

BILL ANALYSIS

C.S.H.B. 1451
By: Thompson
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many retail and Internet pet sellers acquire their animals from breeding facilities, which also sell directly to the public through newspaper and Internet ads. These facilities often times do not provide adequate and humane care for the animals they are breeding, many times failing to keep animals properly sheltered or to provide adequate veterinary attention. Currently, there is little to no regulation requiring these facilities to provide a minimum standard of care for these animals.

Committee Substitute for House Bill 1451 would require the licensing and regulation of dog and cat breeders. This bill is not intended to impact hobby breeders and it is not prohibiting or hindering the breeding or the selling of dogs and cats.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2 and 4 of this bill.

ANALYSIS

SECTION 1. Amends the heading for Title 4 of the Occupations Code to read as, "Title 4. PROFESSIONS RELATED TO ANIMALS"

SECTION 2. Amends Title 4 of the Occupations Code by adding Chapter 802. DOG OR CAT BREEDERS.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. SHORT TITLE. Chapter may be cited as the Dog or Cat Breeders Act.

Sec. 802.002. DEFINITIONS. Defines "Adult animal," "Animal," "Cat," "Commission," "Controlling person," "Department," "Dog," "Dog or cat breeder," "Facility," "Federal regulations," "Intact female animal," "Kitten," "Licensed breeder," "Possess," "Primary enclosure," "Puppy," "Third-party inspector," and "Veterinarian."

Sec. 802.003. APPLICABILITY OF CHAPTER. This chapter does not affect any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state. This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dog or cats. This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes)

Sec. 802.004. PRESUMPTION OF USE FOR BREEDING. For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the department, based on records or other reasonably acceptable evidence, that the animal is not used for breeding.

[Sections 802.005-802.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. The department shall administer and enforce this chapter. The commission shall adopt rules necessary to administer and enforce this chapter.

Sec. 802.052. FEES. The commission by rule shall establish reasonable and necessary fees sufficient to cover the costs of administering and enforcing this chapter. In setting the fee for inspecting or licensing a facility the commission may consider the number of adult intact female animals used for breeding at the facility.

Sec. 802.053. PERSONNEL. The department may employ necessary personnel to carry out functions and duties under this chapter.

Sec. 802.054. EXPENSES. The department may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department shall conduct a criminal background check on each applicant who submits an application for a license and on any controlling person of the applicant. The department may, as permitted by law, examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and obtain any criminal history or record.

Sec. 802.056. DIRECTORY. The department shall maintain a directory of licensed breeders and third-party inspectors registered under this chapter and shall make the directory available to the public.

Sec. 802.057. DISCIPLINARY DATABASE. The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action as provided by Subchapter F and shall make the database available to the public.

Sec. 802.058. CONSUMER INTEREST INFORMATION. The department shall prepare information of consumer interest describing functions performed by the department and rights of the consumer affected by this chapter. The information must describe the procedure by which a consumer complaint is filed with and resolved by the department. The department shall make the information available to the public.

Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. The cat or dog breeder training and enforcement account is an account in the general revenue fund. Administrative penalties collected under Subchapter F shall be deposited to the credit of the account. Funds in the account may be appropriated only to the department for promoting consumer awareness and rules of this chapter; supporting educational seminars, training activities, or other projects designed to benefit the department's ability to administer this chapter; paying for information resulting in disciplinary action under Subchapter F against a person for acting as a dog or cat breeder without a license; and taking any other action to improve the department's ability to investigate violations of and enforce this chapter.

The commission by rule may provide for a system to pay for information resulting in disciplinary action against a person under (b)(3). Rules adopted under this subsection must ensure that a public purpose is accomplished through the use of the payment system. The department may solicit and accept gifts, grants, and other donations from any source for deposit into the account which is exempt from the application of Section 403.095 of the Government Code.

Sec. 802.060. REGULATION of THIRD-PARTY INSPECTORS. The commission by rule shall establish training requirements for third party inspectors, registration procedures, and policies governing the acts in conducting an inspection or investigation.

Sec. 802.061. REGISTRATION OF CERTAIN EMPLOYEES OF LICENSED BREEDERS. The commission by rule may establish registration procedures for any person whose duties and responsibilities include the handling of or caring for an animal in a licensed breeder's facility.

Sec. 802.062. CONTRACTS FOR ENFORCEMENT. The department may contract with a third-party inspector to enforce or assist in the enforcement of this chapter and rules adopted under this chapter, including the performance of inspections and investigations.

Sec. 802.063. INSPECTIONS. The department shall inspect each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance with this chapter and rules adopted under this chapter. Inspections must be conducted during the facility's normal business hours, and the licensed breeder or a representative may be present. The department or third-party inspector may not provide advance notice to the licensed breeder or a representative before arriving at the facility. The licensed breeder or representative shall, on request, assist the inspector in performing the inspection. In conducting an inspection under this section, the inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals, documents, records, or other property relevant to the inspection. The inspector shall submit an inspection report to the department, on a form prescribed by the department, not later than the 10th day after the inspection and provide a copy of the report to the licensed breeder or its representative.

Sec. 802.064. INVESTIGATIONS. On receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, the department or a third-party inspector designated by the department shall investigate the alleged violation.

Sec. 802.065. REPORTING ANIMAL CRUELTY. A person conducting an inspection under Section 802.063 or 802.103 or an investigation under Section 802.064 shall notify the appropriate local law enforcement agency not later than 24 hours after discovering evidence of animal cruelty or neglect during the inspection or investigation.

Sec. 802.066. ADVISORY COMMITTEE. The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E. The advisory committee consists of nine members appointed by the presiding officer of the commission with approval of the commission and will include: two licensed breeders; two veterinarians; two animal welfare organization representatives; two public members; and one animal control officer as defined in Section 829.001 of the Health and Safety Code. Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbering year. If vacancy occurs during a member's term, the presiding officer of the commission, with approval of the commission, shall appoint a replacement member to serve remainder of the unexpired term. The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term and that member may serve more than one term. The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department. Except for the members described by Subsection (b) (1): a person may not be a member of the advisory committee if the person or a member of the person's household is required to be licensed under this chapter; an officer, employee or paid consultant of an entity required to be licensed under this chapter; owns or controls, directly or indirectly, more than 10 percent interest in an entity required to be licensed under this chapter; or is required to register as a lobbyist under Chapter 305 of the Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter. The presiding officer of the commission may remove a member of the advisory committee who is ineligible for membership under Subsection (f). A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the

General Appropriations Act, a member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties. A decision of the advisory committee is effective only on a majority vote of the members present. Chapter 2110 of the Government Code does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

[Sections 802.067-802.100 reserved for expansion]

SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS

Sec. 802.101. LICENSE REQUIRED. A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility the person owns or operates in this state. A license for a single facility may cover more than one building on the same premises. The commission by rule may establish requirements for issuance or renewal of a license issued to a dog or cat breeder under this chapter.

Sec. 802.102. APPLICATION. An applicant for a license under this chapter must: submit to the department a completed application on a form prescribed by the department; any other information regarding the applicant's facilities and operations requested by the department; demonstrate that the applicant has satisfied the requirements of this chapter and rules adopted; and pay to the department the required fee.

Sec. 802.103. PRELICENSE INSPECTION. Except as provided by Subsection (e), the department must inspect a facility before a license is issued for the facility. The department may not issue a license to a dog or cat breeder until the department receives a prelicense inspection report from the inspector, in a format approved by the department certifying that the facility meets the requirements of this chapter and rules. Before the prelicense inspection may be conducted, each applicant must pay to the department the required inspection fee to be used to pay third-party inspectors and the reasonable expenses of the department related to its licensing and inspection duties under this chapter. An applicant whose facility does not meet the requirements of this chapter and rules adopted under this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department. The department may not require a prelicense inspection of a facility for an applicant who holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and submits to the department a copy of the license and a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter on a form prescribed by the department.

Sec. 802.104. INITIAL LICENSE. The department shall issue a license to each dog or cat breeder who meets the requirements of this chapter and rules adopted under this chapter, applies to the department on the form prescribed by the department, and pays the required fee.

Sec. 802.105. TERM; NONTRANSFERABILITY. A license under this chapter is valid until the first anniversary of the date of issuance and is nontransferable. The department shall include the expiration date on each license issued.

Sec. 802.106. LICENSE RENEWAL. A licensed breeder may renew the person's license by submitting a renewal application to the department, on a form prescribed by the department, complying with any other renewal requirements adopted by the department, and paying the required fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed. The department may not renew the license of a person if the person is in violation of this chapter or any rule adopted under this chapter at the time of renewal.

Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION. The department shall deny issuance of a license to, or refuse to renew the license of a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license. The department shall revoke a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction. The department may deny issuance of a license to, refuse to renew, or revoke or suspend a license held by a person who: fails to meet the requirements of this chapter and rules adopted; has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended; has falsified any material information requested by the department; failed to meet a standard adopted by rule under this chapter; or failed to comply with any corrective action required under an inspection report in the time provided by the report.

[Sections 802.108-802.150 reserved for expansion]

SUBCHAPTER D. PRACTICE BY LICENSED BREEDER

Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. A licensed breeder shall: prominently display a copy of the license at the breeder's facility; maintain at the breeder's facility a printed copy of this chapter and rules adopted under this chapter as made available by the department; include the license number in each advertisement of the licensed breeder; and include in each contract for the sale or transfer of an animal by the licensed breeder: the license number; and the statement specified by this chapter or a similar statement adopted by commission rule including the department's name, mailing address, telephone, and Internet website address.

Sec. 802.152. CHANGE IN LICENSE INFORMATION. A licensed breeder shall notify the department in a manner prescribed by the department no later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

Sec. 802.153. ANNUAL INVENTORY. Not later than February 1 of each year, a licensed breeder shall submit to the department on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year. The licensed breeder shall keep copies of the items described by Subsection (a) at the licensed breeder's facility and shall make them available on request to the department or a third-party inspector designated by the department. A licensed breeder that has more than one facility shall: keep separate records for each facility and submit a separate accounting of animals for each facility.

Sec. 802.154. ANIMAL RECORDS. A licensed breeder shall maintain a separate record for each animal in the breeder's facility documenting the animal's care. The record must include: the date the animal entered the facility; if applicable, the name, address, and telephone number of the person from whom the animal was purchased or obtained; a description of the animal, including the animal's breed, sex, color, identifying marks, and weight; the date of birth of the animal or approximate age if the date of birth is unknown; any tattoo, microchip, or other identification number carried by or on the animal. If the animal is a breeding female the breeding dates; dates the animal gave birth to a litter; number of puppies or kittens for each litter; and the name and identification of the sire or tom from each litter. The record must also include all veterinary care provided for the animal, including a record of all inoculations, medications and other veterinary medical treatment received by the animal while in the possession of the licensed breeder. For an animal that was at the facility but is no longer at the facility the record must include the date of disposition or death and as applicable, the name and address of the person to

whom the animal was transferred, or the animal's cause of death. The licensed breeder shall make the records available upon request to the department or a third-party inspector. The commission by rule shall establish the retention period for the records required under this section.

[Sections 802.155-802.200 reserved for expansion]

SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

Sec. 802.201. ADOPTION OF STANDARDS. The commission shall adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety and well-being of each animal in the breeder's possession. The standards adopted under this section must at a minimum meet federal regulations and require that, unless otherwise certified by a veterinarian in the manner prescribed by the department, each dog 12 weeks of age and older be provided with at least one hour of daily exercise in an area that has a surface that has adequate drainage and that will not adversely affect the dog's health or well-being, and may be composed of natural turf or soil. The area must provide adequate protection against harsh weather, including exposure to the sun, and be at least three times more square feet than the dog's primary enclosure. Standards require that an adequate period consistent with breed standards elapse between the breeding cycles of each adult intact female; basic grooming, including bathing and nail trimming, as needed to prevent any condition that adversely affects the animal's health and cleanliness; all primary enclosures be composed of materials that are safe for the animal based on the animal's breed, size, and age; have adequate space to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position; have adequate drainage; and if any portion of the floor is composed of wire or slatted material, it must be free from any protruding, sharp surfaces and be designed so the animal's paws are unable to extend through, or become caught in, the floor. Standards must prohibit the placement of a primary enclosure of an animal on top of another primary enclosure of an animal unless an impervious barrier, designed to prevent the transfer of any liquid or animal waste from one enclosure to the other, is placed between the enclosures. Prohibits the stacking of the primary enclosures of dogs above three vertical levels. Requires at least one regular veterinary examination a year for a breeding animal; require that a dog or cat breeder maintain at each facility a written health care management protocol that addresses routine and preventative care; ensure that necessary routine and preventative care is provided to each animal and that each animal receives appropriate care and treatment for any disease or illness that affects that animal's health or well-being; prohibit a person from euthanizing an animal or performing a surgical birth of an animal or performing a surgical birth of an animal unless the person is a veterinarian. Requires appropriate training for any person whose duties and responsibilities include the handling of or caring for an animal in a dog or cat breeder's facility and prohibit a dog or cat breeder from selling, trading, or giving away an animal before the animal is eight weeks of age. The commission by rule may modify existing standards and establish additional standards or requirements as necessary.

[Sections 802.202-802.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. If a person violates this chapter or a rule adopted under this chapter, the person is subject to any action or penalty under Subchapter F or G, Chapter 51.

SECTION 3. Not later than January 1, 2012, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint the members of the advisory committee established under Section 802.066 of the Occupations Code, as added by this Act.

SECTION 4. Not later than March 31, 2012, the Texas Commission of Licensing and Regulation shall adopt the rules, standards, procedures, and fees necessary to implement Chapter 802, Occupation Code, as added by this Act, and Section 5 of this Act.

SECTION 5. Notwithstanding Chapter 802, Occupations Code, as added by this Act, a dog or cat breeder is not required to hold a license under this chapter to act as a dog or cat breeder before September 1, 2012 or comply with the standards adopted under Subchapter E, Chapter 802, Occupations Code, as added by this Act, before September 1, 2012.

EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house as provided by the Texas Constitution, if not, this Act takes effect September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Committee Substitute to House Bill 1451 makes conforming changes in accordance to changes in the language of the bill. The relating clause is changed from "commercial dog and cat breeders" to "certain dog and cat breeders", Chapter 802 is renamed "Dog or Cat Breeder", and the short title is changed to "Dog or Cat Breeder Act."

Committee Substitute to House Bill 1451 removes the definition for "commercial breeder" and adds the definition for "Dog or cat breeder" and adds the definition for "Licensed breeder". Makes conforming changes using the new terms.

Adds the governing code for the definitions of the "Commission" and the "Department." Removes "Local animal control agency" from the definition of "Third-party inspector".

Adds Sec. 802.004, presumption of use for breeding, to clarify the definition of "dog or cat breeder".

Clarifies in Sec. 802.052 that the number of adult intact female animals used for breeding at the facility may be considered in setting of fees.

Clarifies in Sec. 802.059 (b) (3), that only information resulting in disciplinary action against a person for acting as a dog or cat breeder without holding a license issued under this chapter is eligible for pay.

Clarifies in Sec. 802.059 (c) that the commission by rule may provide for a system to pay for information described by Subsection (b) (3).

Changes in Sec. 802.060 that the commission "shall" establish regulation for third-party inspectors.

Changes in Sec. 802.063, the inspection time from "12-month period" to an "18-month period."

In Sec. 802.065 removes "local animal control agency."

Adds Sec. 802.066 which creates an advisory committee to advise the commission and make recommendations. Makes conforming changes.

In Sec. 802.102 and Sec. 802.153 removes all references to sales taxes.

Deleted Sec. 802.155 which was the limit of 50 intact females and appeal process. Makes conforming changes.

Changes Sec. 802.201 by adding "housing" to the list of areas the commission must consider when adopting rules. The standards must, at a minimum, meet federal regulations. The requirements for surface and flooring for both exercise areas and primary enclosures are further

clarified. Clarifies that an adequate period of time, consistent with breed standards, elapse between breeding cycles. More clearly defines impervious barriers to be placed between primary enclosures if stacking. Allows for the stacking of dog primary enclosure but only 3 vertical. Clarifies the vet requirements, routine and preventive care, and requires the dog or cat breeder to maintain written health care management protocol that addresses routine and preventive care. Removes the requirement for background checks for those other than the applicant for a license. Makes conforming changes.

Requires the presiding officer of the Texas Commission of Licensing and Regulation appoint members to the advisory committee not later than January 1, 2012.