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H.B. No. 1451

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of certain 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. DOG OR CAT BREEDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. SHORT TITLE. This chapter may be cited as the Dog or 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) "Commission" means the Texas Commission of Licensing and Regulation under Chapter 51.

(5) "Controlling person" means an individual who:

(A) is a partner, manager, director, officer, or member of a dog or cat breeder;

1 (B) possesses the authority to set policy or
2 direct management of a dog or cat breeder; or

3 (C) possesses a direct or indirect control of 25
4 percent or more of a dog or cat breeder.

5 (6) "Department" means the Texas Department of
6 Licensing and Regulation under Chapter 51.

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

9 (8) "Dog or cat breeder" means a person who possesses
10 11 or more adult intact female animals and is engaged in the
11 business of breeding those animals for direct or indirect sale or
12 for exchange in return for consideration.

13 (9) "Facility" means the premises used by a dog or cat
14 breeder for keeping or breeding animals. The term includes all
15 buildings, property, and confinement areas used to conduct the
16 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) "Licensed breeder" means a dog or cat breeder who
24 holds a license issued under this chapter.

25 (14) "Possess" means to have custody of or control
26 over.

27 (15) "Primary enclosure" means any structure used to

1 restrict an animal to a limited amount of space. The term includes
2 a room, pen, run, cage, or compartment.

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

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

7 (A) a state agency; or

8 (B) a local law enforcement agency or fire
9 department.

10 (18) "Veterinarian" means a veterinarian in good
11 standing and licensed to practice veterinary medicine in this
12 state.

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

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

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

22 Sec. 802.004. PRESUMPTION OF USE FOR BREEDING. For
23 purposes of this chapter, each adult intact female animal possessed
24 by a person engaged in the business of breeding animals for direct
25 or indirect sale or for exchange in return for consideration is
26 presumed to be used for breeding purposes unless the person
27 establishes to the satisfaction of the department, based on the

1 person's breeding records or other evidence reasonably acceptable
2 to the department, that the animal is not used for breeding.

3 [Sections 802.005-802.050 reserved for expansion]

4 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

5 Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. (a) The
6 department shall administer and enforce this chapter.

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

9 Sec. 802.052. FEES. The commission by rule shall establish
10 reasonable and necessary fees in amounts sufficient to cover the
11 costs of administering and enforcing this chapter. In setting the
12 fee for inspecting or licensing a facility, the commission may
13 consider the number of adult intact female animals used for
14 breeding at the facility.

15 Sec. 802.053. PERSONNEL. The department may employ
16 personnel necessary to carry out the functions and duties of the
17 department under this chapter.

18 Sec. 802.054. EXPENSES. The department may authorize
19 disbursements necessary to implement this chapter, including
20 disbursements for office expenses, equipment costs, and other
21 necessary facilities.

22 Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department
23 shall conduct a criminal background check on each applicant who
24 submits an application for a license under this chapter and on any
25 controlling person of the applicant. The department may, as
26 permitted by law:

27 (1) examine any criminal conviction, guilty plea, or

1 deferred adjudication of the applicant or controlling person; and
2 (2) obtain any criminal history or record of the
3 applicant or controlling person.

4 Sec. 802.056. DIRECTORY. (a) The department shall
5 maintain a directory of licensed breeders and of third-party
6 inspectors registered under this chapter.

7 (b) The department shall make the directory available to the
8 public.

9 Sec. 802.057. DISCIPLINARY DATABASE. (a) The department
10 shall maintain a database of dog or cat breeders who have been
11 subject to disciplinary action as provided by Subchapter F.

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

14 Sec. 802.058. CONSUMER INTEREST INFORMATION. (a) The
15 department shall prepare information of consumer interest
16 describing:

17 (1) the functions performed by the department under
18 this chapter; and

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

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

22 (c) The department shall make the information available to
23 the public.

24 Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT
25 ACCOUNT. (a) The dog or cat breeder training and enforcement
26 account is an account in the general revenue fund. Administrative
27 penalties collected under Subchapter F shall be deposited to the

1 credit of the account.

2 (b) Funds in the account may be appropriated only to the
3 department for:

4 (1) promoting consumer awareness of this chapter and
5 rules adopted under this chapter;

6 (2) supporting educational seminars, training
7 activities, or other projects designed to benefit the department's
8 ability to administer this chapter;

9 (3) paying for information resulting in disciplinary
10 action under Subchapter F against a person for acting as a dog or
11 cat breeder without holding a license issued under this chapter;
12 and

13 (4) taking any other action to improve the
14 department's ability to investigate violations of and enforce this
15 chapter.

16 (c) The commission by rule may provide for a system to pay
17 for information described by Subsection (b)(3). Rules adopted
18 under this subsection must ensure that a public purpose is
19 accomplished through the use of the payment system.

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

22 (e) The account is exempt from the application of Section
23 403.095, Government Code.

24 Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. The
25 commission by rule shall establish:

26 (1) training requirements for a third-party
27 inspector;

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

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

5 Sec. 802.061. REGISTRATION OF CERTAIN EMPLOYEES OF LICENSED
6 BREEDERS. The commission by rule may establish registration
7 procedures for any person whose duties and responsibilities include
8 the handling of or caring for an animal in a licensed breeder's
9 facility.

10 Sec. 802.062. CONTRACTS FOR ENFORCEMENT. The department
11 may contract with a third-party inspector to enforce or assist in
12 the enforcement of this chapter and rules adopted under this
13 chapter, including the performance of inspections and
14 investigations required under this chapter.

15 Sec. 802.063. INSPECTIONS. (a) The department shall
16 inspect each facility of a licensed breeder at least once in every
17 18-month period and at other times as necessary to ensure
18 compliance with this chapter and rules adopted under this chapter.

19 (b) The inspection must be conducted during the facility's
20 normal business hours, and the licensed breeder or a representative
21 of the licensed breeder may be present during the inspection.

22 (c) The department or third-party inspector may not provide
23 advance notice to the licensed breeder or a representative of the
24 licensed breeder before arriving at the facility. The licensed
25 breeder or its representative shall, on request of an inspector,
26 assist the inspector in performing the inspection.

27 (d) In conducting an inspection under this section, an

1 inspector may not enter or access any portion of a private residence
2 of a licensed breeder except as necessary to access animals,
3 documents, records, or other property relevant to the inspection.

4 (e) The inspector shall submit an inspection report to the
5 department not later than the 10th day after the date of the
6 inspection on a form prescribed by the department and provide a copy
7 of the report to the licensed breeder or its representative.

8 Sec. 802.064. INVESTIGATIONS. On receipt of a complaint
9 alleging a violation of this chapter or a rule adopted under this
10 chapter, the department or a third-party inspector designated by
11 the department shall investigate the alleged violation.

12 Sec. 802.065. REPORTING ANIMAL CRUELTY. A person
13 conducting an inspection under Section 802.063 or 802.103 or an
14 investigation under Section 802.064 shall notify the appropriate
15 local law enforcement agency not later than 24 hours after
16 discovering evidence of animal cruelty or neglect during the
17 inspection or investigation.

18 Sec. 802.066. ADVISORY COMMITTEE. (a) The commission
19 shall establish an advisory committee to advise the commission and
20 make recommendations on matters related to the administration and
21 enforcement of this chapter, including licensing fees and standards
22 adopted under Subchapter E.

23 (b) The advisory committee consists of nine members
24 appointed by the presiding officer of the commission with the
25 approval of the commission as follows:

26 (1) two members who are licensed breeders;

27 (2) two members who are veterinarians;

1 (3) two members who represent animal welfare
2 organizations;

3 (4) two members who represent the public; and

4 (5) one member who is an animal control officer as
5 defined in Section 829.001, Health and Safety Code.

6 (c) Members of the advisory committee serve staggered
7 four-year terms. The terms of four or five members expire on
8 February 1 of each odd-numbered year. If a vacancy occurs during a
9 member's term, the presiding officer of the commission, with the
10 approval of the commission, shall appoint a replacement member to
11 serve for the remainder of the unexpired term.

12 (d) The presiding officer of the commission shall designate
13 one member of the advisory committee to serve as presiding officer
14 of the advisory committee for a two-year term. A member may serve
15 more than one term as presiding officer.

16 (e) The advisory committee shall meet annually and at the
17 call of the presiding officer of the advisory committee, the
18 presiding officer of the commission, or the executive director of
19 the department.

20 (f) Except for the members described by Subsection (b)(1), a
21 person may not be a member of the advisory committee if the person
22 or a member of the person's household:

23 (1) is required to be licensed under this chapter;

24 (2) is an officer, employee, or paid consultant of an
25 entity required to be licensed under this chapter;

26 (3) owns or controls, either directly or indirectly,
27 more than a 10 percent interest in an entity required to be licensed

1 under this chapter; or

2 (4) is required to register as a lobbyist under
3 Chapter 305, Government Code, because of the person's activities
4 for compensation on behalf of an entity required to be licensed
5 under this chapter.

6 (g) The presiding officer of the commission may remove from
7 the advisory committee a member who is ineligible for membership
8 under Subsection (f).

9 (h) A member may not receive compensation for service on the
10 advisory committee. Subject to the department's budget and any
11 limitation provided by the General Appropriations Act, a committee
12 member may receive reimbursement for the actual and necessary
13 expenses incurred while performing advisory committee duties.

14 (i) A decision of the advisory committee is effective only
15 on a majority vote of the members present.

16 (j) Chapter 2110, Government Code, does not apply to the
17 size, composition, or duration of the advisory committee or to the
18 appointment of the committee's presiding officer.

19 [Sections 802.067-802.100 reserved for expansion]

20 SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS

21 Sec. 802.101. LICENSE REQUIRED. (a) A person may not act
22 as, offer to act as, or represent that the person is a dog or cat
23 breeder in this state unless the person holds a license under this
24 chapter for each facility that the person owns or operates in this
25 state. A license for a single facility may cover more than one
26 building on the same premises.

27 (b) The commission by rule may establish requirements for

1 issuance or renewal of a license issued to a dog or cat breeder
2 under this chapter.

3 Sec. 802.102. APPLICATION. An applicant for a license
4 under this chapter must:

5 (1) submit to the department a completed application
6 on a form prescribed by the department;

7 (2) submit to the department the information regarding
8 the applicant's facilities and operations requested by the
9 department;

10 (3) demonstrate that the applicant has satisfied the
11 requirements of this chapter and rules adopted under this chapter;
12 and

13 (4) pay to the department the required fee.

14 Sec. 802.103. PRELICENSE INSPECTION. (a) Except as
15 provided by Subsection (e), the department must inspect a facility
16 before a license is issued for the facility.

17 (b) The department may not issue a license to a dog or cat
18 breeder until the department receives a prelicense inspection
19 report from the inspector in a format approved by the department
20 certifying that the facility meets the requirements of this chapter
21 and rules adopted under this chapter.

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

27 (d) An applicant whose facility does not meet the

1 requirements of this chapter and rules adopted under this chapter
2 as revealed by a prelicense inspection may, after correcting
3 deficiencies noted in the inspection report, request another
4 prelicense inspection by paying the required fee to the department.

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

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

10 (2) submits to the department:

11 (A) a copy of the license; and

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

15 Sec. 802.104. INITIAL LICENSE. The department shall issue
16 a license to each dog or cat breeder who:

17 (1) meets the requirements of this chapter and rules
18 adopted under this chapter;

19 (2) applies to the department on the form prescribed
20 by the department; and

21 (3) pays the required fee.

22 Sec. 802.105. TERM; NONTRANSFERABILITY. A license issued
23 under this chapter is valid until the first anniversary of the date
24 of issuance and is nontransferable. The department shall include
25 the expiration date on each license issued under this chapter.

26 Sec. 802.106. LICENSE RENEWAL. (a) A licensed breeder may
27 renew the person's license by:

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

3 (2) complying with any other renewal requirements
4 adopted by the department; and

5 (3) paying the required fee.

6 (b) A person whose license has expired may not engage in
7 activities that require a license until the license has been
8 renewed.

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

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

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

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

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

27 (1) fails to meet the requirements of this chapter and

1 rules adopted under this chapter;

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

4 (3) has falsified any material information requested
5 by the department;

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

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

11 [Sections 802.108-802.150 reserved for expansion]

12 SUBCHAPTER D. PRACTICE BY LICENSED BREEDER

13 Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND
14 RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. A
15 licensed breeder shall:

16 (1) prominently display a copy of the license at the
17 breeder's facility;

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

21 (3) include the license number in each advertisement
22 of the licensed breeder; and

23 (4) include in each contract for the sale or transfer
24 of an animal by the licensed breeder:

25 (A) the license number; and

26 (B) the following statement: "Dog and cat
27 breeders are regulated by the Texas Department of Licensing and

1 Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202,
2 512-463-6599, www.license.state.tx.us" or a similar statement
3 adopted by commission rule that includes the department's name,
4 mailing address, telephone numbers, and Internet website address.

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

10 Sec. 802.153. ANNUAL INVENTORY. (a) Not later than
11 February 1 of each year, a licensed breeder shall submit to the
12 department, on a form prescribed by the department, an accounting
13 of all animals held at the facility at any time during the preceding
14 calendar year.

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

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

21 (1) keep separate records for each facility; and
22 (2) submit a separate accounting of animals for each
23 facility.

24 Sec. 802.154. ANIMAL RECORDS. (a) A licensed breeder shall
25 maintain a separate record for each animal in the breeder's
26 facility documenting the animal's care.

27 (b) The record must include:

- 1 (1) the date the animal entered the facility;
2 (2) if applicable, the name, address, and telephone
3 number of the person from whom the animal was purchased or obtained;
4 (3) a description of the animal, including the
5 animal's breed, sex, color, identifying marks, and weight;
6 (4) the date of birth of the animal or approximate age
7 if the date of birth is unknown;
8 (5) any tattoo, microchip, or other identification
9 number carried by or appearing on the animal;
10 (6) if the animal is a breeding female:
11 (A) breeding dates;
12 (B) dates the animal gave birth to a litter;
13 (C) number of puppies or kittens for each litter
14 of the animal; and
15 (D) the name and identification of the sire or
16 tom for each litter;
17 (7) all veterinary care provided for the animal,
18 including a record of all inoculations, medications, and other
19 veterinary medical treatment received by the animal while in the
20 possession of the licensed breeder; and
21 (8) for an animal that was at the facility but is no
22 longer at the facility:
23 (A) the date of disposition or death of the
24 animal; and
25 (B) as applicable:
26 (i) the name and address of the person to
27 whom the animal was transferred; or

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

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

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

7 [Sections 802.155-802.200 reserved for expansion]

8 SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

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

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

15 (1) at a minimum, meet federal regulations;

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

20 (A) has a surface that has adequate drainage and
21 that will not adversely affect the dog's health or well-being, and
22 that may be composed of natural turf or soil;

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 an adequate period consistent with

1 breed standards elapse between the breeding cycles of each adult
2 intact female animal;

3 (4) require that a dog or cat breeder provide basic
4 grooming to each animal, including bathing and nail trimming, as
5 needed to prevent any condition that adversely affects the animal's
6 health and cleanliness;

7 (5) require that all primary enclosures:

8 (A) be composed of materials that are safe for
9 the animal based on the animal's breed, size, and age;

10 (B) have adequate space to allow the animal to
11 comfortably stand, sit, turn around, and lie down in a natural
12 position;

13 (C) have adequate drainage; and

14 (D) if any portion of the floor surface is
15 composed of wire or a slatted material, be free from any protruding,
16 sharp surfaces and be designed so the animal's paws are unable to
17 extend through, or become caught in, the floor;

18 (6) prohibit the placement of a primary enclosure of
19 an animal on top of the primary enclosure of another animal, unless
20 an impervious barrier designed to prevent the transfer of any
21 liquid or animal waste from one enclosure to the other is placed
22 between the enclosures;

23 (7) prohibit the stacking of the primary enclosures of
24 dogs above three vertical levels;

25 (8) require at least one regular veterinary
26 examination a year for a breeding animal;

27 (9) require that a dog or cat breeder maintain at each

1 of the breeder's facilities a written health care management
2 protocol that addresses routine and preventive care;

3 (10) ensure that necessary routine and preventive care
4 is provided to each animal and that each animal receives
5 appropriate care and treatment for any disease or illness that
6 affects the animal's health or well-being;

7 (11) prohibit a person from euthanizing an animal or
8 performing a surgical birth of an animal unless the person is a
9 veterinarian;

10 (12) require appropriate training for any person whose
11 duties and responsibilities include the handling of or caring for
12 an animal in a dog or cat breeder's facility; and

13 (13) prohibit a dog or cat breeder from selling,
14 trading, or giving away an animal before the animal is eight weeks
15 of age.

16 (c) The commission by rule may modify existing standards and
17 establish additional standards or requirements as necessary to
18 protect or improve the health and well-being of animals or to
19 protect the health and safety of the public.

20 [Sections 802.202-802.250 reserved for expansion]

21 SUBCHAPTER F. ENFORCEMENT

22 Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY.

23 If a person violates this chapter or a rule adopted under this
24 chapter, the person is subject to any action or penalty under
25 Subchapter F or G, Chapter 51.

26 SECTION 3. Not later than January 1, 2012, the presiding
27 officer of the Texas Commission of Licensing and Regulation shall

1 appoint the members of the advisory committee established under
2 Section 802.066, Occupations Code, as added by this Act.

3 SECTION 4. Not later than March 31, 2012, the Texas
4 Commission of Licensing and Regulation shall adopt the rules,
5 standards, procedures, and fees necessary to implement Chapter 802,
6 Occupations Code, as added by this Act, and Section 5 of this Act.

7 SECTION 5. Notwithstanding Chapter 802, Occupations Code,
8 as added by this Act, a dog or cat breeder is not required to:

9 (1) hold a license under that chapter to act as a dog
10 or cat breeder before September 1, 2012; or

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

14 SECTION 6. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2011.