

LEGISLATIVE BILL 825

Approved by the Governor April 11, 2000

Introduced by Price, 26; Bruning, 3; Chambers, 11; Crosby, 29; Cudaback, 36; Dierks, 40; Hartnett, 45; Hudkins, 21; Janssen, 15; Kiel, 9; C. Peterson, 35; Preister, 5; Robak, 22; Schimek, 27; Schrock, 38; Suttle, 10; Thompson, 14; Tyson, 19; Wehrbein, 2; Dw. Pedersen, 39

AN ACT relating to animals; to adopt the Commercial Dog and Cat Operator Inspection Act; to provide an operative date; and to declare an emergency.

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

Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Sec. 2. For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) 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. Veterinary clinics, animal control facilities, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

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

(3) Commercial breeder means any person (a) 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;

(4) Dealer means any person who is not a commercial breeder 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 dogs or cats in a twelve-month period is not a dealer;

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

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

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

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

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

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

(11) 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;

(12) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture; and

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

Sec. 3. (1) Beginning April 1, 2001, a person shall not operate as a commercial breeder, a dealer, or a boarding kennel unless the person obtains the appropriate license as a commercial breeder, dealer, or boarding kennel. 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 a nonreturnable license fee. Such fee shall be one hundred dollars. The license fee shall be paid annually. Additionally, the department may conduct an inspection of the facilities and sanitation and confinement practices of the applicant or any other practices that may affect the humane treatment of dogs and cats. Upon receipt of the application and initial license fee, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(2) A license to operate as a commercial breeder, a license to operate as a dealer, or a license to operate as a boarding kennel 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. 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.

Sec. 4. The department shall establish an inspection program for applicants and licensees to determine whether the standards of care of the Commercial Dog and Cat Operator Inspection Act are being met. 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.

Sec. 5. 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, provisions governing record-keeping 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. 6. Before the department approves an application for an initial license, an inspector of the department may inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

Sec. 7. (1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director after:

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

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

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

(3) A license may be suspended after:

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

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

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

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to

the health or safety of the dogs or cats harbored or owned by the licensee; and

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

(5) A license may be revoked after:

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

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

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

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

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

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from seeking other civil or criminal actions.

Sec. 8. (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 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 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 7 of this act 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 6 and 7 of this act shall set forth the time and place of the hearing except as otherwise provided in section 7 of this act. 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) of this section. A notice of the licensee's right to a hearing to show cause why the license shall not be revoked shall include notice to the licensee that the license may be revoked or suspended, that the licensee may be subject to an order of probation, or that the license may be suspended and the licensee subject to an order of probation, if the director determines such action is more appropriate. A notice of the licensee's right to a hearing to show cause why the license should not be suspended shall include notice to the licensee that the license may be suspended or that the licensee may also be subject to an order of probation if the director determines such action is more appropriate.

(4) 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 7 of this act, the director shall sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee waives the right to a hearing if such licensee does not attend the hearing at the time and place set forth in the notice described in subsection (3) of this section, without requesting 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 shows the director that the licensee 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 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 7 of this act, the director may sustain, modify, or rescind the order after the hearing.

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

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

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may request a law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012.

Sec. 10. (1) It is unlawful for a person to operate without a valid license or operate while a license is revoked or suspended if a license is required by the Commercial Dog and Cat Operator Inspection Act. A licensee shall not operate in any manner which is not in conformity with the act or the rules and regulations adopted and promulgated pursuant thereto or interfere with the duties of the department or any final order of the director pursuant to the act.

(2) Any person who violates any provision of the act is guilty of a Class I misdemeanor.

Sec. 11. The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 12. The department may cooperate with the Secretary of Agriculture in carrying out applicable federal law and the regulations issued by the Secretary of Agriculture under such law. The department may enter into contracts with any person to implement any or all of the provisions of the Commercial Dog and Cat Operator Inspection Act.

Sec. 13. This act becomes operative on July 1, 2000.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.