who:

13 (1) meets the requirements of this chapter and rules
14 adopted under this chapter;

15 (2) applies to the department on the form prescribed
16 by the department; and

17 (3) pays the required fee.

18 Sec. 802.105. TERM; NONTRANSFERABILITY. A license issued
19 under this chapter is valid until the first anniversary of the date
20 of issuance and is nontransferable. The department shall include
21 the expiration date on each license issued under this chapter.

22 Sec. 802.106. LICENSE RENEWAL. (a) A license holder may
23 renew the person's license by:

24 (1) submitting a renewal application to the department
25 on the form prescribed by the department;

26 (2) complying with any other renewal requirements
27 adopted by the department; and

1 (3) paying the required fee.

2 (b) A person whose license has expired may not engage in
3 activities that require a license until the license has been
4 renewed.

5 (c) The department may not renew the license of a person if
6 the person is in violation of this chapter or any rule adopted under
7 this chapter at the time of renewal.

8 Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION.

9 (a) The department shall deny issuance of a license to, or refuse
10 to renew the license of, a person if the person or a controlling
11 person of the commercial breeder has pled guilty to, been convicted
12 of, or received deferred adjudication for animal cruelty or neglect
13 in this state or any other jurisdiction in the five years preceding
14 the person's initial or renewal application for a commercial
15 breeder license.

16 (b) The department shall revoke a license if, after the
17 license is issued, the person or a controlling person of the
18 commercial breeder pleads guilty to, is convicted of, or receives
19 deferred adjudication for animal cruelty or neglect in this state
20 or any other jurisdiction.

21 (c) The department may deny issuance of a license to, refuse
22 to renew the license of, or revoke or suspend a license held by a
23 person who:

24 (1) fails to meet the requirements of this chapter and
25 rules adopted under this chapter;

26 (2) has had a similar license issued by a federal,
27 state, or local authority denied, revoked, or suspended;

1 (3) has falsified any material information requested
2 by the department;

3 (4) has failed to meet a standard adopted by rule under
4 this chapter; or

5 (5) has failed to comply with any corrective action
6 required under an inspection report in the time provided by the
7 report.

8 [Sections 802.108-802.150 reserved for expansion]

9 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

10 Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND
11 RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. A
12 commercial breeder shall:

13 (1) prominently display a copy of the commercial
14 breeder license at the breeder's facility;

15 (2) maintain at the breeder's facility a printed copy
16 of this chapter and rules adopted under this chapter as made
17 available by the department;

18 (3) include the commercial breeder's license number in
19 each advertisement of the commercial breeder; and

20 (4) include in each contract for the sale or transfer
21 of an animal by the commercial breeder:

22 (A) the commercial breeder's license number; and

23 (B) the following statement: "Commercial
24 breeders are regulated by the Texas Department of Licensing and
25 Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202,
26 512-463-6599, www.license.state.tx.us" or a similar statement
27 adopted by commission rule that includes the department's name,

1 mailing address, telephone numbers, and Internet website address.

2 Sec. 802.152. CHANGE IN LICENSE INFORMATION. A commercial
3 breeder shall notify the department in a manner prescribed by the
4 department not later than the 10th day after the date any change
5 occurs in the address, name, management, or controlling person of
6 the business or operation.

7 Sec. 802.153. SALES TAX ACCOUNTING; ANNUAL INVENTORY. (a)
8 Not later than February 1 of each year, a commercial breeder shall
9 submit to the department:

10 (1) a copy of its sales tax report filed with the
11 comptroller for the preceding calendar year; and

12 (2) on a form prescribed by the department, an
13 accounting of all animals held at the facility at any time during
14 the preceding calendar year.

15 (b) The commercial breeder shall keep copies of the items
16 described by Subsection (a) at the commercial breeder's facility
17 and shall make them available on request to the department or a
18 third-party inspector designated by the department.

19 (c) A commercial breeder that has more than one facility
20 shall:

21 (1) keep separate records for each facility;

22 (2) submit a copy of each sales tax report filed with
23 the comptroller by the commercial breeder; and

24 (3) submit a separate accounting of animals for each
25 facility.

26 Sec. 802.154. ANIMAL RECORDS. (a) A commercial breeder
27 shall maintain a separate record for each animal in the commercial

1 breeder's facility documenting the animal's care.

2 (b) The record must include:

3 (1) the date the animal entered the facility;

4 (2) the name, address, and telephone number of the
5 person from whom the animal was purchased or obtained;

6 (3) a description of the animal, including the
7 animal's breed, sex, color, identifying marks, and weight;

8 (4) the date of birth of the animal or approximate age
9 if the date of birth is unknown;

10 (5) any tattoo, microchip, or other identification
11 number carried by or appearing on the animal;

12 (6) if the animal is a breeding female:

13 (A) breeding dates;

14 (B) dates the animal gave birth to a litter;

15 (C) number of puppies or kittens for each litter
16 of the animal; and

17 (D) the name and identification of the sire or
18 tom for each litter;

19 (7) all veterinary care provided for the animal,
20 including a record of all inoculations, medications, and other
21 veterinary medical treatment received by the animal while in the
22 possession of the commercial breeder; and

23 (8) for an animal that was at the facility but is no
24 longer at the facility:

25 (A) the date of disposition or death of the
26 animal; and

27 (B) as applicable:

1 (i) the name and address of the person to
2 whom the animal was transferred; or

3 (ii) the animal's cause of death.

4 (c) The commercial breeder shall make the animal records
5 available on request to the department or a third-party inspector
6 designated by the department.

7 (d) The commission by rule shall establish the retention
8 period for records required under this section.

9 Sec. 802.155. LIMIT ON NUMBER OF ADULT INTACT FEMALE
10 ANIMALS. (a) Except as provided by this section, a commercial
11 breeder may not possess more than 50 adult intact female animals in
12 a facility at any time.

13 (b) The department may permit a commercial breeder to
14 possess more than 50 adult intact female animals in the breeder's
15 facility if:

16 (1) the commercial breeder submits an application
17 under this subsection on a form prescribed by the department; and

18 (2) the department determines that the commercial
19 breeder is adequately staffed and able to meet the requirements of
20 this chapter and the rules adopted under this chapter while housing
21 and caring for the additional adult intact female animals and their
22 litters.

23 (c) The department may:

24 (1) establish additional requirements for a
25 commercial breeder possessing more than 50 adult intact female
26 animals in a facility to ensure the proper housing and care of the
27 animals at the facility; and

1 (2) charge additional fees for licensing and
2 inspecting a facility in which more than 50 adult intact female
3 animals are kept.

4 (d) The department may revoke permission granted under this
5 section if a commercial breeder fails to meet the requirements of
6 this chapter, the rules adopted under this chapter, or any
7 additional requirement set by the department under this section.

8 [Sections 802.156-802.200 reserved for expansion]

9 SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

10 Sec. 802.201. ADOPTION OF STANDARDS. (a) The commission
11 shall adopt rules establishing minimum standards for the humane
12 handling, care, and transportation of dogs and cats by a commercial
13 breeder to ensure the overall health, safety, and well-being of
14 each animal in the commercial breeder's possession.

15 (b) The standards adopted under this section must:

16 (1) meet or exceed federal regulations;

17 (2) require that, unless otherwise certified by a
18 veterinarian in the manner prescribed by the department, a
19 commercial breeder provide each dog 12 weeks of age and older with
20 at least one hour of daily exercise in an area that:

21 (A) has a solid, level surface with adequate
22 drainage;

23 (B) provides adequate protection against harsh
24 weather, including exposure to the sun; and

25 (C) has at least three times more square feet
26 than the dog's primary enclosure;

27 (3) require that each adult intact female animal be

- 1 provided with adequate rest between breeding cycles;
2 (4) require that a commercial breeder provide basic
3 grooming to each animal, including bathing and nail trimming, as
4 needed to prevent any condition that adversely affects the animal's
5 health and cleanliness;
6 (5) require all primary enclosures to have a solid
7 floor surface with not more than 50 percent of the floor composed of
8 a solid slatted surface;
9 (6) prohibit the placement of a primary enclosure of a
10 dog on top of another primary enclosure of a dog;
11 (7) prohibit the placement of a primary enclosure of a
12 cat on top of another primary enclosure of a cat, unless an
13 impervious barrier is placed between the enclosures;
14 (8) require at least one regular veterinary
15 examination a year for a breeding animal;
16 (9) ensure that necessary routine and preventive
17 veterinary care is provided to each animal by a veterinarian to
18 address any disease or illness, including immunization and
19 treatment of animals for disease, parasites, and pest control;
20 (10) prohibit a person from euthanizing an animal or
21 performing a surgical birth of an animal unless the person is a
22 veterinarian;
23 (11) for any person whose duties and responsibilities
24 include the handling of or caring for an animal in a commercial
25 breeder's facility, require:
26 (A) compliance with the criminal background
27 check requirements of Section 802.055; and

1 (B) appropriate training; and
2 (12) prohibit a commercial breeder from selling,
3 trading, or giving away an animal before the animal is eight weeks
4 of age.

5 (c) The commission by rule may modify existing standards and
6 establish additional standards or requirements as necessary to
7 protect or improve the health and well-being of animals or to
8 protect the health and safety of the public.

9 [Sections 802.202-802.250 reserved for expansion]

10 SUBCHAPTER F. ENFORCEMENT

11 Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY.
12 If a person violates this chapter or a rule adopted under this
13 chapter, the person is subject to any action or penalty under
14 Subchapter F or G, Chapter 51.

15 SECTION 3. Not later than March 31, 2012, the Texas
16 Commission of Licensing and Regulation shall adopt the rules,
17 standards, procedures, and fees necessary to implement Chapter 802,
18 Occupations Code, as added by this Act, and Section 4 of this Act.

19 SECTION 4. Notwithstanding Chapter 802, Occupations Code,
20 as added by this Act, a commercial breeder is not required to:

21 (1) hold a license under that chapter to act as a
22 commercial breeder before September 1, 2012; or

23 (2) comply with the standards adopted under Subchapter
24 E, Chapter 802, Occupations Code, as added by this Act, before
25 September 1, 2012.

26 SECTION 5. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.