

LEGISLATIVE BILL 241

Approved by the Governor May 29, 2009

Introduced by Pahls, 31.

FOR AN ACT relating to animals; to amend sections 54-626 and 54-640, Reissue Revised Statutes of Nebraska, and sections 54-625, 54-627, 54-628, 54-629, and 54-632, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to licensing requirements, inspections, rules and regulations, and duties of commercial breeders under the Commercial Dog and Cat Operator Inspection Act; to define and redefine terms; to provide for stop-movement orders as prescribed; to prohibit certain acts; to adopt the Dog and Cat Purchase Protection Act; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 54-625, Revised Statutes Cumulative Supplement, 2008, is amended to read:

54-625 Sections 54-625 to 54-643 and sections 4, 6, and 9 of this act shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Sec. 2. Section 54-626, Reissue Revised Statutes of Nebraska, 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 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;

(3) 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 houses or contains thirty or less dogs or cats in a twelve-month period is not a boarding kennel. 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, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

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

(5) Commercial breeder means any person one of the following:

(a) A person 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 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 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 knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading; engaged in the business of breeding dogs or cats and (b) who sells, exchanges, or leases dogs or cats in return for consideration or who offers to do so, whether or not the dogs or cats are bred, raised, trained, groomed, or boarded by such person. A person who owns or harbors three or less unaltered dogs or cats for breeding purposes which are at least six months of age shall not be a commercial breeder.

A person who sells, exchanges, or leases thirty or less dogs or cats in a twelve-month period shall not be a commercial breeder if all such dogs or cats are sold, exchanged, or leased to a final owner rather than for later retail sale or brokered trading. A person knowingly selling, exchanging, or leasing any dogs or cats for later retail sale or for brokered trading shall

~~be classified as a commercial breeder;~~

(6) 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 ~~less~~ fewer dogs or cats in a twelve-month period is not a dealer;

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

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

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

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

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

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

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

(15) 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;

~~(15)~~ (16) 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;

~~(16)~~ (17) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture; and

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

~~(17)~~ (19) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Sec. 3. Section 54-627, Revised Statutes Cumulative Supplement, 2008, 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 unless the person obtains the appropriate license as a commercial breeder, dealer, boarding kennel, animal control facility, or animal shelter. 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) More than fifty dogs or cats, two hundred fifty 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 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 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 April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility or animal shelter shall be renewed by filing with the department at least thirty days prior to 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.

(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 or animal shelter for the full term of the contract with the state or its political subdivision.

Sec. 4. 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 shelter, or a boarding kennel licensed under section 54-627 shall maintain a written emergency veterinary care plan.

Sec. 5. Section 54-628, Revised Statutes Cumulative Supplement, 2008, is amended to read:

54-628 (1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health. When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice. The premises of the applicant or licensee shall be open for inspection. The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any dog or cat thereon or any sanitation, housing, or other condition or practice that is in violation of the act.

(2) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter the premises of any applicant or licensee during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, sold, exchanged, or leased or are suspected of being housed, sold, exchanged, or leased. For purposes of this subsection, premises includes all buildings, vehicles, equipment, cages, kennels, containers, and pens and all records on such premises. The department shall not be subject to any action for trespass or damages resulting from compliance with this subsection. Pursuant to an inspection under this subsection, the department may:

(a) Enter the premises of any applicant for a license under the act to determine if the applicant meets the requirements for licensure under the act;

(b) Access all premises and examine and copy all records pertaining to compliance with the act and the rules or regulations adopted and promulgated under the act. The department shall have authority to gather evidence, including, but not limited to, photographs;

(c) Inspect or reinspect any vehicle or carrier transporting or holding dogs or cats that is in the state to determine compliance with the act or any rules or regulations adopted and promulgated under the act;

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department to conduct an inspection pursuant to this section; or

(e) Issue and enforce a written stop-movement order pursuant to

section 6 of this act.

(3) For purposes of this section, the private residence of any applicant or licensee shall be available for purposes of inspection only if dogs or cats are housed in a primary enclosure as defined in 9 C.F.R. 1.1 within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

Sec. 6. (1) The department may issue a stop-movement order if the department has reasonable cause to believe that there exists noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, reasonable cause to believe unreasonable sanitation or housing conditions exist.

(2) Such stop-movement order may require the violator to maintain the dogs or cats subject to the order at the existing location or other department-approved premises until such time as the department has issued a written release from the stop-movement order. The stop-movement order shall clearly advise the violator that he or she may request in writing an immediate hearing before the director within two business days after receiving the order. The order issued pursuant to this section shall be final unless modified or rescinded by the director pursuant to section 54-632 at a hearing requested under this subsection.

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act. The department shall not be liable for any costs incurred by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

(a) A description of the nature of the violation;

(b) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act; and

(c) The name, address, and telephone number of the violator who owns or houses the dogs or cats subject to the order.

(5) Before receipt of a written release, the person to whom the stop-movement order was issued shall:

(a) Provide the department with an inventory of all dogs or cats on the premises at the time of the issuance of the order;

(b) Provide the department with the identification tag number, the tattoo number, the microchip number, or any other approved method of identification for each individual dog or cat;

(c) Notify the department within forty-eight hours of the death or euthanasia of any dog or cat subject to the order. Such notification shall include the dog's or cat's individual identification tag number, tattoo number, microchip number, or other approved identification;

(d) Notify the department within forty-eight hours of any dog or cat giving birth after the issuance of the order, including the size of the litter; and

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

(6) The department shall reinspect the premises to determine compliance within ten business days after the initial inspection that resulted in the stop-movement order. At the time of reinspection pursuant to this subsection, if noncompliant conditions continue to exist, further reinspections shall be at the discretion of the department. The violator may request an immediate hearing with the director pursuant to any findings under this subsection.

Sec. 7. Section 54-629, Revised Statutes Cumulative Supplement, 2008, is amended to read:

54-629 The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping, veterinary care plans, emergency veterinary care plans, and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Sec. 8. Section 54-632, Revised Statutes Cumulative Supplement, 2008, is amended to read:

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

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

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection ~~(5)~~ (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) A request for a hearing under subsection (2) of section 6 of this act shall request that the director set forth the time and place of the hearing. The director shall consider the interests of the violator in establishing the time and place of the hearing. Within three business days after receipt by the director of the hearing request, the director shall set forth the time and place of the hearing on the stop-movement order. A notice of the violator's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section.

~~(4)~~ (5) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 6 of this act, the director may sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

~~(5)~~ (6) A licensee or violator waives the right to a hearing if such licensee or violator does not attend the hearing at the time and place set forth in the notice described in subsection (3) or (4) of this section, without requesting that the director, at least two days before the designated time, ~~to~~ change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee or violator shows the director that the licensee or violator had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee or violator waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 6 of this act, the director may sustain, modify, or rescind the order after the hearing.

~~(6)~~ (7) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Sec. 9. It shall be a violation of the Commercial Dog and Cat Operator Inspection Act for any person to (1) deny access to any officer,

agent, employee, or appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment, (2) violate a stop-movement order issued under section 6 of this act, (3) fail to disclose all locations housing dogs or cats owned or controlled by such person, or (4) fail to pay any administrative fine levied pursuant to section 54-633.

Sec. 10. Section 54-640, Reissue Revised Statutes of Nebraska, is amended to read:

54-640 A commercial breeder shall:

(1) Maintain housing facilities and primary enclosures in a sanitary condition;

(2) Enable all dogs and cats to remain dry and clean;

(3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide adequate space appropriate to the age, size, weight, and breed of dog or cat. For purposes of this subdivision, adequate space means sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the cage which shall be at least six inches above the head of the tallest animal when the animal is standing;

(7) Provide dogs with adequate socialization and exercise. For the purpose of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed, and adequate exercise means providing the opportunity for exercise at least two times per day outside of a cage or similar small enclosure except during inclement weather that may be hazardous to dogs;

(8) Assure that a handler's hands are washed before and after handling each infectious or contagious dog or cat; and

(9) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and

~~(9)~~ (10) Provide veterinary care without delay when necessary.

Sec. 11. Sections 11 to 17 of this act shall be known and may be cited as the Dog and Cat Purchase Protection Act.

Sec. 12. 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 or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility 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 14 of this act 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. 13. (1) A seller shall deliver to the purchaser at the time of sale of a pet animal a written disclosure statement containing the following information regarding the pet animal:

(a) The name, address, and license number of any commercial breeder or dealer as such terms are defined in section 54-626 or, if applicable, the United States Department of Agriculture license number of the breeder or any broker who has had possession of the animal prior to the seller's possession;

(b) The date of the pet animal's birth, if known, the state in which the pet animal was born, if known, and the date the seller received the pet animal;

(c) The sex and color of the pet animal, any other identifying marks apparent upon the pet animal, and the breed of the pet animal, if known, or a statement that the breed of the pet animal is unknown or the pet animal is of mixed breed;

(d) The pet animal's individual identifying tag, tattoo, microchip number, or collar number;

(e) The names and registration numbers of the sire and dam and the litter number, if applicable and if known;

(f) A record of any vaccination, worming treatment, or medication administered to the pet animal while in the possession of the seller and, if known, any such vaccination, treatment, or medication administered to the pet animal prior to the date the seller received the pet animal; and

(g) The date or dates of any examination of the pet animal by a licensed veterinarian while in the possession of the seller.

(2) The seller may include any of the following with the written disclosure statement required by subsection (1) of this section:

(a) A statement that a veterinarian examined the pet animal and, at the time of the examination, the pet animal had no apparent or clinical symptoms of a serious health problem that would adversely affect the health of the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future; and

(b) A record of any serious health problem that adversely affects the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future.

(3) The written disclosure statement made pursuant to this section shall be signed by the seller certifying the accuracy of the written disclosure statement and by the purchaser acknowledging receipt of the written disclosure statement. In addition to information required to be given to a purchaser under this section, at the time of sale the seller shall provide the purchaser with written notice of the existence of the purchaser's rights and responsibilities under the Dog and Cat Purchase Protection Act or a legible copy of the act.

(4) If the pet animal is sold to a purchaser who resides outside of the state or intends that the pet animal will be relocated or permanently domiciled outside of the state, the seller shall provide the purchaser with a health certificate signed by a licensed veterinarian who has examined the pet animal and is authorized to certify such certificate.

(5) The seller shall maintain a copy of any written disclosure statements made and any other records on the health, status, or disposition of each pet animal for at least one year after the date of sale to a purchaser.

Sec. 14. (1) In order to have recourse to the remedies available to purchasers under this section, a purchaser shall have the pet animal examined by a licensed veterinarian within seven business days after delivery of the pet animal to the purchaser. The pet animal shall be declared unfit for sale and the purchaser may obtain one of the remedies listed in subsection (2) or (3) of this section if (a) during such examination, the veterinarian diagnoses the pet animal with a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser or (b) within fifteen months after the date of birth of the pet animal, a veterinarian diagnoses the pet animal with a serious health problem or states in writing that the pet animal has died from a serious health problem that the veterinarian believes existed at the time of delivery of the pet animal to the purchaser.

(2) If a pet animal is diagnosed with a serious health problem under subsection (1) of this section, the purchaser shall notify the seller within two business days after the diagnosis and provide the seller with the name and telephone number of the veterinarian or a copy of the veterinarian's report. After such notification, the purchaser may obtain one of the following remedies from the seller:

(a) A refund of the full purchase price of the pet animal upon return of such pet animal to the seller;

(b) An exchange for a pet animal of the purchaser's choice of

equivalent value, if such pet animal is available, upon return of the pet animal, if alive, to the seller; or

(c) Reimbursement for reasonable veterinary fees, not to exceed the full purchase price of the pet animal.

(3) If a pet animal dies from a serious health problem as determined under subsection (1) of this section, the purchaser shall notify the seller within two business days after receipt of the written statement of the veterinarian by the purchaser and shall provide the seller with a copy of such written statement. After receipt of the written statement by the seller, the purchaser may obtain one of the following remedies from the seller:

(a) A refund of the full purchase price of the pet animal; or

(b) A pet animal of the purchaser's choice of equivalent value, if such pet animal is available, and reimbursement for reasonable veterinary fees not to exceed one-half of the full purchase price of the pet animal.

(4) For purposes of this section, veterinary fees shall be deemed reasonable if the service is appropriate for the diagnosis and treatment of the serious health problem and the cost of the service is comparable to similar services provided by licensed veterinarians in close proximity to the treating veterinarian.

Sec. 15. No refund or reimbursement of fees or replacement of a pet animal under section 14 of this act shall be required if one or more of the following conditions exist:

(1) The serious health problem or death of the pet animal resulted from maltreatment, neglect, or injury occurring after delivery of the pet animal to the purchaser;

(2) Any written disclosure statements provided by a seller pursuant to subsection (2) of section 13 of this act disclosed the serious health problem for which the purchaser is seeking a remedy; or

(3) The purchaser failed to follow through with preventative care, including, but not limited to, vaccinations, deworming treatment, or medication, recommended by a licensed veterinarian examining the pet animal.

Sec. 16. (1) If a seller does not comply with a demand for remedy by a purchaser under section 14 of this act, the purchaser may file an action in a court of competent jurisdiction.

(2) If a seller contests a demand for remedy by a purchaser under section 14 of this act, the seller may require the purchaser to produce the pet animal for examination or autopsy by a licensed veterinarian designated by the seller. The seller shall pay for all costs associated with such examination or autopsy. The seller shall have a right of recovery against the purchaser if the seller is not obligated to provide the remedy sought.

(3) The prevailing party in a proceeding under this section shall be limited to a recovery of actual costs and no more than five hundred dollars in reasonable attorney's fees.

Sec. 17. Nothing in the Dog and Cat Purchase Protection Act shall limit any rights and remedies otherwise available under the laws of this state. Any agreement or contract entered into by a seller and a purchaser waiving any rights under the act is void. Nothing in the Dog and Cat Purchase Protection Act shall be construed to limit a seller to offering only those warranties, express or implied, required by the act.

Sec. 18. Sections 11, 12, 13, 14, 15, 16, and 17 of this act become operative on January 1, 2010. The other sections of this act become operative on their effective date.

Sec. 19. Original sections 54-626 and 54-640, Reissue Revised Statutes of Nebraska, and sections 54-625, 54-627, 54-628, 54-629, and 54-632, Revised Statutes Cumulative Supplement, 2008, are repealed.