

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 12

FINAL READING

(SECOND)

Introduced by Mines, 18; Pahls, 31; Schimek, 27; Cornett, 45

Read first time January 4, 2007

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Commercial Dog and Cat Operator
2 Inspection Act; to amend sections 54-628, 54-629, 54-630,
3 54-631, and 54-632, Reissue Revised Statutes of Nebraska,
4 and sections 54-625, 54-627, and 54-633, Revised Statutes
5 Cumulative Supplement, 2006; to change provisions
6 relating to license requirements, inspections, rules
7 and regulations, applications, disciplinary actions, and
8 enforcement powers; to provide for administrative fines;
9 to provide powers and duties; to harmonize provisions;
10 and to repeal the original sections.

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

1 Section 1. Section 54-625, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 54-625 Sections 54-625 to 54-642 and section 9 of this
4 act shall be known and may be cited as the Commercial Dog and Cat
5 Operator Inspection Act.

6 Sec. 2. Section 54-627, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 54-627 (1) ~~Beginning April 1, 2001,~~ a A person shall not
9 operate as a commercial breeder, a dealer, ~~or~~ a boarding kennel,
10 ~~and beginning October 1, 2003,~~ a person shall not operate as an
11 animal control facility, or an animal shelter unless the person
12 obtains the appropriate license as a commercial breeder, dealer,
13 boarding kennel, animal control facility, or animal shelter.
14 ~~Beginning January 1, 2004,~~ a A person shall not operate as a
15 pet shop unless the person obtains a license as a pet shop. A
16 pet shop shall only be subject to the Commercial Dog and Cat
17 Operator Inspection Act and the rules and regulations adopted
18 and promulgated pursuant thereto in any area or areas of the
19 establishment used for the keeping and selling of pet animals.

20 (2) An applicant for a license shall submit an
21 application for the appropriate license to the department, on a
22 form prescribed by the department, together with the annual license
23 fee. Such fee is nonreturnable. ~~Additionally,~~ the department
24 ~~may conduct an inspection of the facilities and sanitation and~~
25 ~~confinement practices of the applicant or any other practices that~~

1 ~~may affect the humane treatment of pet animals.~~ Upon receipt of
2 the application and annual license fee and upon completion of a
3 qualifying inspection if required pursuant to section 54-630 for
4 an initial license applicant or if a qualifying inspection is
5 deemed appropriate by the department before a license is issued
6 for any other applicant, the appropriate license may be issued by
7 the department. Such license shall not be transferable to another
8 person or location.

9 ~~(3) The annual license fee shall be according to a fee~~
10 ~~schedule prepared by the director. The fees shall be based upon~~
11 ~~the number of animals served by the licensee, and there shall be~~
12 ~~startup discounts for new licensees. The maximum annual license fee~~
13 ~~shall not exceed two hundred fifty dollars.~~

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

19 (i) Ten or fewer dogs or cats, one hundred fifty dollars;

20 (ii) Eleven to fifty dogs or cats, two hundred dollars;

21 and

22 (iii) More than fifty dogs or cats, two hundred fifty
23 dollars.

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

1 dollars.

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

4 (d) The fees charged under this subsection may be
5 increased or decreased by the director after a public hearing
6 is held outlining the reason for any proposed change in the fee.
7 The maximum fee shall not exceed three hundred fifty dollars.

8 (4) A license to operate as a commercial breeder, a
9 license to operate as a dealer, a license to operate as a boarding
10 kennel, or a license to operate as a pet shop shall be renewed by
11 filing with the department at least thirty days prior to April 1
12 of each year a renewal application and the annual license fee. A
13 license to operate as an animal control facility or animal shelter
14 shall be renewed by filing with the department at least thirty
15 days prior to October 1 of each year a renewal application and
16 the annual license fee. Failure to renew a license prior to the
17 expiration of the license shall result in an additional fee of
18 twenty dollars required upon application to renew such license.

19 Sec. 3. Section 54-628, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 54-628 The department shall ~~establish an inspection~~
22 ~~program for applicants and inspect all licensees at least once~~
23 in a twenty-four-month period to determine whether the standards
24 of care of licensee is in compliance with the Commercial Dog
25 and Cat Operator Inspection Act. ~~are being met.~~ Any additional

1 inspector or other field personnel employed by the department to
2 carry out inspections pursuant to the act that are funded through
3 General Fund appropriations to the Bureau of Animal Industry
4 shall be assigned to the Bureau of Animal Industry and shall be
5 available for temporary reassignment as needed to other activities
6 and functions of the Bureau of Animal Industry in the event of a
7 livestock disease emergency or any other threat to livestock or
8 public health. When an inspection produces evidence of a violation
9 of the act or the rules and regulations of the department, a copy
10 of a written report of the inspection and violations shown thereon,
11 prepared by the inspector, shall be given to the applicant or
12 licensee, together with written notice to comply within the time
13 limit established by the department and set out in such notice. The
14 premises of the applicant or licensee shall be open for inspection.
15 The department and any officer, agent, employee, or appointee of
16 the department shall have the right to enter upon the premises
17 of any person who has, or is suspected of having, any dog or cat
18 thereon or any sanitation, housing, or other condition or practice
19 that is in violation of the act.

20 Sec. 4. Section 54-629, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 54-629 The department shall adopt and promulgate rules
23 and regulations to carry out the Commercial Dog and Cat Operator
24 Inspection Act. The rules and regulations may include, but are not
25 limited to, factors to be considered when the department imposes an

1 administrative fine, provisions governing record-keeping and other
2 requirements for persons required to have a license, and any other
3 matter deemed necessary by the department to carry out the act. The
4 department shall use as a guideline for the humane handling, care,
5 treatment, and transportation of dogs and cats the standards of the
6 Animal and Plant Health Inspection Service of the United States
7 Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

8 Sec. 5. Section 54-630, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 54-630 Before the department approves an application for
11 an initial license, an inspector of the department ~~may~~ shall
12 inspect the operation of the applicant to determine whether the
13 applicant qualifies to hold a license pursuant to the Commercial
14 Dog and Cat Operator Inspection Act. An applicant who qualifies
15 shall be issued a license. An applicant who does not receive a
16 license shall be afforded the opportunity for a hearing before
17 the director or the director's designee to present evidence that
18 the applicant is qualified to hold a license should a license
19 be issued. All such hearings shall be in accordance with the
20 Administrative Procedure Act.

21 Sec. 6. Section 54-631, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 54-631 (1) A licensee under the Commercial Dog and Cat
24 Operator Inspection Act shall comply with the act, the rules
25 and regulations, and any order of the director issued pursuant

1 thereto. The licensee shall not interfere with the department in
2 the performance of its duties.

3 (2) A licensee may be put on probation requiring such
4 licensee to comply with the conditions set out in an order of
5 probation issued by the director, may be ordered to cease and
6 desist due to a failure to comply, or may be ordered to pay an
7 administrative fine pursuant to section 54-633 after:

8 (a) The director determines the licensee has not complied
9 with subsection (1) of this section;

10 (b) The licensee is given written notice to comply and
11 written notice of the right to a hearing to show cause why an order
12 ~~of probation~~ should not be issued; and

13 (c) The director finds that issuing an order ~~of probation~~
14 is appropriate based on the hearing record or on the available
15 information if the hearing is waived by the licensee.

16 (3) A license may be suspended after:

17 (a) The director determines the licensee has not complied
18 with subsection (1) of this section;

19 (b) The licensee is given written notice to comply and
20 written notice of the right to a hearing to show cause why the
21 license should not be suspended; and

22 (c) The director finds that issuing an order suspending
23 the license is appropriate based on the hearing record or on the
24 available information if the hearing is waived by the licensee.

25 (4) A license may be immediately suspended and the

1 director may order the operation of the licensee closed prior to
2 hearing when:

3 (a) The director determines that there is a significant
4 threat to the health or safety of the dogs or cats harbored or
5 owned by the licensee; and

6 (b) The licensee receives written notice to comply and
7 written notice of the right to a hearing to show cause why the
8 suspension should not be sustained. Within fifteen days after
9 the suspension, the licensee may request in writing a date for
10 a hearing, and the director shall consider the interests of
11 the licensee when the director establishes the date and time of
12 the hearing, except that no hearing shall be held sooner than
13 is reasonable under the circumstances. When a licensee does not
14 request a hearing date within the fifteen-day period, the director
15 shall establish a hearing date and notify the licensee of the date
16 and time of such hearing.

17 (5) A license may be revoked after:

18 (a) The director determines the licensee has committed
19 serious, repeated, or multiple violations of any of the
20 requirements of subsection (1) of this section;

21 (b) The licensee is given written notice to comply and
22 written notice of the right to a hearing to show cause why the
23 license should not be revoked; and

24 (c) The director finds that issuing an order revoking
25 the license is appropriate based on the hearing record or on the

1 available information if the hearing is waived by the licensee.

2 (6) The operation of any licensee which has been
3 suspended shall close and remain closed until the license is
4 reinstated. Any operation for which the license has been revoked
5 shall close and remain closed until a new license is issued.

6 (7) The director may terminate proceedings ~~to suspend or~~
7 ~~revoke a license or subject a licensee to an order of probation~~
8 undertaken pursuant to this section at any time if the reasons
9 for such proceedings no longer exist. A license which has been
10 suspended may be reinstated, a person with a revoked license may be
11 issued a new license, or a licensee may no longer be subject to an
12 order of probation if the director determines the conditions which
13 prompted the suspension, revocation, or probation no longer exist.

14 (8) Proceedings ~~for suspension, revocation, or probation~~
15 undertaken pursuant to this section shall not preclude the
16 department from seeking other civil or criminal actions.

17 Sec. 7. Section 54-632, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 54-632 (1) Any notice or order provided for in the
20 Commercial Dog and Cat Operator Inspection Act shall be properly
21 served when it is personally served on the licensee or on the
22 person authorized by the licensee to receive notices and orders of
23 the department or when it is sent by certified or registered mail,
24 return receipt requested, to the last-known address of the licensee
25 or the person authorized by the licensee to receive such notices

1 and orders. A copy of the notice and the order shall be filed in
2 the records of the department.

3 (2) A notice to comply with the conditions set out in the
4 order of the director provided in section 54-631 shall set forth
5 the acts or omissions with which the licensee is charged.

6 (3) A notice of the licensee's right to a hearing
7 provided for in sections 54-630 and 54-631 shall set forth the time
8 and place of the hearing except as otherwise provided in section
9 54-631. A notice of the licensee's right to such hearing shall
10 include notice that such right to a hearing may be waived pursuant
11 to subsection (5) of this section. A notice of the licensee's right
12 to a hearing ~~to show cause why the license shall not be revoked~~
13 shall include notice to the licensee that the license may be
14 ~~revoked or suspended,~~ that the licensee may be subject to an order
15 of probation, ~~or that the license may be suspended and the licensee~~
16 ~~subject to an order of probation,~~ if the director determines such
17 action is more appropriate. A notice of the licensee's right to a
18 hearing ~~to show cause why the license should not be suspended~~ shall
19 include notice to the licensee that the license may be suspended ~~or~~
20 that the licensee may also be subject to an order of probation if
21 the director determines such action is more appropriate. subject to
22 sanctions as provided in section 54-631.

23 (4) The hearings provided for in the act shall be
24 conducted by the director at the time and place he or she
25 designates. The director shall make a final finding based on

1 the complete hearing record and issue an order. If the director
2 has suspended a license pursuant to subsection (4) of section
3 54-631, the director shall sustain, modify, or rescind the order
4 after the hearing. All hearings shall be in accordance with the
5 Administrative Procedure Act.

6 (5) A licensee waives the right to a hearing if such
7 licensee does not attend the hearing at the time and place set
8 forth in the notice described in subsection (3) of this section,
9 without requesting the director at least two days before the
10 designated time to change the time and place for the hearing,
11 except that before an order of the director becomes final, the
12 director may designate a different time and place for the hearing
13 if the licensee shows the director that the licensee had a
14 justifiable reason for not attending the hearing and not timely
15 requesting a change of the time and place for such hearing. If
16 the licensee waives the right to a hearing, the director shall
17 make a final finding based upon the available information and issue
18 an order. If the director has suspended a license pursuant to
19 subsection (4) of section 54-631, the director may sustain, modify,
20 or rescind the order after the hearing.

21 (6) Any person aggrieved by the finding of the director
22 has ten days after the entry of the director's order to request a
23 new hearing if such person can show that a mistake of fact has been
24 made which affected the director's determination. Any order of the
25 director becomes final upon the expiration of ten days after its

1 entry if no request for a new hearing is made.

2 Sec. 8. Section 54-633, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 54-633 (1) In order to ensure compliance with the
5 Commercial Dog and Cat Operator Inspection Act, the department may
6 apply for a restraining order, temporary or permanent injunction,
7 or mandatory injunction against any person violating or threatening
8 to violate the act, the rules and regulations, or any order of the
9 director issued pursuant thereto. The district court of the county
10 where the violation is occurring or is about to occur shall have
11 jurisdiction to grant relief upon good cause shown. Relief may be
12 granted notwithstanding the existence of any other remedy at law
13 and shall be granted without bond.

14 The county attorney of the county in which such
15 violations are occurring or about to occur shall, when notified
16 of such violation or threatened violation, cause appropriate
17 proceedings under this section to be instituted and pursued without
18 delay.

19 (2) If alleged violations of the Commercial Dog and
20 Cat Operator Inspection Act, the rules and regulations, or an
21 order of the director or an offense against animals observed
22 by an inspector in the course of performing an inspection under
23 the act poses a significant threat to the health or safety
24 of the dogs or cats harbored or owned by an applicant or
25 licensee, the department may direct an inspector to impound

1 the dogs or cats pursuant to sections 28-1011 and 28-1012 or
2 may request any other law enforcement officer as defined in
3 section 28-1008 to impound the dogs or cats pursuant to sections
4 28-1011 and 28-1012. The department shall cooperate and coordinate
5 with law enforcement agencies, political subdivisions, animal
6 shelters, humane societies, and other appropriate entities, public
7 or private, to provide for the care, shelter, and disposition of
8 animals impounded by the department pursuant to this section.

9 (3) The department may impose an administrative fine of
10 not more than five thousand dollars for any violation of the act
11 or the rules and regulations adopted and promulgated under the
12 act. Each violation of the act or such rules and regulations shall
13 constitute a separate offense for purposes of this subsection.

14 Sec. 9. (1) All money collected by the department
15 pursuant to section 54-633 shall be remitted to the State Treasurer
16 for distribution in accordance with Article VII, section 5, of the
17 Constitution of Nebraska.

18 (2) Any administrative fine levied pursuant to section
19 54-633 which remains unpaid for more than sixty days shall
20 constitute a debt to the State of Nebraska which may be collected
21 in the manner of a lien foreclosure or sued for and recovered in
22 a proper form of action in the name of the state in the district
23 court of the county in which the violator resides or owns property.

24 Sec. 10. Original sections 54-628, 54-629, 54-630,
25 54-631, and 54-632, Reissue Revised Statutes of Nebraska, and

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1 sections 54-625, 54-627, and 54-633, Revised Statutes Cumulative
2 Supplement, 2006, are repealed.