

LEGISLATIVE BILL 910

Approved by the Governor March 17, 2010

Introduced by Carlson, 38; Council, 11; Dierks, 40; Dubas, 34; Karpisek, 32; Pahls, 31; Price, 3; Schilz, 47; Wallman, 30.

FOR AN ACT relating to the Commercial Dog and Cat Operator Inspection Act; to amend sections 28-1018, 54-637, and 54-638, Reissue Revised Statutes of Nebraska, sections 54-603 and 54-611, Revised Statutes Cumulative Supplement, 2008, and sections 37-528, 54-626, 54-627, 54-627.01, and 54-645, Revised Statutes Supplement, 2009; to provide for a license fee; to define and license animal rescues under the act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-1018, Reissue Revised Statutes of Nebraska, is amended to read:

28-1018 (1) A person, other than an animal control facility, animal rescue, or animal shelter, who sells a puppy or kitten under eight weeks of age without its mother is guilty of a Class V misdemeanor.

(2) For purposes of this section:

(a) Animal control facility means a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; ~~and~~

(b) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as defined in section 54-626 as the primary means of housing dogs or cats; and

~~(b)~~ (c) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

Sec. 2. Section 37-528, Revised Statutes Supplement, 2009, is amended to read:

37-528 (1) For purposes of this section, drug means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the commission.

(2) Except with written authorization from the secretary of the commission or his or her designee or as otherwise provided by law, a person shall not administer a drug to any wildlife under the jurisdiction of the commission, including, but not limited to, a drug used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

(3) This section does not prohibit the treatment of wildlife to prevent disease or the treatment of sick or injured wildlife by a licensed veterinarian, a holder of a federal migrating bird rehabilitation permit, a holder of a permit regulated under the authority of section 37-316, a holder of a permit regulated under the authority of section 37-4,106, or a holder of a license regulated under the authority of section 37-4,108.

(4) This section shall not be construed to limit employees of agencies of the state or the United States or employees of an animal control facility, animal rescue, or animal shelter licensed under section 54-627 in the performance of their official duties related to public health or safety, wildlife management, or wildlife removal, except that a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection (2) of this section.

(5) A conservation officer may take possession or dispose of any wildlife under the jurisdiction of the commission that the officer reasonably believes has been administered a drug in violation of this section.

(6) A person who violates this section is guilty of a Class IV misdemeanor.

Sec. 3. Section 54-603, Revised Statutes Cumulative Supplement, 2008, is amended to read:

54-603 (1) Any county, city, or village shall have authority by ordinance or resolution, ~~to~~ impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harbinger of any dog or dogs, to be paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the

retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harbinger of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each one-dollar fee collected, such person shall retain three cents and remit the balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the State Treasurer shall be made at least annually at the conclusion of the licensing jurisdiction's fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

Sec. 4. Section 54-611, Revised Statutes Cumulative Supplement, 2008, is amended to read:

54-611 In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, if upon final hearing the defendant is adjudged guilty of any violation of section 54-601 or 54-608, the court may, in addition to the penalty provided in section 54-613, order such disposition of the offending dog as may seem reasonable and proper. Disposition includes sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter or animal rescue as such terms are defined in section 28-1018, or destruction of the dog in an expeditious and humane manner. Reasonable costs for such disposition are the responsibility of the defendant.

Sec. 5. Section 54-626, Revised Statutes Supplement, 2009, is amended to read:

54-626 For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

~~(2)~~ (3) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, an animal welfare society, a society for the prevention of cruelty to animals, or ~~either~~ another nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

~~(3)~~ (4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

~~(4)~~ (5) Cat means any animal which is wholly or in part of the species *Felis domesticus*;

~~(5)~~ (6) Commercial breeder means any one of the following: a person engaged in the business of breeding dogs or cats:

(a) A ~~person who~~ Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs or cats in a twelve-month period beginning on April 1 of each year;

(b) A ~~person engaged in the business of breeding dogs or cats who~~ Who owns or harbors four or more dogs or cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) A ~~person whose~~ Whose dogs or cats produce a total of four or

more litters within a twelve-month period beginning on April 1 of each year;
or

(d) ~~A person who~~ Who knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading;

~~(6)~~ (7) Dealer means any person who is not a commercial breeder or a pet shop but is engaged in the business of buying for resale or selling or exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

~~(7)~~ (8) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

~~(8)~~ (9) Director means the Director of Agriculture or his or her designated employee;

~~(9)~~ (10) Dog means any animal which is wholly or in part of the species *Canis familiaris*;

(11) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

~~(10)~~ (12) Housing facility means any room, building, or areas used to contain a primary enclosure;

~~(11)~~ (13) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

~~(12)~~ (14) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

~~(13)~~ (15) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

~~(14)~~ (16) Pet shop means a retail establishment which sells pet animals and related supplies;

~~(15)~~ (17) Premises means all public or private buildings, kennels, pens, and cages used by a facility and the public or private ground upon which a facility is located if such buildings, kennels, pens, cages, or ground are used by the owner or operator of such facility in the usual course of business;

~~(16)~~ (18) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

~~(17)~~ (19) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

~~(18)~~ (20) Stop-movement order means a directive preventing the movement or removal of any dog or cat from the premises; and

~~(19)~~ (21) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Sec. 6. Section 54-627, Revised Statutes Supplement, 2009, is amended to read:

54-627 (1) A person shall not operate as a commercial breeder, a dealer, a boarding kennel, an animal control facility, ~~or~~ an animal shelter, or, beginning October 1, 2010, an animal rescue unless the person obtains the appropriate license as a commercial breeder, a dealer, a boarding kennel, an animal control facility, or, beginning October 1, 2010, an animal rescue. If a licensee is operating as an animal shelter as of the effective date of this act, he or she may apply for licensure as an animal rescue before October 1, 2010, and shall not be required to pay any licensing fee until October 1, 2010. A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an

initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3) (a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

- (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- (ii) Eleven to fifty dogs or cats, two hundred dollars; ~~and~~
- (iii) Fifty-one to one hundred dogs or cats, two hundred fifty dollars;
- (iv) One hundred one to one hundred fifty dogs or cats, three hundred dollars;
- (v) One hundred fifty-one to two hundred dogs or cats, three hundred fifty dollars;
- (vi) Two hundred one to two hundred fifty dogs or cats, four hundred dollars;
- (vii) Two hundred fifty-one to three hundred dogs or cats, four hundred fifty dollars;
- (viii) Three hundred one to three hundred fifty dogs or cats, five hundred dollars;
- (ix) Three hundred fifty-one to four hundred dogs or cats, five hundred fifty dollars;
- (x) Four hundred one to four hundred fifty dogs or cats, six hundred dollars;
- (xi) Four hundred fifty-one to five hundred dogs or cats, six hundred fifty dollars; and
- ~~(iii)~~ (xii) More than fifty five hundred dogs or cats, two hundred fifty two thousand dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The annual license fee for an animal rescue shall be one hundred fifty dollars.

~~(d)~~ (e) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee that may be charged shall not result in a fee for any license category that exceeds the license fee set forth in this subsection by more than one hundred dollars. The maximum fee shall not exceed three hundred fifty dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department at least thirty days prior to on or before April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility, animal rescue, or animal shelter shall be renewed by filing with the department at least thirty days prior to on or before October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in an additional fee of twenty dollars required upon application to renew such license. a late renewal fee equal to twenty percent of the annual license fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the license fee. The purpose of the late renewal fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late renewal fee shall not prohibit the director from taking any other action as provided in the act.

(5) A licensee under this section shall make its premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

Sec. 7. Section 54-627.01, Revised Statutes Supplement, 2009, is amended to read:

54-627.01 A dealer or pet shop licensed under section 54-627 shall

maintain a written veterinary care plan developed in conjunction with the attending veterinarian for the dealer or pet shop. An animal control facility, an animal rescue, an animal shelter, or a boarding kennel licensed under section 54-627 shall maintain a written emergency veterinary care plan.

Sec. 8. Section 54-637, Reissue Revised Statutes of Nebraska, is amended to read:

54-637 (1) Every dealer, commercial breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

Sec. 9. Section 54-638, Reissue Revised Statutes of Nebraska, is amended to read:

54-638 Provision shall be made for spaying or neutering all dogs and cats released for adoption or purchase from any public or private animal shelter, animal rescue, or animal control facility operated by a humane society, a county, a city, or another political subdivision. Such provision may be made by:

(1) Causing the dog or cat to be spayed or neutered by a licensed veterinarian before releasing the dog or cat for adoption or purchase; or

(2) Entering into a written agreement with the adopter or purchaser of the dog or cat, guaranteeing that spaying or neutering will be performed by a licensed veterinarian in compliance with an agreement which shall contain the following information:

(a) The date of the agreement;

(b) The name, address, and signature of the releasing entity and the adopter or purchaser;

(c) A description of the dog or cat to be adopted or purchased;

(d) A statement, in conspicuous bold print, that spaying or neutering of the dog or cat is required pursuant to this section; and

(e) The date by which the spaying or neutering will be completed, which date shall be (i) in the case of an adult dog or cat, the thirtieth day after the date of adoption or purchase or (ii) in the case of a pup or kitten, either (A) the thirtieth day after a specified date estimated to be the date the pup or kitten will reach six months of age or (B) if the releasing entity has a written policy recommending spaying or neutering of certain pups or kittens at an earlier date, the thirtieth day after such date.

Sec. 10. Section 54-645, Revised Statutes Supplement, 2009, is amended to read:

54-645 For purposes of the Dog and Cat Purchase Protection Act:

(1) Casual breeder means any person, other than a commercial breeder as defined in section 54-626, who offers for sale, sells, trades, or receives consideration for one or more pet animals from a litter produced by a female dog or cat owned by such casual breeder;

(2) Clinical symptom means indication of an illness or dysfunction that is apparent to a veterinarian based on the veterinarian's observation, examination, or testing of an animal or on a review of the animal's medical records;

(3) Health certificate means the official small animal certificate of veterinary inspection of the Bureau of Animal Industry of the Department of Agriculture;

(4) Pet animal means a dog, wholly or in part of the species *Canis familiaris*, or a cat, wholly or in part of the species *Felis domesticus*, that is under fifteen months of age;

(5) Purchaser means the final owner of a pet animal purchased from a seller. Purchaser does not include a person who purchases a pet animal for resale;

(6) Seller means a casual breeder or any commercial establishment, including a commercial breeder, dealer, or pet shop as such terms are defined in section 54-626, that engages in a business of selling pet animals to a purchaser. A seller does not include an animal control facility, animal rescue, or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility, animal rescue, or animal shelter

conducts offsite at any pet store or other commercial establishment; and

(7)(a) Serious health problem means a congenital or hereditary defect or contagious disease that causes severe illness or death of the pet animal.

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1) of section 54-647 or (ii) any other contagious disease that causes severe illness or death after ten calendar days after delivery of the pet animal to the purchaser.

Sec. 11. Original sections 28-1018, 54-637, and 54-638, Reissue Revised Statutes of Nebraska, sections 54-603 and 54-611, Revised Statutes Cumulative Supplement, 2008, and sections 37-528, 54-626, 54-627, 54-627.01, and 54-645, Revised Statutes Supplement, 2009, are repealed.