

SUBJECT: Licensing dog and cat breeders with more than 11 breeding females

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: *(After recommitted:)*
8 ayes — Hamilton, Quintanilla, Driver, Geren, Gutierrez, Harless, Menendez, Thompson

0 nays

1 absent — Kuempel

WITNESSES: *(March 15 hearing:)*
For — Elizabeth Choate, John Morton, Texas Veterinary Medical Association; Joseph Guerra Jr., Houston Humane Society; Monica Hardy, Texas Humane Legislation Network; Charles Jantzen, Houston SPCA; Tammy Roberts, The Humane Society of North Texas; Alan Spence, Texas Academy of Animal Control Officers; Louise Epstein; *(Registered, but did not testify:)* Marge Chapman, Lowrider Dachshund Kennel; Julie Covey, Fox Terrier Rescue of Central & North Texas; Sherry Ferguson, Stacy Schuelke, Houston Humane Society; Cile Holloway, Skip Trimble, Texas Humane Legislation Network; Frances Jonon, Austin Humane Society; Sara Kemptner, Trevor Rees Jones Family; Patt Nordyke, Texas Federation of Animal Care Societies; Nicole Paquette, Humane Society of the United States; Stacy Smith, Humane Society of Flower Mound; Asha Thune, Emancipet; and 62 individuals representing themselves)

Against — Raymond Burnett, Sherriff's Association of Texas; Steve Epperson, Professional Canine Breeders Association; Gary Hammonds, Endangered Breeds Association and A.D.B.A. American Dog Breeders Association E.B.A; Martine Huslig, Responsible Pet Owners Alliance Briard Club of America; Martin Kralik, Responsible Pet Owners Alliance; Gib Lewis, Texas Wildlife Association, Responsible Pet Owners Association; Tom Lundberg, Endangered Breeds Association; Michael Maddox, Pet Industry Joint Advisory Council Texas Pet Industry Coalition; Jean Nelson, Caddo Kennel Club, Canine Animal Rescue Effort; Stephanie Palmer, East Texas Dog Lovers Club; David Tapley, Animal Owners Association of Texas; Sara Whittington, Lonestar Borzoi

Club; Robert Yarnall, American Canine Association; and 10 individuals representing themselves (*Registered but did not testify*: Mary P. Carter, Swedish Vallhund Club of America; Mike Darby, East Texas Dog Lovers Association Animal Owners Association of Texas; Marida Favia del Core Borromeo, Exotic Wildlife Association; Mark Homer, Responsible Pet Owners Alliance; Margaret Reeder, Greyhound Rescue Austin; Bob Turner, Texas Poultry Federation, Texas Sheep & Goat Raisers Association; Cyndy Senff, herself and on behalf of Mike Mobley; and 14 individuals representing themselves)

On — William Kuntz, Texas Department of Licensing & Regulation

DIGEST:

CSHB 1451 would require persons acting as dog and cat breeders to be licensed by the Texas Department of Licensing and Regulation (TDLR). Dog and cat breeders would be defined as persons who possessed 11 or more adult intact females and were engaged in the business of breeding their animals for direct or indirect sale or in exchange for consideration.

By March 31, 2012, TDLR would have to adopt rules, standards, procedures, and fees authorized by the bill. Breeders would not have to hold a license or comply with standards before September 1, 2012.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

Licenses. Persons could not act as a dog or cat breeder in Texas without a license issued by TDLR. Possessing 11 or more adult intact females and being engaged in the business of breeding those animals for direct or indirect sale or in exchange for consideration would require a license. Intact females would be defined as female animals that were not spayed and were capable of reproduction. Breeders would have to hold a license for each facility that they owned or operated.

Licenses would be good for one year. Licenses could not be issued to a person who had pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in the five years before an initial or renewal license application, and a license already issued to such a person would have to be revoked.

Licenses also would be denied or would have to be revoked if these same legal proceedings occurred involving someone who was a partner,

manager, director, or officer, or who had other involvement, as defined by the bill, with the business of a licensee.

License holders would have to display their licenses at their facilities and include their license numbers in advertisements. A contract for the sale and transfer of animals would have to include the license number and a statement with TDLR contact information.

Inspections, fees. TDLR would have to inspect each facility of a licensed breeder at least once every 18 months and other times, as necessary.

Facilities would have to be inspected before a license could be issued. Applicants who did not pass a pre-license inspection could request another pre-license inspection after correcting their deficiencies and paying the required fee. TDLR could not require a pre-license inspection of facilities of applicants who held a federal Class A animal dealers license and had certified to TDLR that the facility met the requirements of CSHB 1451.

TDLR could not give breeders advance notice before arriving at a facility. Breeders would have to assist in the inspection, if requested. Inspectors could not enter or access any portion of a licensed breeder's private residence, except as necessary to access animals, documents, records, or other property relevant to the inspection.

Within 10 days of an inspection, the inspector would have to file a report with TDLR and give a copy to the breeder.

TDLR would be required to investigate complaints alleging violations of CSHB 1451 or rules adopted under the bill. Inspectors who noticed animal cruelty or neglect during an investigation would be required to report it to the local law enforcement agency within 24 hours.

TDLR could contract with state agencies or local law enforcement agencies or fire departments to use third-party inspectors to enforce CSHB 1451. The agency would have to use rules to establish training requirements, registration procedures, and policies for third-party inspectors.

TDLR would be required to adopt rules to administer and enforce CSHB 1451 and to set fees to cover the costs. The department could consider the

number of adult intact females when setting the fees. The inspection fee would have to be paid before a pre-license inspection could be conducted.

Standards. TDLR would have to adopt minimum standards for the humane handling, care, housing, and transportation of dogs and cats by breeders to ensure the overall health, safety, and well-being of each animal. The standards would have to:

- meet federal regulations;
- require daily exercise for dogs at least 12 weeks old in a type of area described by the bill, unless otherwise certified by a veterinarian;
- require an adequate period consistent with breed standards to elapse between breeding cycles of adult females;
- require basic grooming;
- require that primary enclosures meet certain standards, including for size and materials;
- require barriers between stacked animal enclosures and prohibit the stacking of primary enclosures of dogs above three levels;
- require at least one regular veterinary exam annually for breeding animals;
- require that breeders maintain a written health care management protocol that address routine and preventive care;
- ensure necessary routine and preventive care was provided and ensure care and treatment for disease and illness;
- prohibit persons who were not veterinarians from euthanizing an animal or performing a surgical birth;
- require appropriate training for persons handling or caring for animals in a breeder's facility; and
- prohibit breeders from selling, trading, or giving away animals before they were eight weeks old.

TDLR would have authority to modify and establish standards as necessary to protect or improve the health and well-being of animals or to protect the public's health and safety.

Records. Licensed breeders would have to keep a separate record for each animal in their facility, documenting the care of the animal and other information detailed in CSHB 1451, including the veterinary care. Additional information would have to be kept on each breeding female, including the breeding dates and dates that litters were born. Records also

would have to be kept on the disposition of animals no longer at the facility. By February 1 of each year, breeders would have to submit to TDLR an accounting of all animals held at the facility in the preceding year.

Advisory committee. TDLR would be required to establish a committee to advise the commission and make recommendations related to the administration and enforcement of the bill, including licensing fees and standards. The advisory committee would be composed of nine members appointed by the presiding officer of the Texas Commission of Licensing and Regulation, with approval of the commission. Members would have to be appointed by January 1, 2012.

The committee would have to have:

- two members who were licensed breeders;
- two members who were veterinarians;
- two members who represented animal welfare organizations;
- two public members; and
- one member who was an animal control officer.

Members would serve four-year terms, and the presiding officer of the Texas Commission of Licensing and Regulation would designate the presiding officer. The advisory committee would have to meet at least annually and would be exempt from Government Code requirements that apply to state advisory committees.

Enforcement. CSHB 1451 would make persons violating the bill or rules adopted under its authority subject to TDLR's general administrative, penalties, and enforcement authority.

CSHB 1451 would create the dog and cat breeder training and enforcement account in the General Revenue Fund, and administrative penalties collected under the bill would be deposited in the account.

Funds in the account could be appropriated only to TDLR to promote consumer awareness of the law; support education activities; pay for information that resulted in a disciplinary action against a person for acting as a dog or cat breeders while not having a license; and activities to improve TDLR's investigation and enforcement of the bill. TDLR would be able to provide a system to pay for information that resulted in the

disciplinary actions. The fund would be exempt from the state's fund consolidation process.

Other provisions. Other provisions in the bill would require TDLR to:

- conduct a criminal background check on each applicant and on a breeder's partner, manager, director, officer, or member, anyone who had the authority for policy or direct management of a breeder, and anyone who had direct or indirect control of at least 25 percent of a breeder;
- use rules to establish registration procedures for anyone whose duties and responsibilities included the handling or caring for animals in a licensed breeder's facilities;
- maintain a directory of licensed breeders and of third-party inspectors and make it available to the public;
- maintain a database of breeders who had been subject to disciplinary action under the bill and make it available to the public; and
- prepare consumer information about the new law.

**SUPPORTERS
SAY:**

CSHB 1451 is intended to ensure the humane treatment of dogs and cats by Texas breeders. Currently, some unscrupulous animal breeders keep dogs and cats in inhumane conditions that result in diseased, malnourished, and mistreated animals. These breeders, some of whom operate so-called puppy mills, often escape prosecution under Texas' animal cruelty laws. CSHB 1451 would address this problem by requiring breeders who were more than just hobby breeders to obtain a license from the state, be inspected, and meet some minimum standards to ensure animals were healthy and treated humanely. The serious problem of animals being treated inhumanely warrants the narrowly tailored and reasonable licensing standards that would be established by CSHB 1451. This would represent an appropriate, limited regulatory role for the state to protect health and safety.

Texas' current animal cruelty laws, in Penal Code, sec. 42.092, come into play only after cruelty has taken place and animals have been harmed. Before law enforcement can intervene, animals often are dead or severely mistreated. Law enforcement officers and prosecutors, who often have competing demands for their time, may get involved in only the most extreme cases, leaving many mistreated animals to suffer. CSHB 1451 is

designed to prevent cases of animal cruelty before they occur, rather than prosecute them after the fact.

The best way to address this situation is through licensing of breeders and uniform standards. Under the bill, the state could enforce standards for all licensed breeders and would have an additional tool to go after bad breeders who did not get licensed. This would ensure uniform standards throughout the state for which enforcement would not be dependent on local law enforcement resources and efforts. Enforcing those standards through licensing and inspections would be in line with many other Texas professions that are licensed.

CSHB 1451 should not adversely affect responsible breeders. The standards and regulations that would be required under CSHB 1451 would be narrowly tailored to focus on the care of animals. Requirements for clean water, food, adequate room, and receipt of annual veterinary care are reasonable and would not cause undue expense for responsible breeders. Other provisions, such as requiring barriers between stacked cages and limiting the stacking of dog enclosures, would address inhumane practices that include housing animals in stacked cages that allow urine and excrement to drop from one cage to another. A prohibition on selling, trading, or giving away very young animals would ensure that puppies and kittens received the care they needed when they were most vulnerable.

The bill's requirements for inspections are reasonable. The paperwork and recordkeeping that the bill would require would not be burdensome, and the authority granted to TDLR, such as surprise inspections, is often standard for a licensing agency. Most inspectors would report animal cruelty immediately, but the bill would set a reasonable deadline of 24 hours to take into account individual situations. The bill would authorize – but not require – TDLR to register persons working with animals so that the agency could begin this practice if it proved necessary. Requiring workers to be trained would make sure that everyone handling animals knew how they should be treated and understood the law's requirements.

The bill would not apply to true hobby breeders with fewer than 11 breeding females. They would be able to continue their activities without getting a license. Meeting the 11-breeding-females threshold would signal that a breeder was more than a hobby breeder and should have the business licensed and be held to certain minimum standards. CSHB 1451 would not set a cap on the number of animals that could be bred or owned

by a breeder. Breeders would be free to have any size operation, as long as the care and keeping of the animals was humane.

Licensing and having a public directory of breeders would help protect potential pet owners who sometimes pay for animals who are unhealthy or have problems due to mistreatment. Potential pet owners would be able to buy an animal from a licensed breeder and be assured that the animal had been treated properly.

The use of third-party inspectors would be a cost-effective way to administer CSHB 1451 without a significant growth in state employees. Third-party inspectors would be trained, licensed, and monitored to ensure they properly enforced the bill. If a third-party inspector pursued a personal or inappropriate agenda, TDLR could step in quickly and end its affiliation with the inspector. TDLR currently uses third-party inspectors in its programs to inspect architectural barriers, elevators, and boilers, and the system works well. Concerns that the bill would allow non-governmental third-party inspectors with a personal agenda to make inspections are unfounded. The bill would limit third-party inspectors to employees of state agencies and local law enforcement agencies and fire departments.

CSHB 1481 would not be a cost to the state, according to the fiscal note. TDLR would be authorized to raise fees to cover its costs to administer the bill. Provisions such as requiring inspections only every 18 months, allowing third-party inspectors, and allowing fees to be adjusted for the number of breeding females owned by a breeder would keep the fees reasonable and allow smaller operations to pay lower fees. Any new employees that would be added with the bill would be funded through fees assessed by TDLR and would not represent a net cost to general revenue.

The provision in CSHB 1451 that would allow funds accrued through penalties to be used for information relating to disciplinary action would be restricted to only tips about persons acting without a license, not to information relating to licensed breeders. The program would be similar to the state's Operation Game Thief, which allows payments for information that results in certain types of convictions relating to illegal hunting and fishing.

Licensed breeders and others involved would have input into the bill's administration and be treated fairly by TDLR. The bill would establish an

advisory committee that included breeders, veterinarians, the public, and representatives of animal welfare organizations. Rules developed under the bill would be made through TDLR's standard process that includes public input. Any enforcement and disciplinary actions under the bill be governed by the agency's general enforcement statutes that ensure fair treatment of licensees.

**OPPONENTS
SAY:**

Cruelty to animals is a serious problem that should be addressed through better enforcement of current laws, not through CSHB 1451's approach of growing state government and burdening responsible, law-abiding dog and cat breeders with regulations and a new licensing requirement.

Currently, local law enforcement officials adequately enforce animal cruelty laws. These laws are broad enough to cover cases of puppy mills treating animals inhumanely. For example, it can be an offense to fail unreasonably to provide necessary food, water, care, or shelter for animals. Local law enforcement officials, not state employees, are in the best position to know an area and enforce the laws that protect animals from inhumane treatment.

CSHB 1451 would not adequately address current animal cruelty by unethical and irresponsible breeders because these operators simply would not apply for a license and put themselves under the state's regulatory structure. Instead, good breeders would be burdened, and bad breeders would continue to operate.

CSHB 1451 would invest TDLR with powers that are too broad and open-ended. For example, the bill would allow unannounced inspections and permit inspectors to enter portions of a breeder's private residence, as necessary, to access animals, documents, records, or other property related to the inspection. Authority to enter a private residence should be predicated on express consent of the owner. The bill also would allow TDLR to require registration of persons who care for animals, an overreach of government regulation of persons who may be doing something as simple as feeding dogs.

The regulations and standards that CSHB 1451 would impose would be burdensome, costly, and too rigid, even for responsible breeders who take good care of their animals. For example, requiring animals to be examined by a vet annually would be both unnecessary and expensive. Responsible breeders may take an animal to the vet when it is necessary, but this may

not coincide with a 12-month annual schedule. In some areas, the number of veterinarians may be limited or be prohibitively far away, driving up the cost of complying with CSHB 1451. Also, the inflexible prohibition against selling, trading, or giving away animals younger than eight weeks old would not take into consideration that sometimes this is necessary due to the health of a mother dog or cat.

The fees that CSHB 1451 would allow TDLR to charge breeders are undefined by the bill and could be set so high that they put some breeders out of business. Many breeders are struggling to make ends meet, and in these hard economic times, the state should not impose a new financial burden on a small profession. The fiscal note for CSHB estimates that it would result in 14.5 new state FTEs at a time when the Legislature should not be expanding state government.

With its 11-female limit, the bill would set an arbitrary threshold to determine who would have to be licensed. This threshold could be so low that it would force some true hobby breeders to become licensed. Having such a statutory limit could lead to efforts to lower this limit in the future to bring more true hobby breeders under the licensing requirements.

The third-party inspectors that would be able to make inspections under CSHB 1451 might lack expertise or have a personal agenda that was hostile to an animal breeder.

The bill's provisions allowing for money from penalties to be used to pay for tips about law breakers could give an incentive for unwarranted tips that lead to unnecessary inspections for breeders.

**OTHER
OPPONENTS
SAY:**

Instances of animal cruelty noticed during an inspection or investigation should have to be reported to local law enforcement authorities immediately, instead of within 24 hours as the bill would require. There is no compelling reason to allow cruelty to continue after it has been detected.

A better, more limited approach that would not involve licensing breeders might be to let a state entity set standards for the care of animals by large-scale breeders, then make violating those standards an offense under animal cruelty laws.

NOTES:

The committee substitute made numerous changes to the original bill, including:

- removing references to commercial breeders as the type of breeders being licensed under the bill;
- requiring inspections every 18 months, instead of every 12;
- eliminating a cap on the number of animals that breeders may possess;
- removing authority for local animal control agencies to operate as third-party inspectors;
- specifying that information for which persons were paid to give TDLR had to result in disciplinary action against a person for acting as a dog or cat breeder without holding a license issued under this chapter instead of for any disciplinary action;
- amending the required standards that must be adopted by TDLR;
- removing a provision that would have required breeders to submit to TDLR a copy of sales tax reports;
- establishing the advisory committee; and
- requiring TDLR, instead of authorizing it, to develop regulations dealing with third-party inspectors.

HB 1451 was reported favorably, as substituted, by the Licensing and Administrative Procedures Committee on April 7, following a March 15 public hearing, and was recommended for the Local, Consent, and Resolutions Calendar. During its floor consideration on April 14, the bill was recommitted to the Licensing and Administrative Procedures Committee, which again reported the bill as substituted, without change, on the same day. When the bill was considered again on the Local, Consent, and Resolutions Calendar on April 21, it was withdrawn from the calendar and transferred to the Calendars Committee, which set CSHB 1451 on today's Major State Calendar.

A related bill, HB 2116 by Coleman, which would establish standards of care and confinement for dogs and cats by commercial breeders, was reported favorably, as substituted, by the County Affairs Committee on April 21.