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## **PENNSYLVANIA PROFESSIONAL DOG BREEDERS ASSOCIATION**

*Kenneth E. Brandt*

Good morning Chairman Hanna and Chairman Hershey and all the members of the committee. Let me begin by thanking you for the opportunity to present the Pennsylvania Professional Dog Breeders Association's views on House Bill 2525.

As you may recall, the Association spoke before you last year when this committee considered regulations that were promulgated by the Department of Agriculture regarding kennel operations. At that time, the Association, along with many other organizations, strongly opposed the Department's efforts to enact unnecessary and unworkable new rules for breeding in Pennsylvania. The people of Pennsylvania agreed, logging a record 16,000 comments with the Independent Regulatory Review Commission.

Now, a year later, the Department has abandoned these regulations and pursued changes through legislation which is now before you in the form of House Bill 2525. The Association, like many other groups you will hear from, believes that many of the provisions of this bill have been borne out of a political and emotional response to concerns raised regarding dog breeding instead of sound animal husbandry practices and veterinary science – the result of which will likely be the elimination of certain kennel operations in Pennsylvania.

I have represented the Association for over 18 years. During that time, the Association has grown to over 300 members and is proactively engaged in educational campaigns with breeders regarding best practices. The Association also insists on members adhering to the highest standards of dog breeding. We pride ourselves on the fact that less than 1% of the puppies that are born in our kennels have any problems and that Pennsylvania puppies are considered among the healthiest puppies available in the United States. This is precisely why we strongly supported the Puppy Lemon Law when it was enacted.

Unfortunately, the Association simply cannot support House Bill 2525 in its current form. This 81 page rewrite of the Dog Law appears to have one intended purpose – to single out commercial kennels, both good operations and poor ones, and to put them out of business. No where else in the bill are rules so proscriptive than the ones for commercial kennels. There can be no mistake about it, if this bill was enacted into law today - the Association believes that no existing kennel operation could comply with the new requirements.

I offer these statements not to alarm you, but to inform you. Far too often public policy issues are decided based on selected and infrequent celebrated cases that capture news headlines – instead of on the facts. For example, if a member of a church were to get into legal trouble, would it be fair to say that all the members of that congregation were criminals?

Of course, the answer would be no. Unfortunately, that is exactly what is being suggested by many of the new requirements in House Bill 2525.

To be sure, there are instances when dog breeders do not follow existing laws. In those cases, the Association supports enforcement efforts to bring these kennels into compliance. However, if House Bill 2525 were to be enacted, it would literally make criminals of law abiding breeders who would be forced to comply with requirements that have no basis in animal science. For many breeders, they would be forced to either completely rebuild their operations, reduce the number of dogs that they have, or go out of business altogether. Again, if the reasons for these changes were supported by animal husbandry practices or veterinary medicine, the Association could find good reason to support them; however that is not the case.

For the sake of time, the Association has prepared and distributed to the members of the committee a review of the entire bill, complete with rationale for why the Association opposes certain provisions. To be clear, there are some parts of the bill that the Association can support and endorse, such as those that mirror USDA standards. In many instances, however, the Association will strongly oppose the enactment of changes that will not, in the end, result in the more humane treatment of dogs, but are instead intended to satisfy other goals.

I believe that when you consider the actual impact of what is being proposed in House Bill 2525, you will come to the conclusion that it goes well beyond what many would consider acceptable.

Consider the example that has been included on page 17 of the Association's comments that have been distributed to you. As you can see, in this example, a breeder could be found criminally liable for things such as an inspector's interpretation of what is "comfortable" to a dog or an inspector determining "by observation" that two dogs are not compatible. Other criminal offenses could be having kennels be less than 1 inch too small, an inspector determining that there is not enough "foot-candles" of light, or that a simple human error, such as a paperwork mistake occurred. In each of these instances, severe criminal charges can be brought along with fines and penalties.

In this example, it is also important to highlight that if a breeder had his or her license revoked by the Department, he can have all but 25 of his dogs immediately seized. Additionally, if he chooses to appeal the decision of the Department, he is required to post a surety bond, equal to the estimated cost of transportation, care and feeding, removal and impoundment for 31 days for each dog. For a kennel operator who had 75 dogs seized at \$50 per day, he would be required to post a bond in the amount of \$116,250 just to exercise his right to due process. The Association believes that this is wrong.

I know that my time is short, and I apologize for not being able to engage in greater detail with this presentation. Unfortunately, given the magnitude and scope of House Bill 2525, it is simply not possible to touch on the many parts that are particularly troubling. However, in closing, the Association would like to pose a question to the committee members:

If one accepts the premise that the humane treatment of dogs can only be accomplished through the strict regulation of primary enclosures, veterinary care, temperature control, ventilation control, lighting requirements, sanitation and cleanliness and various other mandated requirements, then why are these only limited to commercial kennel operations? Certainly if these provisions promote the very best in animal health and well-being, then they should be applied uniformly to any place where dogs are housed or bred. Instead, this legislation squarely targets commercial kennel operations with these requirements, leaving thousands of dogs without the enumerated "protections" that would be offered to dogs associated with commercial kennel operations.

I submit that Pennsylvania's dog breeding industry can be changed. Just last week in Lancaster County, over 200 dog breeders voluntarily attended a seminar offered by the District Attorney of that county in order to understand and apply the law better.

The Association's annual trade show attracts hundreds of breeders who hear from veterinarians and other professionals about best management practices. Additionally, the states of Missouri and Kansas took on this very issue and developed a regulatory system that makes sense.

And finally, the USDA has had a long and successful history of gaining compliance with breeders by working with them to solve problems.

I ask that the committee seriously consider the impact of House Bill 2525.

The results are most certainly a loss to the agricultural economy, the criminal prosecution of otherwise law abiding citizens, the reduction of due process rights when a state agency takes action against a kennel operator, and, perhaps, the movement of dog breeding to other states where laws are more lenient. If the true goal is to ensure that breeders treat dogs humanely, then certainly there has to be a better, more appropriate way.

Thank you.



## TALKING POINTS

HOUSE BILL 2525, PRINTER'S NO. 3766

Pennsylvania Professional Dog Breeders Association

*on proposed changes to Pennsylvania's Dog Law*

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### *General Comments*

- House Bill 2525 is an emotionally driven response to a problem that could be corrected by enforcement of the existing law. It punishes good and bad breeders alike.
- Last year the Department of Agriculture tried to accomplish many of the same goals that are included in House Bill 2525 through regulations. Over 16,000 comments were filed with the Independent Regulatory Review Commission (a record number). Given the overwhelming opposition to those regulations, the Department is now trying to legislate where it could not regulate.
- The Association does not oppose the humane treatment of dogs – in fact, it demands it. However, some of the provisions of House Bill 2525 will literally put “commercial breeders” out of business, which is clearly the intent of this bill.
- Other organizations, such as the Pennsylvania Veterinary Medical Association have discussed with us House Bill 2525 and share many of our concerns.

### *Specific Comments*

#### *Section 102. Definitions.*

- The definition of “commercial kennel” is established in order to single out these operations and create significant, extensive and far-reaching new requirements for them that would not apply to other kennel operations.

#### *Section 201. Applications for dog licenses; fees; penalties.*

- The Association opposes allowing the Department to set fees by regulation. This would allow the Department to unilaterally set whatever fees it deems appropriate, and would negate the existing consumer protections against excessive licensure fees.

#### *Section 206. Kennels.*

- The Association opposes allowing the Department to set fees by regulation. This would allow the Department to unilaterally set whatever fees it deems appropriate, and would negate the existing consumer protections against excessive licensure fees.

**Section 207. Requirements for kennels.**

- The Association is sincerely concerned about the additional legal power that would be given to the Department, including civil and criminal prosecutorial authority. The enhancement of the penalties indicates that there is a presumption of guilt and that punishment is more important than remediation and correction.
- The Association supports the new requirements for boarding kennels, nonprofit kennels and Kennel Class I through XII license holders. These are commonsense, workable requirements.
- The Association has carefully reviewed the extensive and exhaustive new requirements for commercial kennels, including:
  - (1) How primary enclosures must be constructed and operated;
  - (2) That a program veterinary care be established for physical examinations, vaccination schedules, disease control and prevention, pest and parasite control, nutrition, emergency care and euthanasia;
  - (3) Temperature control;
  - (4) Ventilation control;
  - (5) Lighting requirements;
  - (6) General safety requirements, such as fire extinguishers;
  - (7) Sanitation and cleanliness of kennels; and
  - (8) That a program for pests, insects and external parasites be established;
  - (9) That specific information be affixed to the front of a kennel;
  - (10) That veterinarian records be kept; and
  - (11) That a dog may not be euthanized except by a veterinarian.

For dogs over 12 weeks of age:

- (1) How primary enclosures must be constructed and operated, including a discreet formula for determining size;
  - (2) Exercise requirements;
  - (3) Rabies vaccines may only be administered by a veterinarian; and
  - (4) Periodic veterinarian examinations.
- Many of these requirements failed to win approval through the regulatory process.
  - If the new requirements reflect "the humane treatment of dogs," then why are they only applied to commercial kennels?
  - Some of these provisions are political in nature and are written only to satisfy radical people.

**PRIMARY ENCLOSURES**

- The Association supports several of the requirements for primary enclosures, particularly those that reflect existing USDA standards.



- The Association opposes all ambiguous and subjective references, such as “uncomfortable to a dog...”
- The Association also opposes the provision that a primary enclosure stacked onto another primary enclosure cannot be more than 4 ½ feet from the kennel floor. There is no reason for this.

### **NURSING DOGS**

- The Association supports this provision.

### **HOUSING COMPATIBLE DOGS**

- The Association does not support determining compatibility, “by observation.” This is too subjective.
- The Association also opposes the provision that bitches in heat cannot be housed in the same primary enclosure with other adult dogs – this is precisely the purpose of a breeding kennel.

### **VETERINARY CARE PROGRAM**

- The Association supports these provisions.

### **FIRE SAFETY**

- The Association supports these provisions.

### **CLEANING AND SANITATION**

- The Association supports these provisions, as they generally reflect existing USDA requirements. However, language should be included that would allow an attending veterinarian to also proscribe appropriate cleaning and sanitation requirements.

### **VERMIN AND PEST CONTROL PROGRAM**

- The Association supports this provision. However, language should be included that would allow an attending veterinarian to also proscribe appropriate vermin and pest control protocols.

### **IDENTIFICATION REQUIREMENTS**

- The Association does not support this provision, as written. The identification requirements that already exist set forth that a permanently affixed tag, tattoo or microchip be applied to each dog. This is the identification that is most appropriate.

### **VETERINARIAN RECORDS**

- The Association supports this provision.

#### **EUTHANASIA**

- The Association supports this provision.

#### **PRIMARY ENCLOSURES (FOR DOGS OVER 12 WEEKS OF AGE)**

- The Association does not support doubling the size of primary enclosures, as this is arbitrary and capricious, and in fact, runs afoul of scientific findings regarding the actual behavior patterns of dogs and space.
- Compliance is another issue. The new space requirements, kennel configurations and other infrastructure improvements that would need to be done in 6 months would severely impact upon a current license holders existing complement of dogs.
- The Association believes that Pennsylvania law should follow the USDA regulations relating to space size.
- The Association also believes that the solid flooring requirement raises significant cleanliness and sanitary issues that could impact upon the health of dogs. As such, the Association, along with the Pennsylvania Veterinary Medical Association, opposes this provision.

#### **EXERCISE REQUIREMENTS (FOR DOGS OVER 12 WEEKS OF AGE)**

- The Association opposes the exercise requirements and corresponding exercise pen requirements and believes that the USDA regulations would be more appropriate.

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#### **RABIES VACCINATIONS (FOR DOGS OVER 12 WEEKS OF AGE)**

- The Association does not support these provisions. Kennel operators should be able to continue giving vaccinations and they can do under the current system.

#### **VETERINARY EXAMINATIONS (FOR DOGS OVER 12 WEEKS OF AGE)**

- The Association opposes the requirement that a dog over 12 weeks should be examined at each pregnancy. First, it is difficult and at times not possible to determine that pregnancy as occurred. Further, the incidence of false pregnancy is not entirely uncommon, rendering compliance with this proposed rule nearly impossible. The Association believes that protocols should be established and followed, in conjunction with the attending veterinarian, regarding the treatment of pregnant dogs.

#### **TEMPERATURE CONTROL**

- The Association opposes this provision as it relates to keeping ambient temperatures less than 85 degrees F. With the required ventilation and air changes, which are appropriate, it would be impossible to regulate temperatures below 85 degrees F during the warm months. During these times, ventilation is maximized pursuant to USDA regulations which provides for temperature control through air and cross air pushes through the kennel.

### **VENTILATION CONTROL**

- The Association recognizes the importance of proper ventilation, and believes that the USDA provisions relating to ventilation are appropriate and should be adopted.

### **LIGHTING**

- The Association supports the general lighting requirements and opposes the lighting requirements that reference "foot-candles of light," as this standard would be difficult to determine compliance.
- The Association believes that an attending veterinary should set the lighting requirements for kennels.

### **FLOORS AND WALLS OF PRIMARY ENCLOSURES**

- The Association supports these provisions.

### **FOOD**

- The Association supports these provisions, as they relate to normal kennel operations.

#### ***Section 209. Out-of-state dealer license; application; fee; prohibitions.***

- The Association opposes allowing the Department to set fees by regulation. This would allow the Department to unilaterally set whatever fees it deems appropriate, and would negate the existing consumer protections against excessive licensure fees.

#### ***Section 211. Revocation, suspension or refusal of kennel licenses.***

- The Association opposes the broad new powers that would be given to the Department to revoke a license.
- The Association opposes the ability of the Department to order a kennel operator to divest himself of all but 25 dogs should revocation occur, but before a final determination of license status has been made.
- The Association opposes the Department's new discretionary ability to make determinations without findings of fact or evidentiary hearings, which constitute a violation of due process of law.

- The Association opposes the requirement that a kennel owner must post a surety bond in order to exercise the right to an administrative hearing.
- The Association opposes the intent of this section to criminalize even the most minor of infractions.

*Section 218. Inspections.*

- The Association opposes giving State dog wardens and “other employees of the department” to authority to apply directly for a search warrant to any Commonwealth official.
- The Association opposes the standard for “sufficient probable cause” enumerated in the bill.

*Section 901. Enforcement of this act by the secretary; provisions for inspections.*

- The Association opposes training dog wardens in the enforcement of cruelty statutes, and opposes allowing dog wardens to enforce the cruelty statutes.
- The Association opposes adding eight public members to the Dog Law Advisory Board, because they will have no knowledge, skills and abilities to assist in advising the Secretary of Agriculture on issues relating to dogs.



## COMMENTS ON

### HOUSE BILL 2525, PRINTER'S NO. 3766

By the Pennsylvania Professional Dog Breeders Association

*on proposed changes to Pennsylvania's Dog Law*

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#### *General Comments*

There are several broad comments regarding the overall impact that the proposed statutory changes would have on dog breeding operations in Pennsylvania. Before analyzing the specific sections that House Bill 2525 would amend, the process of determining how to adequately address the issue of the inhumane treatment of dogs must start with an understanding of the problem.

For far too long, government has engaged in a "solution looking for a problem" public policy making position. Emotionally charged issues are given an emotional response, and unintended negative consequences emerge. It appears that this is precisely the issue in this instance, when an independent and fair review of the proposed legislation is undertaken.

Indeed, commercial and other kennel owners have been operating for many years in the Commonwealth. Like any industry, not all breeders follow the law – although they should. As such, celebrated cases arise and the public rightfully calls for change.

However, public policy issues should be addressed reasonably, rationally, and logically. There is no dispute that dogs should be treated humanely; indeed, all reputable breeders believe that the care and attention to their dogs is of the utmost importance. However, when cases of abuse arise, breeders who deeply care for their animals are unfairly targeted.

It is the Department of Agriculture's duty to enforce the Dog Law, and rather than use the existing available tools to address problematic kennel operations, the Department has determined that additional regulatory action that will impact all breeders – both reputable and bad breeders – is more appropriate.

Last year, the Department promulgated Proposed Regulation No. 2-152, under which it sought to further regulate dog kennels and to criminalize certain aspects of breeding as well as implement punitive measures to ensure compliance. The regulations brought an unprecedented spotlight on how far the Department wished to proceed in regulating kennel operations, resulting in a record 16,000 comments being filed with the Independent Regulatory Review Commission (IRRC).

The Department's proposed regulations would have impacted upon every segment of breeders in Pennsylvania – from hobby dog breeders to larger breeding operations, and the result on every level would have been largely negative. While the association represents a more defined class of dog breeder, it recognized the detrimental impact that many of the provisions of these regulations would have on the dog breeding community at large.

It now appears that the Department, rather than seeking a more appropriate method of enforcement, such as the one used by the United States Department of Agriculture (USDA), is circumventing their statutory obligation under the Independent Regulatory Review Act to respond to the 16,000 comments by offering House Bill 2525, Printer's No. 3766. Where it could not successfully regulate, it now intends to legislate.

Regardless of outcome, inadequate enforcement of the current law and accompanying regulations *will not be solved* by additional statutory changes. Unfortunately, the addition of severely regressive changes to the law will only impact those individuals who are already meeting USDA and Departmental standards.

As the Association did with the proposed regulations, we now offer our comments to House Bill 2525, Printer's No. 3766.

### ***Specific Comments***

#### ***Section 102. Definitions.***

This section adds new a new definition to define "commercial kennel." This kennel is defined as a kennel that breeds or whelps dogs and (1) sells or transfers any dog to a dealer or pet shop-kennel; or (2) sells or transfers more than 60 dogs per calendar year.

It is presumed that this definition was added in an effort to distinguish "commercial kennels" from kennel operations of smaller sizes. Although the existing law sets forth different category (or classes) of kennels based on size, it is clearly the intent of this new definition to create a new, clearly identifiable, targeted, kennel operation. Taken with the use of this term throughout the proposed changes to the law, that conclusion becomes abundantly clear.

As "commercial kennel" is a term commonly associated with larger breeding operations, it is an appropriate term to be used and is not opposed. Further, these operations, regardless of definition, are already licensed by the Department as well as the USDA, who similarly uses this term in various publications.

#### ***Section 201. Applications for dog licenses; fees; penalties.***

This section is amended to remove the statutory provisions set forth for appropriate license fees for neutered and spayed dogs, all other male and female dogs, and for applicable fees to be applied for by Pennsylvania residents 65 years of age or older or with disabilities. Similar efforts are made to remove the lifetime license fees set by law.

In place of the statutorily set fees, language is inserted that would allow the Department, by regulation, to establish these licensure fees by regulation. This is sincerely troubling, given the General Assembly's strong position relative to the imposition of fees, taxes, surcharges and other financial obligations required by law for services needed by the Commonwealth in order to legally operate a business.

Enacting these changes would give unilateral control to the Department to promulgate whatever fees it deems appropriate, and the delegation of this authority by the General Assembly would abrogate the existing consumer protections against excessive licensure fees that are currently afforded under the law, as written. In brief, the Department could, by licensure fee, favorably or punitively favor one kennel class over another.

In subsection (c) (*relating to penalty*) of this section, it is proposed to double the minimum existing fine from \$25 to \$50 and to provide that a violation of the section can now include fraudulent statements, including those related to the breed of dog, failure to pay the appropriate fee, or failure to update records, including address and contact information, within 120 days of moving.

Creating a strict liability offense is a punitive approach to dog licensure. It appears that the inclusion of the additional acts that would rise to a summary criminal offense are intended to ensure that noncompliance, no matter how benign, can be strictly enforced without opportunity for correction or remediation.

#### ***Section 206. Kennels.***

This section provides for a statutory listing of kennel types, including several new kennel classifications as determined by the number of dogs, regardless of age, kept in a calendar year. Clearly the attempt here is to highlight, classify, and ultimately to more stringently regulate – commercial kennels, as that term is now defined.

Like the proposed changes to section 201, the amendatory language removes the kennel licensure fees set by statute and delegates the authority to set licensure fees for each classification of kennels to the Department. This includes giving the Department the authority to determine kennel licensure fees for: private kennels, pet-shop kennels, research kennels, rescue network kennels, dealer kennels, boarding kennels, nonprofit kennels, as well as commercial kennels.

As was discussed in our review of section 201, this is sincerely troubling, given the General Assembly's strong position relative to the imposition of fees, taxes, surcharges and other financial obligations required by law for services needed by the Commonwealth.

Enacting these changes would give unilateral control to the Department to promulgate whatever fees it deems appropriate, and the delegation of this authority by the General Assembly would abrogate the existing consumer protections against excessive licensure fees that are currently

afforded under the law, as written. In brief, the Department could, by licensure fee, favorably or punitively favor one kennel class over another.

*Section 207. Requirements for kennels.*

The beginning of this section relates to the legal remedies available to the Department whenever a kennel is operating without obtaining proper licensure. Language is added to expressly indicate that there 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.”

Further, additional civil penalties and remedies are added, including increasing the minimum and maximum civil penalty fines (from \$100 to \$500 per day) to no less than \$500 but no more than \$1,000 per day for violations.

Throughout this section, violations constitute a “violation[s] of this act.” In the new subsection (a.2), violations are referenced as, “violation[s] of a provision of this act or a rule or regulation adopted or order issued under this act.” It is unclear why the additional language carries in this subsection, other than to further empower the Department in its enforcement efforts.

Concerns are raised regarding the delegation of such broad and significant new authority to the Department under this section. The Association has long argued that it is the *failure of the Department to enforce existing law* that has created the issues in the present instance, not necessarily the *failure of the law* that has inhibited enforcement. The Department should justify why such additional, significant penalties are necessary in order to achieve compliance before the General Assembly gives them the statutory right to exercise such authority.

In subsections (g), additional statutory requirements for boarding kennels, nonprofit kennels and Kennel Class I through XII license holders are enumerated. These include commonsense, workable requirements, and we are pleased that the exercise plan required under (g)(1) must be done in conjunction with a veterinarian. This is a position that the Association has long believed the most appropriate approach to proper kennel operations.

Subsection (h) is applicable only to Kennel Class C license holders, which are commercial breeders. The proposed additional requirements dictate:

- (1) How primary enclosures must be constructed and operated;
- (2) That a program veterinary care be established for physical examinations, vaccination schedules, disease control and prevention, pest and parasite control, nutrition, emergency care and euthanasia;
- (3) Temperature control;
- (4) Ventilation control;
- (5) Lighting requirements;
- (6) General safety requirements, such as fire extinguishers;
- (7) Sanitation and cleanliness of kennels; and
- (8) That a program for pests, insects and external parasites be established;



- (9) That specific information be affixed to the front of a kennel;
- (10) That veterinarian records be kept; and
- (11) That a dog may not be euthanized except by a veterinarian.

Subsection (i) sets forth additional requirements on commercial breeders for dogs that are over 12 weeks of age. The proposed additional requirements dictate:

- (1) How primary enclosures must be constructed and operated, including a discreet formula for determining size;
- (2) Exercise requirements;
- (3) Rabies vaccines may only be administered by a veterinarian; and
- (4) Periodic veterinarian examinations.

The above generally referenced requirements for commercial kennels are extraordinarily proscriptive and, in many respects, reflect the efforts of the Department to enact regulations that were promulgated last year; as mentioned earlier, these regulations failed to win any level of approval after dog breeders across the Commonwealth scrutinized their practicable implications.

It is highly questionable why such detailed requirements would be set forth in statute, instead of by regulation. What would be the effect should veterinary or animal husbandry practices dictate that a certain provision should be modified? Setting forth definitive and finite requirements, using mathematical formulas, and micro-legislating will likely result in difficulties as new or changing standards, procedures or equipment become available to breeders; in these cases, the law would not recognize those new – and perhaps better – standards, procedures and equipment and compliance would be constrained to what is being proposed here, should it become law.

**The question recurs, if one accepts the premise that the humane treatment of dogs can only be accomplished through the strict regulation of primary enclosures, veterinary care, temperature control, ventilation control, lighting requirements, sanitation and cleanliness, and various other mandated requirements, then why are these limited only to commercial kennel operations?**

**Certainly if these provisions promote the very best in animal health and well-being, then they should be applied uniformly to any place where dogs are housed or bred; instead, this legislation squarely targets commercial kennel operations with these requirements, leaving thousands of dogs without the enumerated “protections” that will now be offered to dogs associated with commercial kennel operations.**

This approach is clearly without merit and firmly demonstrates that the legislation is not intended to promote the health and safety and well-being of dogs, but rather to create a highly punitive regulatory system that favors certain breeding operations over others, tantamount to invidious discrimination.

Finally, without regard to the underlying political goals of these specific proposals, when reviewed in their context, they cannot and do not provide for the results that the Department truly seeks, other than the potential elimination of commercial kennels in Pennsylvania.

Given the scope of the requirements, it becomes necessary to evaluate each specific area that is proposed to be amended in this section, since such changes are so expansive and in some instances, illogical, unworkable, or without scientific or empirical support.

### **PRIMARY ENCLOSURES**

This proposed changes set forth very specific, detailed requirements for primary enclosures. Each provision will be discussed separately.

Primary enclosures:

- (1) Must be designed and constructed so that they are structurally sound and must be kept in good repair.
- (2) Must have no sharp points or edges that could injury the dogs.
- (3) Must be maintained in a manner to protect the dogs from injury.
- (4) Keep animals other than dogs from entering the enclosure.
- (5) Enable the dogs to remain dry and clean.
- (6) Provide shelter and protection from temperatures and weather conditions that may be uncomfortable or hazardous to any dog.
- (7) Provide sufficient space to shelter all the dogs housed in the primary enclosure at one time.
- (8) Provide potable water at all times, unless otherwise directed by a veterinarian.
- (9) Enable all surfaces in contact with the dogs to be readily cleaned and sanitized or be replaceable when worn or soiled.
- (10) Have floors that are constructed in a manner that protects the dogs' feet and legs from injury.
- (11) Provide space to allow each dog to turn about freely, to stand, sit and lie in a comfortable and normal position, in addition to enabling the dog to lie down while fully extended without the dog's head, tail, legs, face or feet touching any side of the enclosure.
- (12) Have an interior height of at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.
- (13) May not be stacked more than two rows high and the bottom of the uppermost primary enclosure may not be more than four and one-half feet off the housing facility floor. Where the primary enclosures are stacked a tray or other Department-approved device which will prevent urine, feces and other debris from passing into or being discharged into the underlying primary enclosure must be placed under the upper primary enclosure. The tray must be impermeable to water and capable of being easily sanitized.

The above captioned items are not altogether problematic, although several do raise issues that need to be highlighted.

Requirements (1), (2), (3), (5), (7), (8), (9), (10), and (12) are not opposed by the Association. They reflect understandable, reasonable and rationale requirements that make good sense. Some of the provisions reflect current requirements under USDA standards, which is a position that the Association has long supported.

Questions are raised concerning what is meant in item number (4), which provides that primary enclosures must keep animals other than dogs from entering the enclosure. On its face, this is not problematic, as it should be the intent of all breeders to exclude any other animal from entering a primary enclosure. As such, it is unclear what the intent of this provision is; whether, in fact, it is to address rodent control or if, in fact, it is to ensure that other animals should not be able to enter a primary enclosure.

Additionally, the Association believes that primary enclosures should provide shelter and protection from temperatures and weather conditions that may be hazardous to a dog; however item number (6) also sets forth that primary enclosures must do the same for conditions that may be "uncomfortable" to a dog. This is extraordinarily unclear and entirely too subjective. What is "uncomfortable" and who determines when this condition exists? The Association opposes the inclusion of this term as a standard in item number (6).

Similar objections are raised concerning language that is found in item number (11), which requires that primary enclosures provide space to allow each dog to turn about freely, to stand, sit and lie in a "comfortable and normal position..." Again, what is "comfortable and normal?" This is extraordinarily unclear and entirely too subjective. The Association opposes the inclusion of this phrase as a standard in item number (11).

Finally, item number (13) requires that primary enclosures may not be stacked more than two rows high and that the bottom of the uppermost primary enclosure may not be more than "four and one-half feet" off the housing facility floor. The Association questions why four and one-half feet was determined to be an appropriate height for the stacking of kennels and believes that this standard is too rigid and would not allow for compliance with the "two rows high" provision without violating the "four and one-half feet" rule. Justification should be provided as to why this figure is the most appropriate. The Association opposes the inclusion of the "four and one-half feet" language as a standard in item number (13).

### **NURSING DOGS**

The proposal requires that each bitch with nursing puppies be provided with an additional amount of floor space in a primary enclosure, as determined by the attending veterinarian. It further provides that if the additional amount of floor space for each nursing puppy is less than 5% of the minimum requirement for the bitch, the amount of floor space must be approved in writing by the attending veterinarian.

The Association supports this provision.

### **HOUSING COMPATIBLE DOGS**

The proposed changes require that:

- (1) All dogs housed in the same primary enclosure must be "compatible, as determined by observation;"
- (2) Not more than six adult dogs may be housed in the same primary enclosure;
- (3) That bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding;
- (4) That bitches with litters may not be housed in the same primary enclosure with other adult dogs; and
- (5) Puppies under 12 weeks of age would not be permitted to be housed in the same primary enclosure with adult dogs, other than the dam or foster dam.

The Association supports items (2), (4), and (5).

Item number (1), while seemingly appropriate, would be difficult, if not impossible to comply with. Determining the compatibility of dogs housed in the same primary enclosure "by observation" leaves an extraordinary amount of question as to what truly is compatible. Each dog is unique and will react individually under different circumstances. Whose "observation" determines compliance with this rule? Rather, the provision should require that no dogs shall be housed so as to produce an inhumane environment.

Item number (3) was an issue that was raised in the original enactment of Act 225 of 1982. Excellent discussions were held at that time and it was agreed that a similar rule to this should not be enacted, for a multitude of reasons, including the fact that breeding kennels, unlike boarding kennels, are specifically licensed to breed dogs.

### **VETERINARY CARE PROGRAM**

Provisions are included that require that a program of veterinary care be established through consultation with a veterinarian. The program of veterinary care must include a physical examination and vaccination schedule, a protocol for disease control and prevention, pest and parasite control, nutrition, emergency care and euthanasia. A copy of the program must be kept in the kennel records.

The Association supports these provisions.

### **FIRE SAFETY**

The proposal requires that all kennels be equipped with a smoke alarm and have a means of fire suppression, such as fire extinguishers or a sprinkler system.

The Association supports these provisions.

### **CLEANING AND SANITATION**

The proposal includes new, additional requirements for cleanliness and sanitation, which are enumerated as follows:

- (1) Excreta, hair, dirt and food waste must be removed from the primary enclosures as least daily or more often, if necessary;
- (2) Used primary enclosures and food and water receptacles must be cleaned and sanitized before they may be used to house, feed or water another dog or grouping of dogs;
- (3) Used primary enclosures and food and water receptacles for dogs must be sanitized at least once every two weeks using one or more of the following methods (or more often, if necessary):
  - a. **For hard surfaces of primary enclosures and food and water receptacles:** live steam under pressure, washing with water with a temperature of at least 180 degrees F and soap or detergent, as with a mechanical cage washer, washing all soiled surfaces with "appropriate" detergent solutions and disinfectant or by using a combination detergent or disinfectant product that removes organic materials and mineral buildup and provides sanitation followed by a clean water rinse.
  - b. **For primary enclosures, exercise areas and housing facilities using materials that cannot be sanitized using the techniques above:** removing the contaminated material as necessary to prevent odors, diseases, pests, insects and vermin infestation; and
- (4) Premises where primary enclosures are located, including buildings and surrounding groups, must be kept clean and in good repair, must be kept free of accumulation of trash, junk, waste products, and discarded matter. Weeds, grasses and bushes must be controlled.

The Association supports these provisions, as they generally reflect existing USDA requirements. However, language should be included that would allow an attending veterinarian to also proscribe appropriate cleaning and sanitation requirements.

### **VERMIN AND PEST CONTROL PROGRAM**

This proposal requires that a program be established and maintained for the control of insects and external parasites.

The Association supports this provision. However, language should be included that would allow an attending veterinarian to also proscribe appropriate vermin and pest control protocols.

## **IDENTIFICATION REQUIREMENTS**

New requirements are added that require that all dogs in a kennel have affixed to the front of the primary enclosure "something" that contains all of the following information:

- (1) The date of birth of the dog;
- (2) The date of the last rabies vaccination; and
- (3) The date of the dog's last veterinarian check.

The Association does not support this provision, as written. The identification requirements that already exist set forth that a permanently affixed tag, tattoo or micro-chip be applied to each dog. This is the identification that is most appropriate. Having "something" affixed to the front of a primary enclosure can be problematic when dogs are moved or when enclosures are cleaned. Further, identification and records are best kept in a centralized, secure location where they can easily be maintained and be readily available for inspection.

## **VETERINARIAN RECORDS**

The proposal requires that all veterinarian records be kept as long as the dog is at the facility.

The Association supports this provision.

## **EUTHANASIA**

The proposal expressly prohibits the euthanasia of a dog except if done so by a veterinarian.

The Association supports this provision.

## **PRIMARY ENCLOSURES (FOR DOGS OVER 12 WEEKS OF AGE)**

The proposal places additional mandates on a commercial kennel license holder that apply to dogs over 12 weeks of age that reside in these kennels. For primary enclosures:

- (1) A dog must be provided a minimum amount of floor space in the primary enclosure, as follows: find the mathematical square of the sum of the length of the dog in inches, measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144, then multiply by 2. The calculation is:  $(\text{length of dog in inches} + 6)(\text{length of dog in inches} + 6) = \text{the required floor space in square inches}$ .  
Required floor space in inches/144 x 2 = required floor space in square feet;
- (2) For a second dog placed in a kennel under paragraph (1), the minimum floor space would be needed to be doubled;
- (3) For each dog above two, the minimum floor space must be multiplied by 1.5 per additional dog;
- (4) Primary enclosures must be placed no higher than 12 inches above the floor and may not be placed or stacked on top of another cage or primary enclosure;

- (5) The floor of primary enclosures must be solid and cannot sag or bend between structural supports;
- (6) Each primary enclosure must have an entryway that will allow dogs unfettered clearance out of the enclosure to an exercise area if the enclosure is opened;
- (7) Each primary enclosure must open onto and be adjacent to an exercise area; and
- (8) An additional area, not counting toward the minimum space requirements, may be provided to a dog and may be constructed of coated wire flooring to allow for voiding and excrement.

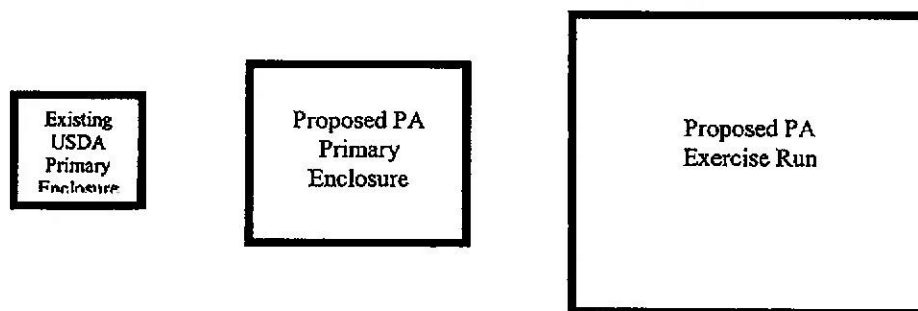
The Association believes that the doubling of enclosure sizes is arbitrary and capricious, and in fact, runs afoul scientific findings regarding the actual behavior patterns of dogs and space. According to a study published in *Laboratory Animal Science* (Volume 39, No. 4, July 1989), entitled "The Effects of Cage Sizes and Pair Housing on Exercise of Beagle Dogs," there is a diminutive - if not a negative - impact on dogs with larger kennels. In brief, the study noted that:

- No cause/effect relationship between health and a formal exercise program or cage size could be found in previous studies.
- *Human contact - not cage size* - is the single most consistent and important factor in encouraging dogs to be active.
- On the average, only 5.8 to 14.6% of any day for a dog is spent in any type of movement. *Even with people in the room*, a dog will only spend 10 or 15 minutes of the hour in activity.
- A single housed dog in a regulation size cage travels only 600 m/day. Doubling the area of the cage did not increase the distance traveled, but reduced it significantly.
- Other studies have shown that dogs in a large cage did spend more time lying down so that, in fact, the higher level of activity in standard cages may not be reflective of active exercise, but rather small movements.
- When dogs were housed in larger cages, they spent more time moving, but they do not travel as far.
- Dogs that are well fed and content do not exercise routinely.
- **Artificial mechanisms such as doubling cage size do not increase exercise.**
- Increasing cage size decreases the time and distance a dog moves.
- When programs for exercise are established by the USDA and attending veterinarians, emphasis needs to be placed on human-animal interaction.

Compliance is another issue that must be considered. The new space size requirements, kennel configurations as well as other infrastructure improvements will severely impact upon a license holder to house their current complement of dogs. The proposal would halve the number of dogs in many facilities and would require significant infrastructure changes to accommodate an unreasonable, irrational and unnecessary change.

The net effect of this provision is significant when one considers the practical implications of this requirement, coupled with the exercise run requirements that are discussed in the next section.

Under this proposal, Pennsylvania commercial kennels would be required to be double the required size of USDA standards. Additionally, the new requirements for exercise runs require that each exercise run be "at least twice the size of a primary enclosure," so that is, mathematically, four times the size an existing USDA primary enclosure. The example below is only demonstrative for one dog over 12 weeks old in a primary enclosure. For an additional dog housed in that primary enclosure, each enclosure size, and exercise run, would have to be doubled again under the proposed statute.



An additional issue is the requirement under item number (5) that requires primary enclosures to have solid flooring. Such requirements present significant issues relative to cleanliness and sanitation and the Association, along with the Pennsylvania Veterinary Medical Association, opposes this provision.

The Association believes that Pennsylvania law should follow the USDA regulations relating to space size.

#### **EXERCISE REQUIREMENTS (FOR DOGS OVER 12 WEEKS OF AGE)**

The proposal sets forth exercise requirements for dogs over 12 weeks of age that are housed in a commercial kennel. The requirements are as follows:

- (1) The exercise run must allow for unfettered clearance for dogs from their primary enclosure (*as enumerated above*);
- (2) The exercise run must be at least twice the size of the primary enclosure;
- (3) The exercise run must not allow dogs to escape;
- (4) Fencing for the exercise run must be kept in good repair and free of rust, jagged edges or other defects that could cause injury to the dogs;
- (5) The exercise run must be cleaned in accordance with the requirements for cleaning primary enclosures;
- (6) Dogs must not be placed in the area so as to cause them injury;



- (7) Only "compatible dogs" may be exercised together;
- (8) Nursing bitches must be exercised separately with their puppies, when age appropriate;
- (9) The exercise area must be solid and maintainable. Gravel, packed earth and grass which are "solid and maintainable" may be used; and
- (10) The exercise area must be outdoors.

To begin, one must consider the conclusions drawn by a scientific study that examined exercise behaviors relative to living conditions. An examination of Federal regulations (section 3.8-6) clearly demonstrates that exercise can be achieved through more reasonable means. The Federal regulations also indicate the importance of socialization. For example, Federal regulations recognize "pairing" of dogs to accommodate exercise and socialization needs. Was this considered in developing the proposed changes?

Any change in size and exercise requirements should be examined closely and conclusions should be drawn from animal science rather than other factors. Additionally, as was outlined in the previous section, the construction of exercise pens presents significant issues. Having direct egress to an outside exercise run from a primary enclosure would require significant modification of existing facilities, and there is no established reason why an exercise run must be "...at least twice the size of a primary enclosure."

The Association does not support these provisions and believes that the USDA regulations would be more appropriate.

#### **RABIES VACCINATIONS (FOR DOGS OVER 12 WEEKS OF AGE)**

Under this proposal, rabies vaccines may only be administered by a licensed veterinarian. Further, notwithstanding the Rabies Prevention and Control in Domestic Animals and Wildlife Act, a dog *may* be given rabies shot within 30 days after the dog has reached three months of age.

The Association does not support these provisions. Currently, kennel operators are able to be "certified" by the Department to administer rabies vaccinations. Under this program, proper training is administered and dogs are given vaccinations in a timely and appropriate manner, as required by law. There is no justifiable reason for requiring a veterinarian to administer a rabies vaccination.

Where concerns exist relative to the existing process, a kennel's attending veterinarian should be able to attest that an operator is capable of administering the vaccine.

#### **VETERINARY EXAMINATIONS (FOR DOGS OVER 12 WEEKS OF AGE)**

Under this proposal, a dog over 12 weeks must be examined by a veterinarian at least once a year or at each pregnancy, whichever occurs more frequently.

The Association, in joining with the Pennsylvania Veterinary Medical Association, recognizes and supports the active role of veterinarians in commercial kennel operations. The Association supports the provision that a dog over 12 weeks should be examined by a veterinarian at least once a year. However, the requirement that a dog over 12 weeks should be examined at each pregnancy is problematic. First, it is difficult and at times not possible to determine that pregnancy has occurred. Further, the incidence of false pregnancy is not entirely uncommon, rendering compliance with this proposed rule nearly impossible. The Association believes that protocols should be established and followed, in conjunction with the attending veterinarian, regarding the treatment of pregnant dogs.

### **TEMPERATURE CONTROL**

This proposal includes new requirements that outline minimum and maximum temperatures for facilities. When dogs are present, ambient temperatures must not fall below 50 degrees F., and may not rise above 85 degrees F.

The association opposes this provision as it relates to keeping ambient temperatures less than 85 degrees F. With the required ventilation and air changes, which are appropriate, it would be impossible to regulate temperatures below 85 degrees F during the warm months. During these times, ventilation is maximized pursuant to USDA regulations which provides for temperature control through air and cross air pushes through the kennel.

### **VENTILATION CONTROL**

The proposal requires that commercial kennels be sufficiently ventilated to provide for the health and well-being of all the dogs. Ventilation must also:

- (1) Minimize odors, drafts, ammonia levels and to prevent moisture condensation;
- (2) Be provided by windows, vents, fans or air conditioning;
- (3) Meet the minimum air flow required for control of moisture condensation under "severe conditions;"
- (4) Provide for at least six air changes per hour; and
- (5) Assure dry kennel floors during cold weather.

The proposal further provides that:

- (1) Auxiliary ventilation or air conditioning must be provided when the ambient temperature is 85 degrees F or higher;
- (2) Ventilation may be achieved through (a) design of the building shell, (b) natural air flow, or (c) by means of auxiliary air movement systems;
- (3) Where auxiliary air movement systems are utilized, the kennel still must have doors and windows which can be opened to allow air flow; and
- (4) Relative humidity must be maintained at a level that ensures the health and well-being of the dogs.

The ventilation control provisions that are being proposed are extensive and would likely require significant renovation by some kennels in order to achieve compliance, yet operators would only have 6 months to make such renovations in order to be compliant and retain their license.

The Association recognizes the importance of proper ventilation, and believes that the USDA provisions relating to ventilation are appropriate and should be adopted.

### **LIGHTING**

The lighting requirements as enumerated on page 32 (lines 26 through 30) and page 33 (lines 1 through 6) make good sense. However, the proposal then begins to proscribe that:

- (1) Lighting in an indoor facility must be at least 10 foot-candles<sup>1</sup> of light;
- (2) At least 50 foot-candles of light must be provided in all bathing, grooming and toilet areas; and
- (3) At least 30 foot-candles of light must be provided in support building, including food preparation and storage areas.

There is little question that no kennel operator, regardless of kennel class, size or designation, can know how many "foot-candles" of lighting are being provided in their facilities. How many foot-candles of light are required for residents of long-term care facilities in the Commonwealth? For school children? For members of the General Assembly to conduct business at the State Capitol?

How many foot-candles of light are required of a home when a dog is ultimately sold or adopted? The humane treatment of dogs must begin at the point of common sense. These requirements are set forth in a blatant and clear attempt to *ensure* non-compliance.

The Association continues to believe that the attending veterinarian should set forth and approve lighting requirements.

### **FLOORS AND WALLS OF PRIMARY ENCLOSURES**

This would require that floors and walls of primary enclosures be impervious to moisture and that ceilings of indoor housing facilities be impervious to moisture or be replaceable.

The Association supports these provisions.

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<sup>1</sup> The unit is defined as the amount of illumination the inside surface an imaginary 1-foot radius sphere would be receiving if there were a uniform point source of one candela in the exact center of the sphere. Alternatively, it can be defined as the illuminance on a 1-square foot surface of which there is a uniformly distributed flux of one lumen. This can be thought of as the amount of light that actually falls on a given surface. The foot-candle is equal to one lumen per square foot.

The SI derived unit of illuminance is the lux. One footcandle is equal to 10.76 lux, although in the lighting industry, typically this is approximated as 1 footcandle being equal to 10 lux.

## **FOOD**

This would require that all dogs must be provided with adequate food that is clean and free from contaminants.

The Association supports this provision and believes that no reputable, licensed kennel operator would not provide adequate food that is not clear or free from contaminants. It should be mentioned that under normal kennel operations, this is not an issue; however, there are documented instances where food becomes contaminated in feeding dishes due to the activities of a dog, rather than a kennel operator.

### *Section 209. Out-of-state dealer license; application; fee; prohibitions.*

The proposed changes to this section again remove the statutory fee of \$300 for an out-of-state dealer license and again would authorize the Department to set the licensure fee by regulation.

As was discussed in our review of section 201, this is sincerely troubling, given the General Assembly's strong position relative to the imposition of fees, taxes, surcharges and other financial obligations required by law for services needed by the Commonwealth.

Enacting these changes would give unilateral control to the Department to promulgate whatever fees it deems appropriate, and the delegation of this authority by the General Assembly would abrogate the existing consumer protections against excessive licensure fees that are currently afforded under the law, as written.

### *Section 211. Revocation, suspension or refusal of kennel licenses.*

Broad new powers are given to the Department relating to licensure revocation in this section. Once the Department refuses to license a kennel or a revocation of a license has occurred, the kennel owner must divest himself of all dogs over 25 dogs within 10 days. Should the kennel owner appeal the administrative decision of the Department:

- (1) The kennel may not acquire any additional dogs or breed any more dogs;
- (2) No dog may be euthanized (except under certain medical circumstances, as approved by the Department);
- (3) The kennel must reduce the number of dogs on the premises to 25 (or a lesser number, if the Department makes such a determination);
- (4) The kennel must allow a State dog warden to inspect the kennel without a warrant in order to determine compliance with the Department's order; and
- (5) The Department may impose a civil penalty of not less than \$100 but not more than \$500 per day for each violation, and a violation would constitute a misdemeanor of the third degree.

The section also includes new provisions for the removal of dogs from a kennel, if the department makes certain findings based on "reasonable grounds." Should a kennel owner

appeal the administrative decision by the Department to remove dogs from their kennel, the proposed changes require that the kennel owner post a surety bond, payable to the Commonwealth of Pennsylvania, Department of Agriculture, Bureau of Dog Law Enforcement, equal to the estimated cost of transportation, care and feeding, removal and impoundment for 31 days, for the number of dogs removed.

There are serious due process issues which arise from the provisions that are incorporated into this section, particularly relating to the ability of the Department to act in removing dogs before a final determination of licensure status is made. The proposed statutory changes are written with a presumption of guilt to be applied in each case where the Department, acting as an agent of the Commonwealth, takes administrative action against a licensee.

At the Department's discretion, without findings of fact or evidentiary hearings, breeders may be subject to unilateral loss of their dogs, which under the laws of the Commonwealth, are legally bound as property. This clearly has both state and federal constitutional implications. Further, the requirement that a surety bond be posted altogether violates an aggrieved citizen the opportunity seek remediation under official action of the State. In instances where a breeder cannot post a surety bond, or where the Department determines that the bond posted is insufficient, they are denied due process under the law.

While the Association recognizes the importance of giving the Department appropriate enforcement authority to ensure compliance, one must consider the magnitude of what is being proposed. Consider the following example of what could occur under the law, if it is enacted as proposed:

Breeder Smith has 100 dogs. He has successfully complied with all Pennsylvania and USDA regulations since beginning a dog breeding operation 10 years ago. He has only had minor infractions that were immediately corrected when inspectors brought these issues to his attention over the many years he has been in business.

House Bill 2525, Printer's No. 3766 becomes law.

The Department inspects his kennel and determines that his primary enclosures are noncompliant by 1 inch. Inspectors cite that a primary enclosure does not meet the new law's requirement that keep a dog from being in "uncomfortable" temperatures, or that a dog cannot "sit and lie in a comfortable position." Further, Breeder Smith's upper primary enclosure that is stacked on top of another primary enclosure is four feet and eight inches, two inches higher than allowed by law. Upon further review, the inspector determines, "by observation" that a pair of dogs are not compatible, and therefore should not have been housed together. Finally, the inspector believes that less than 50 foot-candles of light are being provided to the kennel's grooming and bathing area.

Under the new law, the Department issues a notice to Breeder Smith indicating that his breeder's license has been revoked. He must immediately divest himself of at least 75 of his dogs (or more, if the Department believes it appropriate). He may not acquire any additional dogs, breed any more dogs, no dog may be euthanized, and he must now allow the State dog warden to inspect his kennel without a warrant. For any violation of the rules governing revocation of his license, Breeder Smith could be fined from \$100 to \$500 per day per violation and be charged with a misdemeanor of the third degree per violation, which carries a criminal penalty of up to one year in prison.

If Breeder Smith believes that the Department erred in revoking his license, in order for him to have an administrative hearing to appeal the Department's decision he now is required to post a surety bond, equal to the estimated cost of transportation, care and feeding, removal and impoundment for 31 days.

In calculating the surety bond, it is determined that the cost per dog for transportation, care and feeding, removal and impoundment, per day, is \$50. Since 75 dogs were seized, the cost per day for the dogs is estimated at \$3,750. As the statute requires the surety bond to reflect this cost for 31 days, Breeder Smith must post a surety bond in order to exercise an appeal of the Department's decision in the amount of \$116,250.

Breeder Smith decides that he cannot afford to post the surety bond, now recognizes the very real implications of the criminalization of any activities he undertakes after his license is revoked, and decides to close his business of 10 years.

Unfortunately, this example makes it clear that the intent of this section is to criminalize even the most minor of infractions relating to the breeding of dogs in Pennsylvania. In considering other industries, there can be no comparison that despite any breeder's best efforts; they are, at the discretion of the Pennsylvania Department of Agriculture, subject to any or all of the following:

1. Fines beginning up to \$500 per day for each infraction;
2. Being charged with a misdemeanor of the third degree, which carries a penalty of one year of imprisonment (18 Pa.C.S. § 1104).
3. Having their dogs confiscated without due process of law; and
4. Being denied access to appeal such decisions without posting a surety bond, another violation of due process of law.

#### *Section 218. Inspections.*

This section is amended to permit State dog wardens and "other employees of the department" to apply for a search warrant to any Commonwealth official authorized to issue a warrant for the purposes of inspecting or examining any kennel, property, building, premise, place, dog, book, record or other physical evidence.

The language declares that "sufficient probable cause" exists if these entities can show (1) the inspection, examination or seizure is pursuant to a general administrative plan to determine compliance with the Dog Law, or (2) the entity has reason to believe that a violation of the Dog Law or regulations promulgated under the Dog law have occurred.

Under existing laws, these agents do not have statutory authority to petition for a search warrant. Further, the vague descriptions of what constitutes probable cause are both constitutionally questionable and altogether offensive to all the citizens of the Commonwealth.

Under this language, if an "employee of the Department" "has reason to believe" that a kennel owner violated *any* provision of the Dog Law or *any one* of the myriad of regulations regarding kennel operations, they, by statute, are authorized to seek and execute a search warrant upon a kennel operator. This is extraordinarily disturbing in its intent and patently offensive in its inclusion. These standards do not even mirror those protections afforded any citizen under the both the Pennsylvania and United States constitutions.

*Section 901. Enforcement of this act by the secretary; provisions for inspections.*

This section requires that the Secretary of Agriculture establish training requirements for dog wardens and other employees of the Department to include cruelty consistent with the training conducted in accordance with 22 Pa.C.S. Ch. 37 (*relating to humane society police officers*).

While not included in this bill, it is the established goal of companion legislation to empower Dog Law enforcement officers to also enforce Pennsylvania's animal cruelty statutes. The Association opposes this effort. The General Assembly made clear in various enabling statutes that the enforcement of the Dog Law is rightfully the responsibility of the Department of Agriculture. The Assembly equally empowered humane society police officers with the duty to enforce animal cruelty laws. This creates a check and balance that ensures that no one entity has both regulatory authority as well as law enforcement authority.

This section also seeks to add eight additional members to the Dog Law Advisory Board, which are to represent the general public, as recommended by the Governor.

Unfortunately, given the dismissal of the entire Dog Law Advisory Board a number of years ago by the Governor, the only measure of fairness was the proscription in the existing Dog Law that set forth a representative board to be comprised of knowledgeable individuals throughout the dog breeding industry that could bring their knowledge, skills and abilities to assist in advising the Secretary of Agriculture on issues relating to dogs.

However, the inclusion of citizens at large, who may or may not have an understanding or knowledge of the varied and diverse dog breeding operations in Pennsylvania, in addition to the overlay of federal law and regulations, would likely not produce constructive, beneficial or more informed policy making regarding the practice of dog breeding.

As stated at the outset of this review, emotionally charged issues are given an emotional response, and unintended negative consequences emerge. Pennsylvania statute should not promote nor reflect such policy.



## **A Quick Reference to the Requirement for the Exercise of Dogs Under the Animal Welfare Act**

The requirements of the Animal Welfare Act (AWA) are set forth under the Regulations and Standards in the Code of Federal Regulations (CFR). These requirements are found in Title 9 CFR, Chapter 1, Subchapter A - Animal Welfare, Parts 1,2, and 3. The requirement for the exercise of dogs is set forth under section 13(a)(2)(B) of the AWA (7 U.S.C., 2143). The standards for the exercise of dogs are set forth in 9 CFR, Chapter 1, Subchapter A - Animal Welfare, Part 3, Section 3.8. Section numbers are given for reference to the actual wording of each requirement (see NOTE on last page).

**Definition - Positive physical contact:** means petting, stroking, or other touching which is beneficial to the well-being of the animal.

The requirements for the exercise of dogs are as follows:

### **I. Exercise for dogs (Sect. 3.8):**

Dealers, exhibitors, and research facilities must develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise. The plan must be approved by the attending veterinarian and must include written standard procedures to be followed in providing the opportunity for exercise.

The plan must be made available to APHIS and any funding Federal agency upon request. At a minimum the plan must comply with the following:

(a) **Dogs housed individually** - Dogs over 12 weeks of age, except bitches with litters, must be provided a regular opportunity for exercise if they are individually in enclosures that provide less than two times the floor space required for that dog under section 3.6(c)(1) (i.e. length of dog in inches + 6) x (length of dog in inches + 6) / 144 = required floor space in square feet. (3.8(a)).

(b) **Dogs housed in groups** - Dogs over 12 weeks of age maintained in groups do not require additional opportunity for exercise if they are maintained in enclosures that provide at least 100 percent of the required minimum floor space for each dog if maintained separately. These dogs may be maintained in compatible groups unless: (3.8(b)).

(1) Housing in compatible groups is not in accordance with the Committee approved research protocol; (3.8(b)(1)).

(2) In the opinion of the attending veterinarian such housing would adversely affect the health or well-being of the dogs; or (3.8(b)(2)).

(3) Any dog exhibits aggressive or vicious behavior. (3.8(b)(3)).

(c) **Methods and period of providing exercise opportunity.**

(1) The frequency, method, and duration of the opportunity for exercise shall be determined by the attending veterinarian and, at research facilities, in consultation with and approval by the Committee. (3.8(c)(1)).

(2) In developing the plan, the provision of positive physical contact with humans

considered. Any dog that is maintained without sensory contact with another dog must be provided with positive physical contact with humans at least daily. (3.8(c)(2)).

(3) The opportunity for exercise may be provided in a number of ways, such as: (3.8(c)(3)).

(i) Group housing if the enclosure provides at least 100 percent of the minimum required floor space for each dog if maintained separately under section 3.6(c)(1). (3.8(c)(3)(i)).

(ii) Maintaining individually housed dogs in enclosures that provide at least twice the minimum required floor space under section 3.6(c)(1); (3.8(c)(3)(ii)).

(iii) Providing access to a run or open area at a frequency and duration prescribed by the attending veterinarian; or (3.8(c)(3)(iii)).

(iv) Other similar activities. (3.8(c)(3)(iv)).

(4) Forced exercise methods such as swimming, treadmills, or carousel-type devices are not acceptable methods of exercise. (3.8(c)(4)).

**(d) Exemptions.**

(1) If, in the opinion of the attending veterinarian, it is inappropriate for certain dogs to exercise because of their health condition, or well-being, those dogs may be exempted from the exercise requirement. Such exemptions must be documented by the attending veterinarian and reviewed at least every 30 days unless the basis for the exemption is a permanent condition. (3.8(d)(1)).

(2) Dogs at research facilities may be exempted from the exercise requirement if the principal investigator determines for scientific reasons set forth in the research proposal that it is inappropriate for certain dogs to exercise. The exemption must be documented in the Committee approved proposal and must be reviewed at appropriate intervals as determined by the Committee, but not less than annually. (3.8(d)(2)).

(3) Records of any exemptions must be maintained and made available to USDA officials or any funding Federal agency upon request. (3.8(d)(3)).

**NOTE:** The information in this paper contains excerpts and paraphrasing of the published regulations and standards in 9CFR, Chapter 1, Subchapter A- Animal Welfare. The appropriate section in 9 CFR should be consulted for the actual wording of that requirement.

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