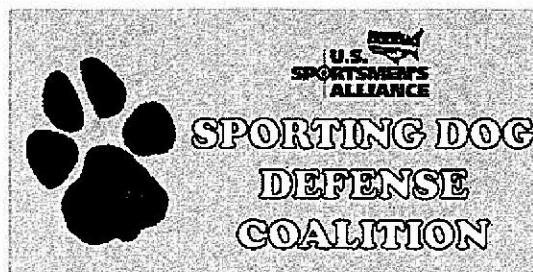


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A program of the U.S. Sportsmen's Alliance

Testimony on House Bill 2525

to the

House Agriculture and Rural Affairs Committee

by

Rob Sexton,

Vice President for Government Affairs

US Sportsmen's Alliance

June 12, 2008

Introduction

Chairman Hanna, Chairman Hershey, members of the committee, thank you for the opportunity to testify on House Bill 2525, which would make significant changes to Pennsylvania's Dog Law. I am Rob Sexton, vice president for government affairs for the US Sportsmen's Alliance. USSA is a national sportsmen's advocacy organization founded in 1978. Our mission is to protect the rights of American sportsmen and women to hunt, fish and trap.

A subset of our organization is especially devoted to dogs. Whether hunting with dogs, field trialing with dogs, training or raising sporting dogs, most of these folks would give up hunting all together if it could not be enjoyed with their dogs. USSA founded the Sporting Dog Defense Coalition to specifically address the issues of this community.

With me today is Terry Griffin, Master of Foxhounds for the Radnor Hunt, located in Malvern, PA. Radnor is the oldest continuously operating foxhunt in the Commonwealth. Terry is also president of the Bryn Mawr Hound Show Association and the Pennsylvania director of the Masters of Foxhounds Association of America.

Joining Terry is John Gible of Elizabethtown. John is a member of the Dog Law Advisory Board, member of the Pennsylvania Beagle Gun Dog Association and President of the Northeast Beagle Gun Dog Federation .

I have been told that neither of these gentlemen will be afforded the opportunity to make a public statement, but that they are able to help me answer questions committee members may have about our position. Both of these men are genuine dog lovers, experts in their breed, very knowledgeable about the dog law and the operation of private kennels.

A list of the Sporting Dog Defense Coalition is included with my testimony. I speak today on behalf of these national and Pennsylvania organizations which have united to address the concerns we have about House Bill 2525. As written today, our 60 member coalition of sportsmen and sporting dog organizations, sporting dog publications and sporting goods businesses reluctantly opposes House Bill 2525. To understand our position, it is important to go back to the beginning.

When the Governor announced his intention to reform the dog law to address the “puppy mill” issue, none of our coalition members ever dreamed they would be on the outside looking in, let alone opposed to what was actually submitted. Unfortunately, as many of you know, that is exactly what happened.

One-Size-Fits-All Regulations

The initial regulations treated every kennel the same regardless of its purpose. They imposed a draconian set of specific requirements in which no existing kennel in Pennsylvania would be able to comply. Compliance alone would have meant financial ruin for the sporting dog community.

It took nearly an entire year of an aggressive grassroots campaign to convince the administration that this issue needed to be before the legislature. First, because the different types of kennels had to be recognized and more importantly because these new requirements and the accompanying penalties need to be openly debated before the legislature, which is much more responsive to the people. At this point I would like to acknowledge the help given to us by members of this committee and other legislators. Without your help, we would not be having this hearing today.

The Need for House Bill 2525

Before outlining our specific issues, I would like to add this: Our people support the concept that something must be done. The truth is something already has been done. Enforcement has increased. Awareness has increased. The Department has created what it calls a new “SWAT” enforcement team of dog wardens to address the issue. The attorney general has agreed to changes that will allow prosecutors to try the cases involving the dog law. According to the Department’s own report, convictions and license revocations have significantly increased. In other words, aggressive enforcement of existing law is making a difference.

There have even been reports of enforcement of “law” that is not clearly on the books currently. Some of our members have been told during inspections that they are required to treat kennels with chemicals to waterproof them. More recently boarding kennels have been asked to provide information to the state on customers whose dogs are not properly licensed.

The crackdown envisioned by the authors of House Bill 2525 has already begun. Knowing this, it is essential to recognize that violators make up roughly 2% of all licensed kennels. This fact must be considered when evaluating the comprehensive nature of House Bill 2525. Our people will support the idea that more should be done to target abusive operators, but we question why there should be such a broad grant of discretionary and punitive authority as this bill grants to the Department of Agriculture. There needs to be reasonable limits to protect the law abiding.

Compromise

Throughout the regulatory process we have been continually asked to compromise and we have continuously risen to that challenge. We have submitted alternative language both to the regulations and the current bill before you. All of our suggestions have been in good faith.

Over the last few months we have had hours of constructive dialogue with the administration and the Department of Agriculture. Both sides have given on issues to try to reach a resolution.

Our primary mission remains: to protect the viability of Pennsylvania's strong sporting dog heritage. We believe that our changes would improve this bill and our members support that concept. At the same time we do not support legislation that could criminalize and penalize sportsmen out of existence.

Goal

The goal of this legislation should be to provide the necessary tools to address the issue of abusive kennels while protecting the 98% of licensed kennel owners who operate within the law and in good faith. One of the key differences we have with the administration in this effort is this: they see kennel owners in two groups – those who obey the law and those who do not.

In reality dog kennel owners, like all citizens, fall into three categories: those who obey the law, those who occasionally make mistakes and inadvertently violate a rule or regulation, and those who flagrantly break the law. While the state needs the tools to get at group number three, it should not be granted the ability to eliminate group number two. To the contrary, reasonable penalties and education will provide the proper incentive for people of good will to comply.

Further House Bill 2525 applies the same punitive sanctions to individual dog owners and private kennels as it does large commercial operations. This one-size-fits-all approach fails to recognize the severity of a penalty on a non-revenue generating private operation.

Another example of the one size approach deals with requiring license tags to be worn by dogs. During our discussions with the state, they conceded to our request that hunting dogs be exempted from this requirement because many kennel operators believe that dogs can be injured by their collars during a hunt. The requested exemption is very narrow in scope. However the state refuses to extend this exemption to transportation from the kennel to and from the hunt,

which creates an unreasonable requirement for which there is no demonstrated need. The requirement has nothing to do with the stated purpose of this bill.

Amendments

This theme permeates the specifics of our requested amendments. What follows is a priority listing of our amendments complete with an explanation of each. They are divided into three categories: our top priorities, very important amendments and last, amendments to improve the bill.

Initially, the sporting dog community had 36 separate issues of concern with House Bill 2525. On May 19th, representatives of the Sporting Dog Defense Coalition met with the administration to discuss the requested amendments, roughly two weeks after seeing HB 2525 for the first time. As a result of the meeting, we withdrew 10 of our amendments. On June 3, the administration sent us a response to the remaining 26 issues. Constructive dialogue between us has resulted in the resolution of 16 of these amendments. We are willing to accept 3 more with some additional suggested language. 7 issues remain completely unresolved as of this hearing. Unfortunately these include the most critical elements of this legislation that must be changed to protect private sporting dog kennels.

The following six areas are the top priorities of USSA and its coalition members. They encompass 10 of our 26 requested amendments:

Issue 1. Enforcement and Penalties – Section 211 (a) (new section 12) and Section 903

It is essential to have an objective set of criteria for the department to utilize when determining whether or not to revoke, suspend or refuse to issue a kennel license. The department proposes alternative language to USSA's request. The alternative language is acceptable with the following changes which are bolded:

211(a) Change the lead in paragraph to state:

"(a) General powers of secretary. - - ...The secretary may revoke, **suspend**, or **refuse to issue** a kennel license or out-of-state dealer license for any one or more of the following reasons. In determining whether to revoke, **suspend** or **refuse** a kennel license or out-of-state dealer license for a misstatement as set forth in subparagraphs (1), (2) the secretary will consider the gravity of the misstatement. In determining whether to revoke, **suspend** or **refuse** an existing kennel license or out-of-state dealer license for a failure to comply with a provision of the act or regulations, as set forth in subparagraphs (3) and (4) the following will be among the factors the secretary will consider (i) The gravity of the violation (ii) The number of current or past violations (iii) The ~~potential~~ effect of the violation on the health or welfare of the dog or dogs; (iv) whether the kennel has been previously warned to correct the violation (iv) whether the violation resulted in a criminal conviction; (v) the length of time that has passed between violations."

It is equally critical that the penalty section of the dog law be clear and fair. USSA submitted a graded penalty section in which penalties and fines increase for repeat violators. Our request provides for a warning for a first offense that does not cause harm to a dog. Our suggested amendment calls for penalties for repeat violators and for offenses that cause harm to a dog. The state, however continues to want to be able to stack both criminal and civil penalties together even for minor offenses. It is important to remember that as written each violation brings a civil penalty of up to \$1,000 and a criminal fine of up to \$500. A kennel inspection that produces three minor violations would result in up to \$4,500 in fines and penalties along with possible jail time, even if not one of the violations results in harm to a single dog! Our newly drafted Section 903 provides a penalty grading system. It recognizes the difference between offenses that cause harm to dogs and those of a technical nature.

For these reasons, we continue to request the following redrafted section 903:

"Section 903. Enforcement and penalties.

(a) Civil Penalty. --

- (1) Where the Bureau of Dog Law Enforcement finds that the first violation within a year of a provision of this act or a rule or regulation adopted under this act did not cause harm or an adverse effect to a dog or present a danger to the public health or safety, it shall issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance.
- (2) (i) The Bureau of Dog Law Enforcement may, in lieu of a warning, assess a civil penalty of not less than \$100 or more than \$1,000 for:
 - (A) the first and any subsequent violation in a year of a provision of this act or rule or regulation adopted under this act where the owner or operator does not take immediate action to resolve the violation and come into compliance, or the violation caused harm or an adverse effect to a dog or presents a danger to the public health or safety; or
 - (B) more than one violation in a year of a provision of this act or rule or regulation adopted under this act for substantially the same conduct;
- (ii) The factors for consideration in determining whether to assess a civil penalty under subparagraph (i) hereof and, if so, the amount of the penalty are:

- (A) The gravity of the violation.
 - (B) The potential harm to the public.
 - (C) The potential effect on the dog or dogs.
 - (D) The willfulness of the violation.
 - (E) Previous history of violations
 - (F) The economic benefit to the violator for failing to comply with this act or rules or regulations adopted under this act .
- (iii) Notification of assessment of a penalty under subparagraph (i) hereof shall be in writing and shall set forth the factors and basis for the amount of the penalty sufficiently to permit administrative review of the penalty.
- (3) Before leaving the premises being inspected, or as soon thereafter as reasonably possible, the dog warden or other authorized person conducting the inspection shall deliver to the representative of the owner or operator who is present written notification of each violation found and the date by which such violation must be resolved and brought into compliance ("compliance date"), which date must be realistic under the circumstances assuming immediate effort to come into compliance. Each day the violation continues after the compliance date may be deemed a separate violation.
- (4) In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the Bureau of Dog Law Enforcement may refer the matter to the Office of the Attorney Counsel or the Office of the Attorney General, which shall institute an action in the appropriate court to recover the penalty.
- (b) Criminal penalties. - - Unless otherwise provided under this act, a person who violates a provision of Articles II through VII or a rule or regulation adopted or order issued under this act commits the following:
- (1) For the third violation within a year for substantially the same conduct , or for the second violation within a year for conduct causing harm or an adverse effect to a dog or presenting a danger to the public health or safety, a summary offense. Upon conviction, the violator shall be sentenced for each offense to pay a fine of not less than \$100 nor more than \$500 plus costs of prosecution or to serve a term of imprisonment for not more than 90 days, or both, in addition to any civil penalties applied.

- (2) For the fourth and each subsequent violation within a year for substantially the same conduct, or for a violation which caused harm or an adverse effect to a dog or presents a danger to the public health or safety that occurs within one year after sentencing for such a violation under this subparagraph (b), a misdemeanor of the third degree.
- (c) In determining the number and type of violations for purposes of assessing civil and criminal penalties under paragraphs (a)(1)-(a)(2) and (b)(1)-(b)(2) hereof, but for no other purposes of this act, including paragraph (a)(3) hereof and Section 211, all violations found during an inspection shall constitute a single violation
- (d) Representation. -- Upon prior authorization and approval of the district attorney for the county in which the proceeding is held, a State dog warden may be represented in any proceeding under this section by an attorney employed by the Office of General Counsel.
- (e) Civil remedies. -- In addition to any other remedies provided by this act, a violation of this act or the regulations promulgated under this act shall be abatable in the manner provided by law or equity.
- (f) Equitable relief. -- In cases where the circumstances require it, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, provided such notice of the application has been given to the respondent in accordance with the rules of equity practice. In any such proceeding, the court shall issue a prohibitory or mandatory injunction if it finds that the respondent is engaging in unlawful conduct as defined by this act or is engaging in conduct which is causing immediate and irreparable harm to the public. In addition to the injunction, the court in such equity proceeding may assess civil penalties in accordance with this section.
- (g) Penalties collected. -- All civil penalties collected under this act shall be remitted to the Dog Law Restricted Account."

Issue 2. Search Warrants and Inspections – Sections 218 and 220

Under our search warrant amendment a warrant may only be issued if the dog warden has reason to believe that a violation of the dog law has occurred. The state's proposed alternative still permits a search warrant even if a dog warden has no reason to believe that a violation has

occurred. While the state points to other licenses that allow searches without a belief that a violation has occurred, the examples they cite relate to businesses that could potentially impact the health and safety of millions of Pennsylvania citizens such as radioactive waste disposal and clean drinking water. Private residences that house private kennels do not rise to a level of public concern to justify something more than the normal probable cause requirement in which a law enforcement official believes that a violation has occurred. We believe that a portion of the state's alternative is an improvement on ours. For these reasons we are not able to accept the state's alternative but we do make the following bolded change to our request:

"Section 218 (c):

"(c) Search warrant.--State dog wardens and other employees of the department may apply for a search warrant to any Commonwealth official authorized to issue a search warrant for the purposes of inspecting or examining any kennel, property, building, premise, place, dog, book, record or other physical evidence or for the purpose of removing any dog under section 207 or 211. The warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any of the following:

- (1) ~~The inspection, examination or seizure is pursuant to a general administrative plan to determine compliance with this act.~~
- (2) The State dog warden or employee of the department has reason to believe that a violation of this act or the regulations promulgated under the authority of this act has occurred **and the search warrant is necessary to properly enforce this act or its regulations.**"

The state has also suggested an alternative to the inspections sections. We are able to accept the department's language with the following bolded additions:

"Section 218. Inspections [of premises and dogs].

- (a) Premises and dogs.--State dog wardens and other employees of the department are hereby authorized to inspect all licensed kennels [and], all dogs within the Commonwealth and all unlicensed establishments which are operating as a kennel as defined by section 206. For purposes of inspection, a State dog warden and other full-time employees of the department shall be authorized to enforce the provisions of this act and regulations promulgated by the department [pursuant to] under this act. State dog wardens and employees of the department shall inspect all licensed kennels within the Commonwealth at least [once] twice per calendar year to enforce the provisions of this act and regulations promulgated by the department under this act It shall be unlawful for any person to refuse admittance to such State dog wardens and employees of the department for the purpose of making inspections and enforcing the provisions of this act.

- (b) Records.--State dog wardens and other employees of the department shall be authorized to inspect the records required under this act of all licensed and unlicensed kennels.
- (c) Search warrant.--State dog wardens and other employees of the department may apply for a search warrant to any Commonwealth official authorized to issue a search warrant for the purposes of inspecting or examining any kennel, property, building, premise, place, dog, book, record or other physical evidence or for the purpose of removing any dog under section 207 or 211. The warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any of the following: ~~(1) The inspection, examination or seizure is pursuant to a general administrative plan to determine compliance with this act.~~ (2) The State dog warden or employee of the department has reason to believe that a violation of this act or the regulations promulgated under the authority of this act has occurred **and the search warrant is necessary to properly enforce this act or its regulations."**
- "(d) Inspection Results-- Only employees of the Department who have received the training required under section 901(b) shall have the authority to issue reports of the inspection.

Section 220. Refusal of Entry.

- (a) Violation.--It shall be a violation of this act if a person **deliberately** refuses entry to an agent of the Commonwealth acting to enforce this act. A refusal shall include any of the following: (1) Preventing an agent from entering property. (2) Preventing an agent from inspecting a dog. (3) Hiding a dog from an agent. (4) An act or omission that prevents an agent from gaining entry to the property.
- (b) Order of inspection--When a State dog warden or employee of the department attempts a kennel inspection in a building and no person is present to grant him access, a State dog warden or employee of the department may post an order on an entrance to the building demanding access to the building within 36 hours. Failure to permit an inspection within the 36-hour time period indicated in the order that was posted shall be a violation of this act and shall constitute a refusal for purposes of subsection (a), **unless there is a reasonable explanation for the failure of the kennel operator to permit the inspection.** "

Issue 3. Local Ordinances and Zoning – Section 211 (a) (8)

Tying the issuance of a kennel license to a local or zoning ordinance is alarming to private kennel operators, many of whom operate in rural areas that are becoming more suburban. New folks may not like kennels or other rural experiences, and seek to impose ordinances or zoning restrictions that will eliminate kennels. Our fears were realized in Lebanon County where a township zoning board recently placed 28 humane conditions on a permit for a dog kennel. We believe that the local jurisdictions have the ability to enforce their own ordinances without help from the state.

The state has agreed to remove local ordinances from the provision but seeks to retain zoning. USSA is agreeable to the change with the following bolded substitution:

“Section 211 (a) (8)

(8) the person holding or applying for a license has received **a final, non-appealable order declaring that the person’s kennel is not a permitted use under the applicable zoning ordinance** ~~final disapproval to operate based on a local ordinance or zoning ordinance relating to operation of a kennel .”~~

Issue 4. Proper License and Grace Period – Section 207 (a) (1)

Current law does not make an exception when a kennel operator has a need to become licensed or upgrade classes of licenses. Sportsmen have not fought this because it has not been enforced. With passage of this bill and recent focus on increased enforcement, it is critical to have a grace period to cover unforeseen events such as a larger than expected litter of puppies. Our amendment suggests 14 days. The state objects to a grace period because it could allow a new kennel to operate before a license has been issued. We believe it is highly unlikely that a kennel operator would proceed with opening a new kennel for 14 days knowing that they must first pass an inspection before receiving a license, however, we are agreeable to reduce our amendment to 7 days. Here is our revised language:

“Section 207 (a) (1)

It shall be no defense to any civil penalty or criminal prosecution under this act that a person operating a kennel failed to properly obtain the appropriate license. **A kennel operator that is applying for a license or for a different class of license because of an increase in the total number of dogs in the kennel during a calendar year shall not be in violation provided the application is filed within 7 days of the increase.**”

Issue 5. Other Jurisdiction’s Cruelty Laws – Section 211 (a)

Our amendment simply clarifies that if the state is going to revoke a kennel license for an out of state cruelty violation, the other state’s statute must be of a similar nature. The state has accepted our amendment language:

"Section 211 (a)

"The Secretary shall revoke a kennel license or out of state dealer license if a licensee is convicted of a violation of 18 PA.C.S. Section 5511 or a cruelty law of another jurisdiction of substantially similar conduct pursuant to a cruelty law of another state."

Issue 6. Tags and Tags During Transport – Sections 207 (d), 213, and 802

The department agreed to exempt the tag requirement for those dogs engaged in a hunt, field trial or similar activity. They did not agree to the exemption during transport. This is an unreasonable requirement for which there is no demonstrated need. Some private kennel operators think that the requirement that collars and tags be used during transportation may actually create a danger for the dog. The state accepted our change to 207, but rejects 213 and 802. This creates a real and unnecessary burden that has nothing to do with the stated purpose of this bill, which is to address "puppy mills." The administration's explanation for why the requirement is necessary in the very limited circumstances in which the dog is being transported by the owner doesn't speak to the issue – no experience suggests that it is necessary. The requested exemption is very narrow. Our language follows:

"Section 207 (d) Tags (page 27, lines 21-30)

Every holder of a kennel license shall attach one tag to a collar or harness of each dog except as provided for in Section 202, or during a hunt, show, performance, event, or field trial, or commonly accepted training practices involving hunting dogs and dogs that participate in field trials"

"Section 213 Transportation of Dogs (page 50, lines 14-23)

"Section 213. Transportation of dogs. It shall be unlawful for any dog required to be licensed as hereinbefore provided, to be transported for any purpose without a current license tag firmly attached to a collar or harness securely fastened to the dog except when a dog is being transported for law enforcement, or to receive veterinary care pursuant to an order of the secretary for humane purposes, or by the owner to or from a hunt, show, performance event, field trial, or commonly accepted training practices involving hunting dogs and dogs that participate in field trials, performance events or conformation dog shows. All vehicles being used to transport dogs are subject to inspection and must meet requirements for such transportation through regulations as promulgated by the secretary."

"Section 802 (a) Licensing (page 71, line 24 and 25)

Any dog not bearing a license tag shall prima facie be deemed to be unlicensed except as provided under section 207 (d) and section 213."

Conclusion

The above requested amendments represent the most serious concerns we have about House Bill 2525 in its current form. These issues represent areas where broad discretionary authority and enforcement could easily be used to eliminate private kennels if not all licensed kennels across the Commonwealth.

During the hundreds of hours of dialogue we have had with the Department of Agriculture and the administration we have raised this concern many times. The response of the administration has been to ask that we trust that they would not abuse their discretion. That is a difficult proposition for us for two reasons:

First, it is difficult because we have a fifteen month history with the Department of Agriculture on this issue. While we have had productive dialogue, there have been too many occasions during which our concerns have been ignored while the administration plunged forward in their quest to see regulations enacted. It was not until the licensed dog community was able to persuade elected officials to become involved that the regulatory process was slowed, and this issue made its way into your hands. While you may say that my example is proof that the system works, I would note for your information that the last 15 months have cost the Sporting Dog Defense Coalition and its members more than \$150,000 to date and thousands of hours, both paid and volunteer. Once this legislation becomes law, there will be regulations. Private kennel operators do not have the financial means to police the implementation of this act into perpetuity.

Second and much more important is the fact that the current administration and leadership of the Department of Agriculture will not be the only ones to ever implement and enforce the content and, as of now, unknown set of regulations. We cannot and should not depend on unknown future officials to exercise this level of discretion without reasonable limits. Our amendments are reasonable and workable solutions to both goals.

They permit the administration to move forward with sweeping new enforcement powers, while at the same time provide the proper and necessary limitations to protect the vast majority of licensed kennels which are law abiding.

The members of the Sporting Dog Defense Coalition never would have envisioned opposing legislation which stated goal is to alleviate the suffering of dogs. It is not our goal to remain an opponent of House Bill 2525. It is our hope that this committee will accept our amendments to fix this bill. We remain available as the legislative process moves forward to work with members of this committee, the House, Senate and the administration to resolve the outstanding issues.

Thank you for the opportunity to address this committee. Terry, John and I would be pleased to answer any questions.



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