

**Pennsylvania House of Representatives Agriculture and Rural Affairs Committee
Dennis C Wolff, Secretary, Pennsylvania Department of Agriculture
June 12, 2008**

Good morning. Thank you very much, Chairman Hanna, Chairman Hershey and members of the Committee. I am pleased to present to you what I believe is a needed overhaul of the Dog Law, House Bill 2525. This bill is the product of thousands of stakeholder comments, meetings with you, with the Independent Regulatory Review Commission, with our wardens and with all segments of the dog world, and six months of intensive review and revision of a preliminary draft.

Within the existing Dog Law, we have done a lot in the last year and a half to increase enforcement of our kennel laws, to improve our warden training and to provide information to the public. Still, dogs in some commercial breeding kennels live in very poor settings because the standards in the current Dog Law allows for it. We therefore must revise the Dog Law, which has not been updated for 12 years. As you know, I am a production farmer. It is true that this legislation requires different standards for dogs than we have for livestock, but dogs are different. They are not bred to be food, to produce food or clothing, or as transportation. Most dogs are bred to spend what may be ten or fifteen years in someone's home as their family's companion. Proper care of these dogs, both those bred and those sold, is essential to fulfill this purpose.

Before I go further, let me preface my remarks by reminding everyone that under House Bill 2525, just like the current Dog Law, a person is not required to hold a kennel license until she or he meets the definition of a kennel, which, generally means they keep or transfer 26 or more dogs in a calendar year. Once a person meets that threshold, they are required to hold a kennel license and will be classified and regulated according to the type of kennel they operate.

I would like to give you an example of what are considered acceptable standards under the current Dog Law. If the requirements of the current law are met, a kennel owner can choose to permanently confine breeding dogs in small, stacked, wire-floored cages with no heat, no opportunity for exercise, no routine veterinary care and minimal contact with people. While this is distressing to all who love dogs, it is completely legal under the current Dog Law. Our wardens can only enforce the law. The public has criticized our Department for not doing more to regulate commercial breeding kennels. We are limited by the current law.

I want to be clear that we are not seeking to end commercial breeding operations in Pennsylvania. We instead are seeking to raise the bar on these operations, which are clearly different from other types of kennels. Commercial kennels breed dogs in very large quantities, and the profit motive impacts the welfare of the dogs in many of these operations because our Dog Law allows it to. These dogs live permanently in these facilities as their many litters of pups are born and leave. These are the dogs that need this legislation.

As suggested by many different groups, we have defined commercial kennels for the first time, and set standards for these kennels that mostly mirror but sometimes go beyond the US Department of Agriculture requirements. We propose to define commercial kennel as a kennel that breeds or whelps dogs and does one of the following -

- sells or transfers any dog to a dealer or a pet shop kennel, OR sells or transfers more than 60 dogs per calendar year. This does not include boarding kennels, private sporting or hobby kennels, dealer kennels, pet stores or nonprofit kennels. Having 60 dogs does not make you a commercial kennel until you sell or transfer more than 60 dogs per calendar year. We estimate that about 650 kennels, out of about 2750 total licensed kennels, would fall under this definition.

Under House Bill 2525, commercial breeding kennel standards will change in these ways for dogs over 12 weeks of age:

- Current small primary enclosure standards would stop. This legislation would double the current amount of space for the first and second dog in the cage, and require 1.5 times the current space requirement for additional dogs up to six.
- Dogs will need to be on solid flooring rather than coated metal strand "wire" flooring. Wire flooring causes leg problems, gait problems, foot deformities and cysts.
- It will be mandatory for dogs to have access to an outdoor run to give them the opportunity for exercise.
- Primary enclosures will no longer be stacked on top of each other. This will ensure that all dogs are visible to the wardens and, more importantly, to the dogs' daily caretakers.
- Kennel operators will have to remove dogs from their primary enclosures when the primary enclosures are cleaned. Dogs will not be at risk for inhumane exposure to cleaning chemicals or power washing.
- Dogs must have annual veterinary exams or a veterinary exam during each pregnancy, whichever is more often, and a program of veterinary care must be established for the kennel. Veterinary records for each dog must be kept by the owner while the dog is in the kennel.
- The temperature in the dogs' primary enclosure must be maintained between 50 and 85 degrees, reasonable lighting and ventilation must be provided and pests like rats and mice must be controlled.
- Rabies vaccines may only be given by veterinarians, not by kennel owners. In some commercial kennels, wardens have found problems such as kennels using outdated vaccines or not being able to match vaccination records with dogs.
- Euthanasia may be performed only by veterinarians.

While most of the specific requirements for the kennel's structure, environment and housekeeping mirror the USDA dog kennel requirements found in the Animal Welfare Act. A few do not – the cage size, exercise and solid flooring requirements. We feel very strongly that dogs permanently confined in kennels need both a reasonable amount of space and an opportunity to exercise, as well as flooring that does not damage their feet and legs.

Most PA kennels go far beyond the current law in caring for their dogs, and this legislation would have little effect on them. House Bill 2525 does make some improvement that will affect all types of kennels, including:

- All kennels must be equipped with a fire extinguisher. There have been several kennel fires over the past year-and-a-half, all around the state and in various types of kennels, and hundred of dogs have died. This is an inexpensive way to address this problem.

- All kennels need to have an exercise plan approved by that kennel's veterinarian. This provision is flexible and does not limit what the exercise may be – it can be taking your dogs with you when hunting, the many types of work that dogs do, or utilizing runs for the dogs as most boarding kennels have.
- The age at which a dog can be sold has been raised from seven to eight weeks – this is consistent with USDA.
- Kennels when buying or selling dogs must keep records that include the full name and address, not just the post office box, of persons or kennels involved in the transactions.
- Kennel licenses, and notices of license revocation or suspension, must be displayed at the kennel.
- Additional grounds to revoke a kennel license have been added, including mandatory revocation upon a conviction of animal cruelty, and discretion to revoke based on conviction of a felony, an order under the Puppy Lemon Law to stop operating, or a final disapproval based on a zoning or local ordinance to operate a kennel.

House Bill 2525 would provide the Department with clear authority to address the problem of illegal unlicensed kennels. We cited 50 kennels last year for operating illegally – that is, operating with 26 or more dogs during the year without being licensed. We need the ability to enforce the law for unlicensed kennels in the same manner as we can for licensed kennels, including the ability to inspect and to cite for bad conditions. As with licensed kennels, the unlicensed kennels would be afforded the opportunity to appeal any action of the Department. We also included specific procedures for situations where dogs must be removed and situations where the number of dogs in a kennel must be reduced because its license has been revoked.

Our bill includes enforcement changes that are absolutely critical in order to properly enforce the Dog Law. I want to be clear with you that if you have been told these enforcement tools are unreasonable concepts, you have been misinformed. The first point everyone needs to consider when evaluating our proposed enforcement provisions is that these will not affect kennel operators who are not breaking the law. For example, very rarely are any sporting dog kennels problematic. Unless that sporting dog kennel owner has been breaking the law thus far, there should be no reason for that owner to be concerned; remember that those kennels will, in essence, not be changed by this legislation. I believe that any effort to argue otherwise is based on a general distrust of government regulation and enforcement and does not belong in this specific discussion. Your commitment to raising the bar for dogs that spend their lives in commercial kennels is directly linked to your support for our necessary enforcement changes. The changes we need include the ability to obtain an administrative search warrant for the purpose of inspecting a kennel, the ability to compel timely inspections by posting an order at the kennel, and statutory penalty improvements within the Dog Law.

This legislation seeks to implement penalty amounts for criminal convictions, as currently they are not statutory defined. This often results in convictions that only amount to very small fines, which is a slap on the wrist when someone is selling dogs at hundreds of dollars a piece. Additionally, this legislation would add civil penalties to give the Department a less punitive option for addressing problem kennels. Right now, when we get into enforcement situations with kennels, we can cite them only for criminal

violations of the Dog Law. A conviction gives them a criminal record, and repeated violations become misdemeanors. Most other licensing statutes have this remedy, but also provide for administrative civil penalties, for the offender whom the agency may choose not to prosecute criminally if they had another enforcement choice. Our success with voluntary consent agreements shows that this approach can be mutually beneficial – to get improvement in particular kennels but without criminally prosecuting the owners. Kennel owners still have a constitutional right to due process and may challenge a civil penalty at an administrative hearing, and several factors must be considered when determining the amount of the penalty to assess.

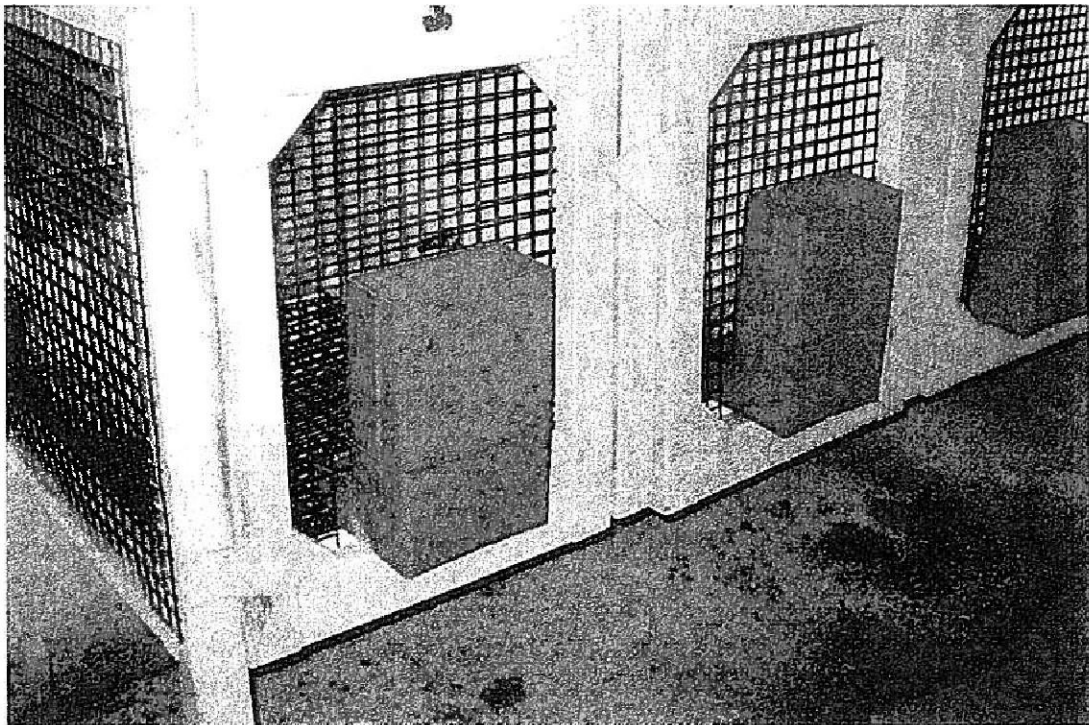
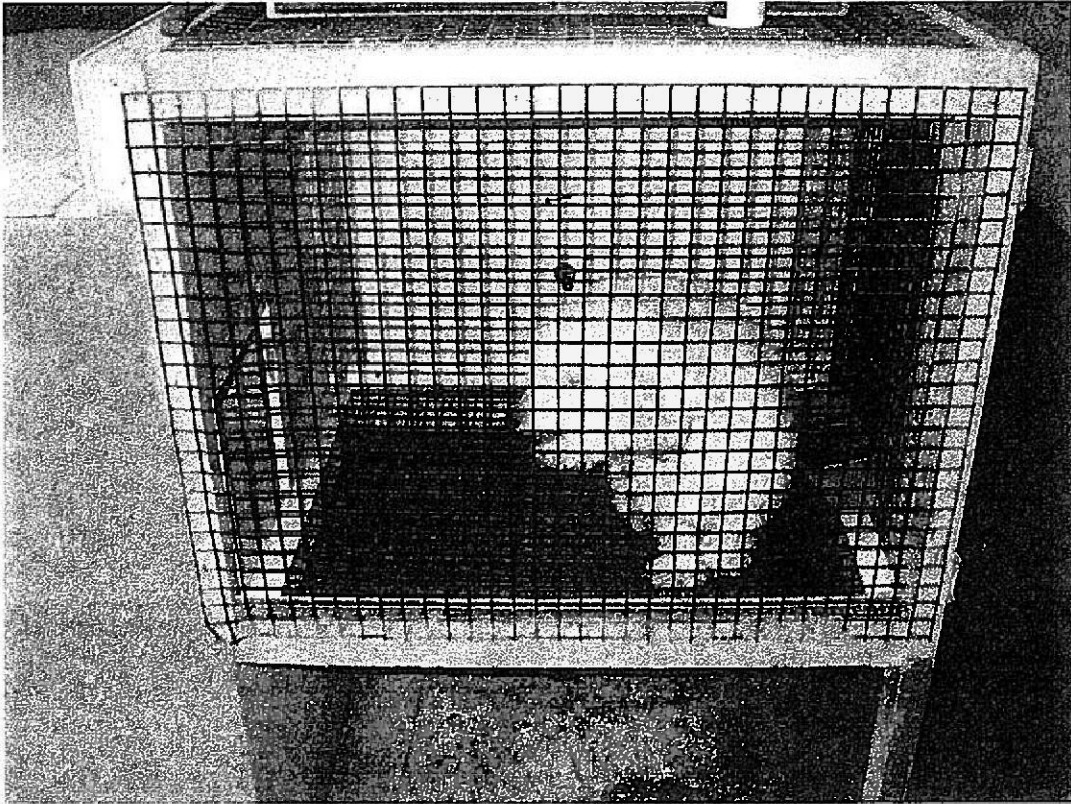
This legislation would permit the Department to set license fees through the regulatory process, which provides safeguards against excessive increases, but allows increases when needed and justifiable. Many other statutes allow fees to be set by regulation. The Regulatory Review Act requires the Department to obtain public and legislative review and comment, as well as the review and comments of an independent agency (IRRC). Governor Rendell has committed not to raise fees except for larger kennels, as under current law, kennels that deal with 251 or 9000 dogs per year pay the same \$500 kennel license fee. We believe that a 9000-dog kennel, which uses up more department resources for inspection, should pay more than a 251-dog kennel. This legislation would create a structure to allow that to occur.

Changes are proposed for the dangerous dog provisions of the Dog Law. Most of these changes are technical in nature, to make the duties of the dog owner clear. The fee to register a dog already declared dangerous is raised from \$25 to \$500, and such a dog would be required to be both micro-chipped for easy identification, and spayed or neutered to prevent breeding. I strongly support these provisions from a public safety standpoint.

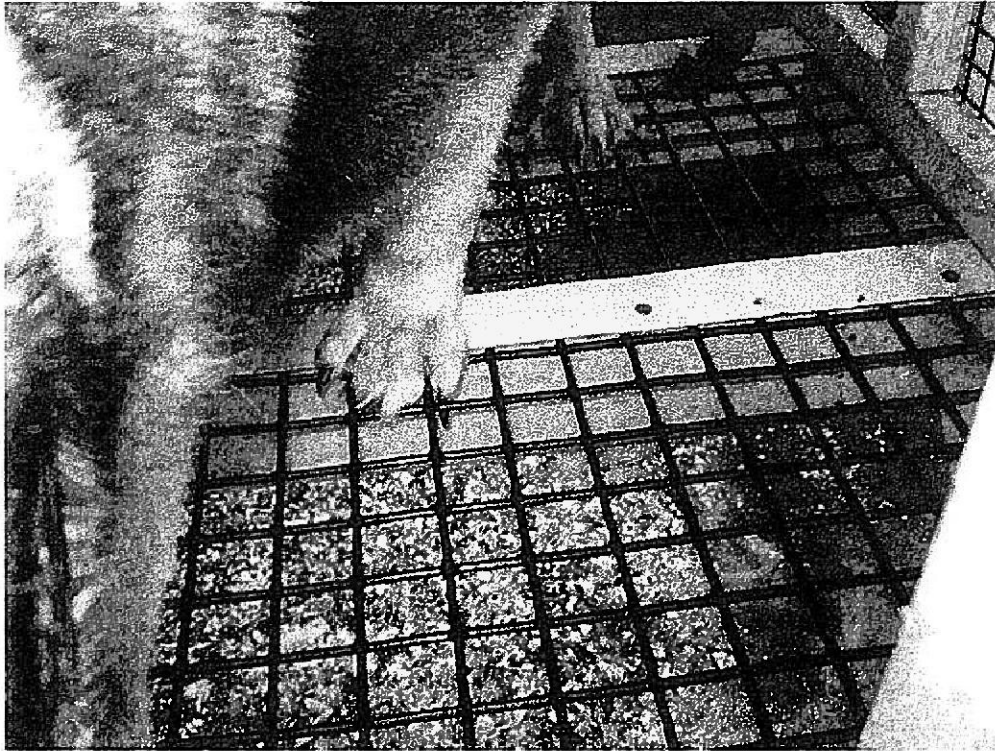
We have also added or changed some definitions to address new practices in the dog world since the Dog Law was last amended in 1996. We changed the definition of boarding kennel to include dog day care facilities, a growing trend. We defined rescue network kennels, and rescue network kennel homes, to cover organizations that place abandoned dogs but do not have a traditional shelter kennel. These organizations obtain homeless dogs, often from other states, and place these dogs temporarily in private “foster” homes until they are permanently adopted by new owners. We added a definition of dealer to cover persons who sell dogs on the internet for kennels for profit but do not themselves have a kennel.

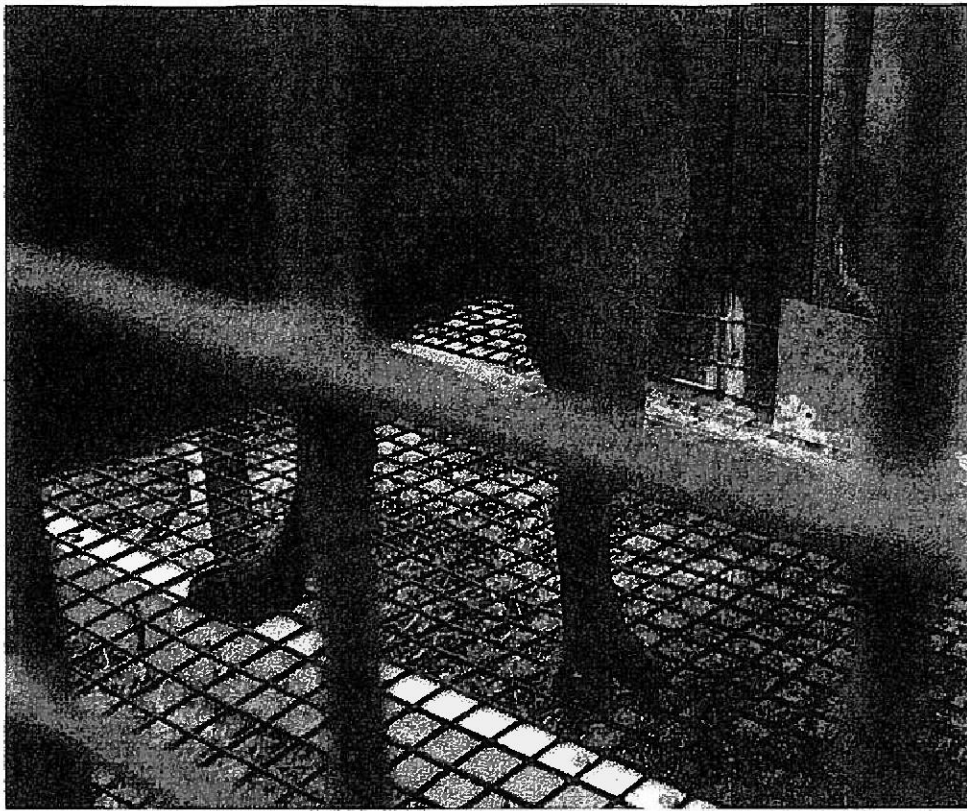
While I haven't covered every detail of this comprehensive legislation, I have tried to discuss the major provisions of the bill. Attached to my testimony are supporting documents, including a thorough explanation of the enforcement changes we need. I am joined by Deputy Secretary Jessie Smith as well as our Special Prosecutor, Jeff Paladina. We will be happy to take your specific questions at this time. Thank you again for the opportunity to speak to you about this legislation.

Below, poodles are kept in small cages allowed by current law.



It is currently legal in Pennsylvania for dogs in commercial breeding kennels to live their entire lives on wire floors. As seen here, these conditions can lead to foot problems.



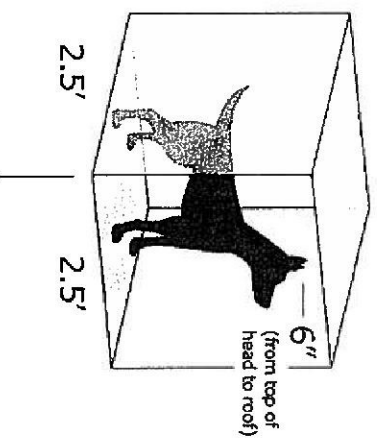


Extended time on wire floors can lead to cysts on feet



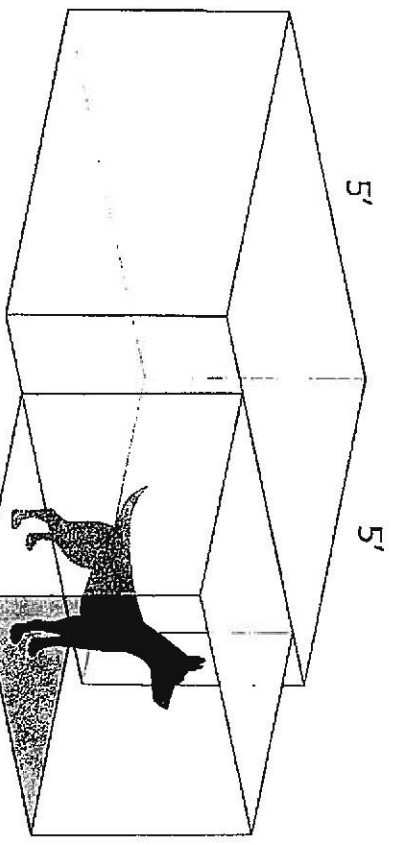
Increased Cage Sizes

Current Law



Cage - 6.25 sq. ft.
No exercise required

Proposed Law



Outdoor
Exercise Area - 25 sq. ft.

Cage - 12.5 sq. ft.

approx.
3.54'

approx.
3.54'

Addendum: Comments on Enforcement Impact of House Bill 2525

I. Enforcement of the Dog Law - Overview

The Dog Law and current kennel regulations set forth mandatory requirements as to how dogs are to be housed and kennels maintained and cleaned. The Department attempts to ensure regulatory compliance 365 days per year through unannounced inspections; at least twice per year at each kennel, and more if necessary. It is important that violations result in an actual and immediate penalty of one kind or another. Otherwise, a kennel operator could simply neglect kennel conditions the majority of the year and simply correct those conditions noted on the semi-annual inspection. Dogs would suffer the majority of the year without unannounced inspections coupled with the certainty of penalties for non-compliance.

For the past 1.5 years, at the Governor's direction, there has been a marked increase in emphasis on enforcement. The Department has found areas where the current law is lacking. House Bill 2525 provides necessary provisions to address some of those areas.

II. WHO needs to obey the kennel regulations? – Defining kennels

Problem: The current law is unclear as to the fundamental question, "Who needs to obey the kennel regulations?" The reason for the lack of clarity is a definitional problem.

The current Dog Law, at Section 101, defines kennel as any establishment wherein dogs are kept for the purpose of breeding, hunting, training, renting, research or

vivisection, buying, boarding, sale, show, or any other similar purpose and is so constructed that dogs cannot stray therefrom. Thus, a kennel is defined according to the purpose for which dogs are held. Separately, at Section 206, the Dog Law defines who needs a kennel license. It states an establishment that sells, gives away, or in any way transfers a cumulative total of 26 or more dogs in a calendar year needs a kennel license. The license requirement is silent as to the purpose for which dogs are kept. "Establishment" is not defined. These differing standards have caused confusion as to who is being regulated.

For example, a county prosecutor contacted the Department and argued an individual who sold several litters of dogs, but not in excess of the threshold of 26, should be charged with kennel violations because she met the "purpose-based" definition of kennel in Section 101. Unlicensed kennel operators have attempted to elude licensing, and have defeated prosecutions, by arguing in court: (1) each family member can possess 26 dogs in a calendar year, when the "establishment" clearly harbored a cumulative total of several times in excess of 26 dogs; (2) they can possess unlimited dogs in a calendar year provided they were simply pets, and not kept for any of the purposes listed in section 101; and (3) 25 dogs each can be kept on multiple separate parcels of real estate by one kennel operator. Even the Commonwealth Court of Pennsylvania could not agree unanimously on what constitutes operating a kennel in the case of Commonwealth v. Lopez.

Solution: House Bill 2525 attempts to clarify this important issue in the following ways:

1. It defines a kennel according to the number of dogs kept in a calendar year without regard to the purpose for which they are kept.

2. It defines establishment to encompass all dogs located on all the premises owned by the person operating the kennel.

III. HOW is enforcement conducted? – Gaining access to facilities

The primary way of ensuring kennel standards are met is through unannounced inspections. The current law gives the Department the authority and duty to inspect all dogs and kennels in this Commonwealth. The Dog Law also makes it unlawful to refuse entry to a State Dog Warden for the purposes of making a kennel inspection.

Problem: In the overwhelming majority of cases, kennel owners consent to kennel inspections. However, where a kennel owner refuses entry to a kennel building to a State Dog Warden, both the current Dog Law and Constitutional law require a search warrant to check on the conditions of the kennel and dogs. The current Dog Law is silent as to the standards necessary to obtain a search warrant.

Solution: House Bill 2525 clarifies that the Department may obtain an administrative inspection warrant to conduct an inspection necessary to gauge compliance with the Dog Law. This is necessary because a criminal search warrant must be based on probable cause of an existing violation of law, something which is effectively impossible to obtain without access to the inside of the kennel.

Courts have long recognized that to require probable cause of a violation of law in order to obtain a search warrant for a purely administrative inspection would clearly frustrate the purpose of administrative statutes. For administrative statutes, Courts have

required a lesser showing than probable cause of a violation of law to obtain a search warrant. Instead, the administrative agency must simply justify why an establishment has been selected for an inspection through proof of an administrative plan for enforcement based on neutral factors. Administrative inspection warrants protect the rights of individuals against unreasonable searches by ensuring that the agency chooses the particular establishment for inspection based on neutral factors, e.g. "it is your turn for semi-annual inspection."

House Bill 2525 poses no additional requirements on kennel owners, but simply allows the inspections already provided for in the current law to occur on schedule without the added complication presented by a refusal of entry to Dog Wardens. Without this ability - something provided to multiple other agencies charged with administrative duties to inspect the facilities they regulate - the Department is hampered in properly enforcing the Dog Law.

Problem: Some smaller and private licensed kennel operators hold jobs off-site and are often not available when Dog Wardens attempt to inspect. The Department may make multiple fruitless attempts to inspect a licensed kennel because no one is available to provide access and the hours of time and travel expense are a large drain on Department resources. Because of the necessity for unannounced inspections, it is not appropriate to make an appointment to inspect. In such circumstances, it is not necessary or desirable to obtain a warrant and force entry, but some mechanism must be in place to complete the required inspection.

Solution: House Bill 2525 provides a streamlined process to compel a timely inspection. Dog Wardens post an order for inspection and a kennel owner has 24 hours

to arrange for an inspection after the order is posted. While the 24 hour period compromises slightly the unannounced inspection, this is a reasonable concession to the everyday demands of kennel operators who have no history of noncompliance. If the period to arrange inspection is longer than 24 hours, the resulting inspection would not be an accurate reflection of kennel conditions and maintenance on a daily basis.

III. WHAT is the appropriate penalty for violations? – Civil Penalties added

Under current law, the Department's options for violations consist of criminal charges or license revocation. A wider range of penalties is necessary, particularly the standard administrative tool of civil penalties. This creates neither a criminal record nor results in putting a kennel's license in immediate jeopardy.

Criminal penalties initially consist of a summary criminal citation, a hearing and potential conviction before a magisterial district judge, and sentencing consisting of a fine. (The kennel owner has a right to appeal that decision to the county's Court of Common Pleas, with the same potential outcome.) If the kennel owner is charged with a second violation of the Dog Law within one year of sentencing on the initial charge, the new charge becomes a misdemeanor of the third degree.

Problem: In a routine initial violation, a summary criminal citation may be an effective deterrent penalty. However, the primary purpose of the criminal system is punishment for past conduct. Criminal penalties are always not the optimum method of achieving compliance. All too frequently, conditions remain or go uncorrected and repeat violations result in multiple criminal citation filings, repetitive hearings and fines, all of which clog the criminal system and frustrate judges. A relatively minor second

offense also may undesirably burden the kennel operator with a misdemeanor criminal conviction.

Alternatively, the only administrative penalty available under the current law is license revocation. Not all minor violations, even if repetitive and/or uncorrected over time, are worthy of the ultimate penalty of license revocation. (To the extent the current law, Section 211, mentions license “suspension,” suspension is unworkable because the dogs must remain in the operator’s possession, negating any effect or purpose of a “suspension”)

Solution: House Bill 2525 provides administrative options other than license revocation to force immediate compliance with the act. Countless administrative enforcement and licensing statutes provide for administrative civil penalties as an alternative to license revocation. House Bill 2525 permits the Department to issue a notice of violation and fine the kennel operator daily until the violation is corrected. This escalating penalty is the most effective way to address a repetitive kennel condition that reoccurs or remains uncorrected. This is not achievable through a criminal penalty. The kennel operator maintains his rights to due process and may challenge the penalty through an administrative appeal. However, in such circumstances, the violation is highly likely to be corrected immediately in that the risk of failing to do so is so great.

House Bill 2525 unties the Department’s hands by providing it with a full range of options to deal with problem kennels operators.