

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 910

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

Read first time January 12, 2010

Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Commercial Dog and Cat Operator
2 Inspection Act; to amend sections 28-1018, 54-637, and
3 54-638, Reissue Revised Statutes of Nebraska, section
4 54-611, Revised Statutes Cumulative Supplement, 2008, and
5 sections 37-528, 54-625, 54-626, 54-627, 54-627.01, and
6 54-645, Revised Statutes Supplement, 2009; to define and
7 license animal rescues under the act; to impose transfer
8 fees; to provide powers and duties for transferors, the
9 Department of Agriculture, the Director of Agriculture,
10 and the State Treasurer; to harmonize provisions;
11 to repeal the original sections; and to declare an
12 emergency.

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

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

3 28-1018 (1) A person, other than an animal control
4 facility, animal rescue, or animal shelter, who sells a puppy or
5 kitten under eight weeks of age without its mother is guilty of a
6 Class V misdemeanor.

7 (2) For purposes of this section:

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

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

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

24 Sec. 2. Section 37-528, Revised Statutes Supplement,
25 2009, is amended to read:

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

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

11 (3) This section does not prohibit the treatment of
12 wildlife to prevent disease or the treatment of sick or injured
13 wildlife by a licensed veterinarian, a holder of a federal
14 migrating bird rehabilitation permit, a holder of a permit
15 regulated under the authority of section 37-316, a holder of a
16 permit regulated under the authority of section 37-4,106, or a
17 holder of a license regulated under the authority of section
18 37-4,108.

19 (4) This section shall not be construed to limit
20 employees of agencies of the state or the United States or
21 employees of an animal control facility, animal rescue, or animal
22 shelter licensed under section 54-627 in the performance of their
23 official duties related to public health or safety, wildlife
24 management, or wildlife removal, except that a drug shall not
25 be administered by any person for fertility control or growth

1 stimulation except as provided in subsection (2) of this section.

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

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

8 Sec. 3. Section 54-611, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 54-611 In counties having a population of eighty thousand
11 or more inhabitants and cities of the first class contained in such
12 counties, if upon final hearing the defendant is adjudged guilty
13 of any violation of section 54-601 or 54-608, the court may, in
14 addition to the penalty provided in section 54-613, order such
15 disposition of the offending dog as may seem reasonable and proper.
16 Disposition includes sterilization, seizure, permanent assignment
17 of the dog to a court-approved animal shelter or animal rescue as
18 such terms are defined in section 28-1018, or destruction of the
19 dog in an expeditious and humane manner. Reasonable costs for such
20 disposition are the responsibility of the defendant.

21 Sec. 4. Section 54-625, Revised Statutes Supplement,
22 2009, is amended to read:

23 54-625 Sections 54-625 to 54-643 and section 8 of this
24 act shall be known and may be cited as the Commercial Dog and Cat
25 Operator Inspection Act.

1 Sec. 5. Section 54-626, Revised Statutes Supplement,
2 2009, is amended to read:

3 54-626 For purposes of the Commercial Dog and Cat
4 Operator Inspection Act:

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

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

14 ~~(2)~~ (3) Animal shelter means a facility used to house
15 or contain dogs or cats and owned, operated, or maintained by
16 an incorporated humane society, animal welfare society, society
17 for the prevention of cruelty to animals, or other nonprofit
18 organization devoted to the welfare, protection, and humane
19 treatment of such animals;

20 ~~(3)~~ (4) Boarding kennel means a facility which is
21 primarily used to house or contain dogs or cats owned by
22 persons other than the operator of such facility. The primary
23 function of a boarding kennel is to temporarily harbor dogs
24 or cats when the owner of the dogs or cats is unable to
25 do so or to provide training, grooming, or other nonveterinary

1 service for consideration before returning the dogs or cats to the
2 owner. A facility which provides such training, grooming, or other
3 nonveterinary service is not a boarding kennel for the purposes
4 of the act unless dogs or cats owned by persons other than the
5 operator of such facility are housed at such facility overnight.
6 Veterinary clinics, animal control facilities, animal rescues, and
7 nonprofit animal shelters are not boarding kennels for the purposes
8 of the act;

9 ~~(4)~~ (5) Cat means any animal which is wholly or in part
10 of the species *Felis domesticus*;

11 ~~(5)~~ (6) Commercial breeder means any one of the
12 ~~following:~~ a person engaged in the business of breeding dogs or
13 cats:

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

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

22 (c) A ~~person whose~~ Whose dogs or cats produce a total
23 of four or more litters within a twelve-month period beginning on
24 April 1 of each year; or

25 (d) A ~~person who~~ Who knowingly sells, exchanges, or

1 leases dogs or cats for later retail sale or brokered trading;

2 ~~(6)~~ (7) Dealer means any person who is not a commercial
3 breeder or a pet shop but is engaged in the business of buying
4 for resale or selling or exchanging dogs or cats as a principal
5 or agent or who claims to be so engaged. A person who purchases,
6 sells, exchanges, or leases thirty or fewer dogs or cats in a
7 twelve-month period is not a dealer;

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

11 ~~(8)~~ (9) Director means the Director of Agriculture or his
12 or her designated employee;

13 ~~(9)~~ (10) Dog means any animal which is wholly or in part
14 of the species *Canis familiaris*;

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

25 ~~(10)~~ (12) Housing facility means any room, building, or

1 areas used to contain a primary enclosure;

2 ~~(11)~~ (13) Inspector means any person who is employed
3 by the department and who is authorized to perform inspections
4 pursuant to the act;

5 ~~(12)~~ (14) Licensee means a person who has qualified for
6 and received a license from the department pursuant to the act;

7 ~~(13)~~ (15) Pet animal means an animal kept as a household
8 pet for the purpose of companionship, which includes, but is not
9 limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians,
10 and reptiles;

11 ~~(14)~~ (16) Pet shop means a retail establishment which
12 sells pet animals and related supplies;

13 ~~(15)~~ (17) Premises means all public or private buildings,
14 kennels, pens, and cages used by a facility and the public or
15 private ground upon which a facility is located if such buildings,
16 kennels, pens, cages, or ground are used by the owner or operator
17 of such facility in the usual course of business;

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

21 ~~(17)~~ (19) Secretary of Agriculture means the Secretary of
22 Agriculture of the United States Department of Agriculture;

23 ~~(18)~~ (20) Stop-movement order means a directive
24 preventing the movement or removal of any dog or cat from the
25 premises; and

1 ~~(19)~~ (21) Unaltered means any male or female dog or
2 cat which has not been neutered or spayed or otherwise rendered
3 incapable of reproduction.

4 Sec. 6. Section 54-627, Revised Statutes Supplement,
5 2009, is amended to read:

6 54-627 (1) A person shall not operate as a commercial
7 breeder, a dealer, a boarding kennel, an animal control facility,
8 an animal rescue, or an animal shelter unless the person obtains
9 the appropriate license as a commercial breeder, dealer, boarding
10 kennel, animal control facility, animal rescue, or animal shelter.
11 If a licensee is operating as an animal shelter as of the effective
12 date of this act, he or she may apply for licensure as an animal
13 rescue before October 1, 2010, and shall not be required to pay
14 any licensing fee until October 1, 2010. A person shall not operate
15 as a pet shop unless the person obtains a license as a pet
16 shop. A pet shop shall only be subject to the Commercial Dog and
17 Cat 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. If
20 a facility listed in this subsection is not located at the owner's
21 residence, the name and address of the owner shall be posted on the
22 premises.

23 (2) An applicant for a license shall submit an
24 application for the appropriate license to the department, on a
25 form prescribed by the department, together with the annual license

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

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

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

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

15 and

16 (iii) More than fifty dogs or cats, two hundred fifty
17 dollars.

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

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

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

25 ~~(d)~~ (e) The fees charged under this subsection may be

1 increased or decreased by the director after a public hearing is
2 held outlining the reason for any proposed change in the fee. The
3 maximum fee shall not exceed three hundred fifty dollars.

4 (4) A license to operate as a commercial breeder, a
5 license to operate as a dealer, a license to operate as a boarding
6 kennel, or a license to operate as a pet shop shall be renewed
7 by filing with the department ~~at least thirty days prior to~~ on or
8 before April 1 of each year a renewal application and the annual
9 license fee. A license to operate as an animal control facility,
10 animal rescue, or animal shelter shall be renewed by filing with
11 the department ~~at least thirty days prior to~~ on or before October
12 1 of each year a renewal application and the annual license fee.
13 Failure to renew a license prior to the expiration of the license
14 shall result in an additional fee of twenty dollars required upon
15 ~~application to renew such license.~~ a late renewal fee equal to
16 twenty percent of the annual license fee due and payable each
17 month, not to exceed one hundred percent of such fee, in addition
18 to the license fee. The purpose of the late renewal fee is to pay
19 for the administrative costs associated with the collection of fees
20 under this section. The assessment of the late renewal fee shall
21 not prohibit the director from taking any other action as provided
22 in the act.

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

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

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

11 Sec. 7. Section 54-627.01, Revised Statutes Supplement,
12 2009, is amended to read:

13 54-627.01 A dealer or pet shop licensed under section
14 54-627 shall maintain a written veterinary care plan developed
15 in conjunction with the attending veterinarian for the dealer or
16 pet shop. An animal control facility, an animal rescue, an animal
17 shelter, or a boarding kennel licensed under section 54-627 shall
18 maintain a written emergency veterinary care plan.

19 Sec. 8. (1) There is hereby imposed a fee on each
20 transfer of ownership of a dog to an ultimate consumer from a
21 commercial breeder, dealer, animal control facility, animal rescue,
22 animal shelter, boarding kennel, or pet shop licensed under the
23 Commercial Dog and Cat Operator Inspection Act. Such fee shall be
24 collected by the licensee at the time of such transfer and remitted
25 to the department.

1 (2) Beginning on the effective date of this act, the fee
2 imposed by this section shall be ten dollars. The director may
3 increase the fee after a public hearing, except that the fee shall
4 not be greater than twenty-five dollars.

5 (3) (a) Any person required to collect the fee imposed by
6 this section shall have on file with the director on the last day
7 of the months of January, April, July, and October of each year, on
8 forms prescribed by the director, a statement of the number of dogs
9 transferred to an ultimate consumer for the immediately preceding
10 calendar quarter. In conjunction with the filing of the appropriate
11 statement, the person filing the statement shall remit all fees
12 collected pursuant to this section for all transfers occurring
13 during the appropriate quarter to the department.

14 (b) Failure to file the statement or remit all fees
15 required by subdivision (a) of this subsection shall result in a
16 late fee equal to twenty percent of the fees due and payable each
17 quarter. The late fee shall not exceed one hundred percent of the
18 fees due and payable each quarter, in addition to such fees. The
19 purpose of the late fee is to pay for the administrative costs
20 associated with the collection of fees under this section.

21 (c) All fees collected pursuant to this section shall be
22 remitted to the State Treasurer for credit to the Commercial Dog
23 and Cat Operator Inspection Program Cash Fund.

24 (4) To the extent applicable, the director may use the
25 collection provisions of the Nebraska Revenue Act of 1967 for

1 the administration and collection of the fee imposed by this
2 section. For the purpose of more efficiently securing the payment,
3 collection, and accounting of such fee and for the convenience of
4 the licensee in the collection of the fee, the director may adopt
5 and promulgate rules and regulations providing a form and method
6 for the documentation of exempt transfers.

7 Sec. 9. Section 54-637, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 54-637 (1) Every dealer, commercial breeder, animal
10 shelter, animal rescue, animal control facility, or pet shop
11 or any other retailer, who transfers ownership of a dog or cat to
12 an ultimate consumer, shall deliver to the ultimate consumer of
13 each dog or cat at the time of sale, written material, in a form
14 determined by such seller, containing information on the benefits
15 of spaying and neutering. The written material shall include
16 recommendations on establishing a relationship with a veterinarian,
17 information on early-age spaying and neutering, the health benefits
18 associated with spaying and neutering pets, the importance of
19 minimizing the risk of homeless or unwanted animals, and the need
20 to comply with applicable license laws.

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

24 Sec. 10. Section 54-638, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 54-638 Provision shall be made for spaying or neutering
2 all dogs and cats released for adoption or purchase from any
3 public or private animal shelter, animal rescue, or animal control
4 facility operated by a humane society, a county, a city, or another
5 political subdivision. Such provision may be made by:

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

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

13 (a) The date of the agreement;

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

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

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

21 (e) The date by which the spaying or neutering will be
22 completed, which date shall be (i) in the case of an adult dog or
23 cat, the thirtieth day after the date of adoption or purchase or
24 (ii) in the case of a pup or kitten, either (A) the thirtieth day
25 after a specified date estimated to be the date the pup or kitten

1 will reach six months of age or (B) if the releasing entity has a
2 written policy recommending spaying or neutering of certain pups or
3 kittens at an earlier date, the thirtieth day after such date.

4 Sec. 11. Section 54-645, Revised Statutes Supplement,
5 2009, is amended to read:

6 54-645 For purposes of the Dog and Cat Purchase
7 Protection Act:

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

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

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

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

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

1 (6) Seller means a casual breeder or any commercial
2 establishment, including a commercial breeder, dealer, or pet
3 shop as such terms are defined in section 54-626, that engages
4 in a business of selling pet animals to a purchaser. A seller
5 does not include an animal control facility, animal rescue, or
6 animal shelter as defined in section 54-626 or any animal adoption
7 activity that an animal control facility, animal rescue, or animal
8 shelter conducts offsite at any pet store or other commercial
9 establishment; and

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

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

19 Sec. 12. Original sections 28-1018, 54-637, and 54-638,
20 Reissue Revised Statutes of Nebraska, section 54-611, Revised
21 Statutes Cumulative Supplement, 2008, and sections 37-528, 54-625,
22 54-626, 54-627, 54-627.01, and 54-645, Revised Statutes Supplement,
23 2009, are repealed.

24 Sec. 13. Since an emergency exists, this act takes effect
25 when passed and approved according to law.