



TENNESSEE INTRODUCES “COMMERCIAL BREEDER ACT”

**** HB 386 Signed By Governor On July 8th ****

The Issue.

Senate Bill 258 and House Bill 386 (companion bills), have been introduced in Tennessee creating the “Commercial Breeder Act”. These bills provide licensing requirements for commercial breeders and set restrictions on commercial breeder businesses. A **“commercial breeder” is defined in this legislation as “any person who possesses or maintains 20 or more adult female dogs in whole or in part for the purpose of the sale of their offspring as companion animals”**.

The Impact.

This legislation would make it illegal for any commercial breeder to advertise, sell, offer to sell, transport or offer for transportation any companion animal unless the commercial breeder has a valid license from the Commissioner of Agriculture and has complied with the rules and regulations created by the commissioner. For purposes of these bills, “companion animal” means a cat or dog.

In order to obtain a license a commercial breeder must submit an application to the Commissioner of Agriculture. Each application for a license shall be accompanied by a license fee based upon on the number of companion animals a breeder possesses or maintains as follows:

- 20-40 adult companion animals per year - \$500 fee;
- 41-75 adult companion animals per year- \$1,000 fee.

A license will only be issued if:

- The applicant or the responsible officers of the applicant are of good moral character;
- An inspection has been made of the premises and a finding is made that it conforms to this part, the rules and regulations of the commissioner, and is a suitable place in which to conduct the commercial breeder's business;
- The commercial breeder has a valid sales tax registration number and is in good standing with the Tennessee department of revenue; and
- The licensee has never been convicted of any criminal offense involving an animal.

Licenses shall not be issued to any commercial breeder who possesses or maintains more than 75 unsterilized companion animals over the age of six months. Anyone who violates this licensure requirement will be subject to a Class B misdemeanor punishable by a fine.

These bills also provide additional requirements for commercial breeders. Each commercial breeder must keep on file forms, and at such times as prescribed by the commissioner, semi-annual reports containing the



following information:

- The number of dogs or cats in the possession of the commercial breeder on the date the report is filed;
- The number of dogs and cats sold during the reporting period and the names and addresses of the persons to whom they were sold; and
- The number of dogs and cats received by the commercial breeder during the reporting period under circumstances other than purchase and the names and addresses of the persons from whom they were obtained.

Also, commercial breeders will be required to keep records on the purchase, sale, transportation, and handling of dogs and cats. Furthermore, the premises of any commercial breeder, whether licensed or not licensed, must be made available to the commissioner or the commissioner's representative for inspection at all reasonable times.

Recommended Action.

By creating the “Commercial Breeders Act”, these bills place new standards on commercial breeders that will affect the way they conduct business. **It is important for commercial breeders to be aware of these new proposals and take the necessary actions to protect themselves.** While the bills define “commercial breeders” as any person with 20 or more adult females, other provisions clearly apply to breeders of cats as well. Also, setting limits of 20 or more supersedes USDA Animal Welfare Act licensing requirements and, therefore, should exempt federally licensed facilities.

Senate Bill 258 has been assigned to the Senate Committee on Commerce, Labor & Agriculture and House Bill 386 has not yet been given a committee assignment. Neither bill has yet been set for hearing.

We urge you to read the text of this legislation (attached to the online version of this PetAlert), found on the Breaking News page of the PIJAC website (www.pijac.org). Please check the Breaking News page of the PIJAC website often for updates on this bill and for committee assignment and hearing information.

We have listed the Senate Committee on Commerce, Labor & Agriculture members below. Please contact the committee members with any questions or concerns you have regarding SB 258.

If you have further questions please feel free to contact PIJAC’s Bambi Nicole Osborne by phone at 202-452-1525 or via email at bambi@pijac.org.

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2009 TN H 386 **AUTHOR:** Sontany
 VERSION: Enacted - Interim
 VERSION DATE: 07/08/2009

STATE OF TENNESSEE

SENATE BILL 258

By Jackson

HOUSE BILL 386

By Sontany

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 1; Title 39, Chapter 14, Part 2; and Title 44, Chapter 17, to protect consumers from purchasing unhealthy companion animals by regulating commercial breeders; and to enact the "Commercial Breeder Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1 . Tennessee Code Annotated, Title 44, Chapter 17, is amended by adding the following as a new part 7:

Section 44-17-701. This part shall be known and may be cited as the "Commercial Breeder Act".

Section 44-17-702. As used in this part, unless the context otherwise requires:

(1) "Adult companion animal" means a dog or a cat that is over one (1) year of age or has reached sexual maturity, whichever occurs first;

(2) "Cat" means any live cat of the species *Felis catus*;

(3) "Commercial breeder" means any person who possesses or maintains, under his or her immediate control, twenty (20) or more unsterilized adult female dogs or cats in this state for the purpose of selling the offspring as companion animals. "Commercial breeder" does not include any person who possesses or maintains, under his or her immediate control, dogs or cats in this state:

(A) For the primary purpose of:

(i) The practice of veterinary medicine;

(ii) Hunting as defined in Section 70-1-101(a)(19); or (iii) Training and/or handling; or

(B) For the exclusive purpose of engaging in the business of boarding and/or grooming.

- (4) "Commissioner" means the commissioner of health;
- (5) "Companion animal" means any dog or cat as defined in this part;
- (6) "Dog" means any live dog of the species *Canis familiaris*;
- (7) "Person" means any individual, firm, corporation, partnership, association, or other legal entity; and
- (8) "Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

Section 44-17-703.

(a) An application for a license as a commercial breeder shall be made to the commissioner on a form provided by the commissioner, which shall contain such information as the commissioner may reasonably require.

(b) Each application for a license shall be accompanied by a license fee established by the commissioner based upon the number of unsterilized adult female dogs or cats maintained under the applicant's immediate control in this state for the purpose of selling their offspring as companion animals.

Section 44-17-704.

(a) The commissioner shall issue a license to an applicant after determining:

(1) Through an inspection, that the premises are suitable as a facility for commercial breeding and finding that the premises conform to this part and the rules and regulations promulgated pursuant to this part;

(2) The applicant has a valid sales tax registration number and is in good standing with the Tennessee department of revenue;

(3) The applicant has never been convicted of a violation of Section 39-14-212, at any time, or convicted of any other criminal offense involving an animal as set out in title 39, chapter 14, part 2, for a period of ten (10) years immediately preceding the date of the application; and

(4) The applicant does not operate or maintain a controlling interest in any releasing agency.

(b) Each license shall be issued only for the premises and to the person or persons named in the application and shall not be transferable or assignable.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

(d) License numbers shall be included on all of the licensee's invoices, advertisements or promotions that pertain to a companion animal, including but not limited to, newspapers, internet, radio, or flyers.

(e) Any written materials that pertain to a companion animal, including but not limited to, the license and the companion animal's bill of sale, shall include in bold print the statement: This license does not certify that the companion animal being sold has been examined by or is under the care of a licensed

veterinarian.

Section 44-17-705.

(a) A license, unless sooner suspended or revoked, shall be renewable annually upon application and payment of the renewal fee by the licensee provided such licensee has complied with the requirements of this part as confirmed by an annual inspection conducted by the commissioner.

(b) Each fee for renewal of a license shall be based upon the number of unsterilized adult female dogs or cats maintained under the licensee's immediate control in this state for the purpose of selling their offspring as companion animals.

Section 44-17-706.

(a) The commissioner may refuse to issue or renew, revoke, or suspend a license of any commercial breeder or impose any other lawful discipline against a licensee for any of the following reasons:

(1) A violation by the licensee of the Tennessee Consumer Protection Act of 1977, codified in title 47, chapter 18, part 1, that relates to the operation of dog kennels or commercial dog breeding;

(2) Willful falsification of material information contained in the application;

(3) The licensee's conviction, or that of any responsible officer of the licensee, for any criminal offense involving an animal set out in title 39, chapter 14, part 2, within the previous ten (10) years; or

(4) The licensee's nonconformance with this part or the rules and regulations of the commissioner of agriculture promulgated pursuant title 44, chapter 17 or the commissioner of health pursuant to Section 44-17-713. When the commissioner of health promulgates rules pursuant to Section 44-17-713, such rules shall govern the regulation of this part.

(b) In addition to or in lieu of any other disciplinary actions, the commissioner may impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation; each day of continued violation constitutes a separate violation.

(c) Any commercial breeder aggrieved by a final order of the commissioner issued under this section may appeal such order in accordance with the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

(d) The commissioner is authorized to apply to courts of competent jurisdiction for writs of injunction for the enforcement of this part. It is the duty of the several district attorneys general to represent the commissioner when called upon to do so.

(e) If the commissioner imposes discipline on a licensee or unlicensed person in a disciplinary contested case proceeding, the licensee or unlicensed person may be required to pay the actual and reasonable costs of the investigation and prosecution of the case.

Section 44-17-707.

Each commercial breeder shall file, on forms and at such times as prescribed by the commissioner, an annual report containing the following information:

- (1) The number of dogs or cats in the possession of the commercial breeder on the date the report is filed;
- (2) The number of dogs or cats sold during the reporting period;
- (3) The number of dogs and cats bought during the reporting period; and
- (4) The number of dogs and cats received by the commercial breeder during the reporting period under circumstances other than purchase.

Section 44-17-708.

(a) The premises of any commercial breeder shall be made available to the commissioner or the commissioner's representative for inspection during normal business hours. The commissioner or the commissioner's representative shall make or cause to be made such inspections or investigations of the premises and records as considered necessary. The commissioner's representative shall not be permitted to inspect the premises of a commercial breeder pursuant to this subsection unless such representative is a state employee.

(b) (1) If an inspection reveals a violation of this part or departmental rules promulgated to implement this part, the commissioner shall give the commercial breeder a detailed list of the violations found during the inspection.

(2) The commercial breeder shall have thirty (30) days from the date of the inspection to correct all violations contained on the list provided by the commissioner.

(3) At the end the thirty (30) day period, the commercial breeder shall notify the department in writing of the actions taken to correct such violations. The premises of the commercial breeder may be reinspected to determine compliance with this part or applicable rules and regulations. If all violations contained on the list have been corrected and no other violations found, no further action shall be taken against the commercial breeder with regard to those violations.

(4) If at the reinspection, the commissioner finds that the commercial breeder has not corrected all violations on the list, the commissioner may assess a civil penalty of fifty dollars (\$50) up to one thousand dollars (\$1,000) per violation of this part or the rules promulgated hereunder.

Section 44-17-709. The commissioner shall notify the applicable local law enforcement agency if an inspection reveals, or there is credible evidence to believe, a violation of title 39, chapter 14, part 2, exists on the premises.

Section 44-17-710.

(a) It is a violation of this part for any commercial breeder to advertise, sell, or offer to sell, any companion animal unless the commercial breeder has a valid license from the commissioner.

(b) The commissioner may assess a civil penalty of fifty dollars (\$50) up to one thousand dollars (\$1,000) per violation of this section. Each day of continued violation constitutes a separate violation.

Section 44-17-711.

(a) If the commissioner has reason to believe that a person has caused or is causing a violation of this

part or the rules and regulations promulgated under this part, then the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation. Such injunction shall also prohibit the sale of companion animals by such person until the person is in compliance with this part or the rules and regulations promulgated under this part.

Section 44-17-712. No provision of this part authorizes the commissioner to confiscate cats or dogs in the possession of, or maintained by, a commercial breeder. If it comes to the attention of the commissioner that a violation of title 39, chapter 14, part 2, is occurring on the property of a commercial breeder, then the commissioner shall follow the procedure set out in Section 44-17-709.

Section 44-17-713. The commissioner may promulgate such rules and regulations as are reasonably necessary to implement this part including, but not limited to, requiring criminal background checks. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 44-17-714. Any person who possesses or maintains twenty (20) or more adult female dogs or cats in this state for the purpose of selling their offspring as companion animals, whether licensed pursuant to this part or unlicensed, who is in violation of the provisions of this part or any rule promulgated pursuant to this part shall be required to reimburse any municipal, county or state government for any costs reasonably and necessarily incurred in transporting, treating, feeding, maintaining or otherwise caring for any dog or cat possessed or maintained in violation of this part. Any security posted pursuant to Section 39-14-210, may be used to reimburse the applicable governmental entity or entities for costs incurred pursuant to this part but the reimbursement required shall not be limited to the amount of posted security.

Section 44-17-715.

(a) There is hereby established within the general fund, a commercial breeder act enforcement and recovery account, hereinafter the "account". All fees received for licenses issued or renewed and all civil penalties collected under the provisions of this part shall be deposited into the account, together with all amounts collected from commercial breeders pursuant to Title 67, Chapter 6, Part 2.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of this Section 9-4-603 for the sole benefit of the account and any amounts remaining in the account at the end of the fiscal year shall remain available in subsequent fiscal years.

(c) In accordance with rules of the commissioner and applicable provisions of the general appropriation act, monies in the account shall be used:

(1) First, to pay for the cost of administering the provisions of this part; and

(2) Second, subject to the availability of funds, to pay any state or local government agency for its unreimbursed direct costs of transporting, care or feeding of any companion animals actually incurred solely as a result of a notification received under the provisions of Section 44-17-709. It is hereby declared to be the legislative intent that to the extent practical, state and local agencies will enter into partnerships with releasing agencies to provide, at the releasing agencies' expense, for the transporting, care or feeding of any companion animals resulting from a notification received under the provisions of Section 44-17-709.

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 47-18-1_.

(a) Notwithstanding any other law, and to be construed as supplementary to any other law, the following shall constitute a separate violation of this part:

(1) Each companion animal sold, offered for sale, or advertised while the commercial breeder is unlicensed or has had such license suspended or revoked; or

(2) Each unfair or deceptive statement, material omission, or action taken by a commercial breeder.

(b) Any commercial breeder who commits a violation of this section shall be subject to a remedial civil penalty for each separate violation not to exceed one thousand dollars (\$1,000).

(c) Upon reason to believe that a commercial breeder is selling dogs or cats without the license required by title 44, chapter 17, part 7, the attorney general and reporter, after consultation with the director of the division of consumer affairs, may issue a pre-filing request for consumer protection information in accordance with Section 47-18-106. Should a person deny the representative access to the premises, the attorney general and reporter shall petition, without cost or bond, any circuit or chancery court of competent jurisdiction for an order granting access to such premises and records. The provisions of this part shall apply to the issuance of such request.

SECTION 3. For the purpose of promulgating rules and regulations necessary to effectuate the purposes of this act, and for notifying the public, employing staff and making other necessary preparatory arrangements, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.

(c) This provisions of this act shall terminate and expire on June 30, 2014. The comptroller of the treasury is urged to study the implementation and impact of the provisions of this act as it implements the licensing of commercial breeders of dogs and cats. As a part of the study, the comptroller shall examine the benefits afforded to the public by such licensing of commercial breeders, the health of dogs and cats maintained by such commercial breeders, and the impact upon the costs of dogs and cats that are sold to the public by such commercial breeders. If a study is conducted, the comptroller shall report any findings and recommendations of such study to the general assembly on or before January 15, 2014.