

BILL ANALYSIS

Senate Research Center
82R18530 MAW-F

H.B. 1451
By: Thompson et al. (Whitmire)
Criminal Justice
5/10/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

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

This bill does not affect any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state. This bill does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats. This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, V.T.C.S.).

For purposes of this bill, each adult intact female animal possessed by a person engaged in the business of breeding for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the Texas Department of Licensing and Registration (TDLR), based on records or other reasonably acceptable evidence, that the animal is not used for breeding.

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

H.B. 1451 amends current law relating to the licensing and regulation of certain dog and cat breeders and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 2 (Sections 802.051, 802.052, 802.059, 802.060, 802.061, 802.101, 802.151, 802.154, and 802.201, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Title 4, Occupations Code, to read as follows:

TITLE 4. PROFESSIONS RELATED TO ANIMALS

SECTION 2. Amends Title 4, Occupations Code, by adding Chapter 802, as follows:

CHAPTER 802. DOG OR CAT BREEDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. **SHORT TITLE.** Provides that this chapter may be cited as the Dog or Cat Breeders Act.

Sec. 802.002. **DEFINITIONS.** Defines, in this chapter, "adult animal," "animal," "cat," "commission," "controlling person," "department," "dog," "dog or cat breeder," "facility," "federal regulations," "intact female animal," "kitten," "licensed breeder," "possess," "primary enclosure," "puppy," "third-party inspector," and "veterinarian."

Sec. 802.003. **APPLICABILITY OF CHAPTER.** (a) Provides that this chapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state.

(b) Provides that this chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats.

(c) Provides that this chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, V.T.C.S.).

Sec. 802.004. **PRESUMPTION OF USE FOR BREEDING.** Provides that, for purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the Texas Department of Licensing and Registration (TDLR), based on the person's breeding records or other evidence reasonably acceptable to TDLR, that the animal is not used for breeding.

[Reserves Sections 802.005-802.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 802.051. **GENERAL POWERS AND DUTIES; RULES.** (a) Requires TDLR to administer and enforce this chapter.

(b) Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules necessary to administer and enforce this chapter.

Sec. 802.052. **FEES.** Requires TCLR by rule to establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter. Authorizes TCLR, in setting the fee for inspecting or licensing a facility, to consider the number of adult intact female animals used for breeding at the facility.

Sec. 802.053. **PERSONNEL.** Authorizes TDLR to employ personnel necessary to carry out the functions and duties of TDLR under this chapter.

Sec. 802.054. **EXPENSES.** Authorizes TDLR to authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

Sec. 802.055. **CRIMINAL BACKGROUND CHECKS.** Requires TDLR to conduct a criminal background check on each applicant who submits an application for a license

under this chapter and on any controlling person of the applicant. Authorizes TDLR to, as permitted by law:

- (1) examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and
- (2) obtain any criminal history or record of the applicant or controlling person.

Sec. 802.056. DIRECTORY. (a) Requires TDLR to maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

- (b) Requires TDLR to make the directory available to the public.

Sec. 802.057. DISCIPLINARY DATABASE. (a) Requires TDLR to maintain a database of dog or cat breeders who have been subject to disciplinary action as provided by Subchapter F.

- (b) Requires TDLR to make the information maintained in the database available to the public.

Sec. 802.058. CONSUMER INTEREST INFORMATION. (a) Requires TDLR to prepare information of consumer interest describing:

- (1) the functions performed by TDLR under this chapter; and
- (2) the rights of a consumer affected by this chapter.

- (b) Requires that the information describe the procedure by which a consumer complaint is filed with and resolved by TDLR.

- (c) Requires TDLR to make the information available to the public.

Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. (a) Provides that the dog or cat breeder training and enforcement account is an account in the general revenue fund. Requires that administrative penalties collected under Subchapter F be deposited to the credit of the account.

- (b) Authorizes funds in the account to be appropriated only to TDLR for:

- (1) promoting consumer awareness of this chapter and rules adopted under this chapter;
- (2) supporting educational seminars, training activities, or other projects designed to benefit TDLR's ability to administer this chapter;
- (3) paying for information resulting in disciplinary action under Subchapter F against a person for acting as a dog or cat breeder without holding a license issued under this chapter; and
- (4) taking any other action to improve TDLR's ability to investigate violations of and enforce this chapter.

- (c) Authorizes TDLR by rule to provide for a system to pay for information described by Subsection (b)(3). Requires that rules adopted under this subsection ensure that a public purpose is accomplished through the use of the payment system.

- (d) Authorizes TDLR to solicit and accept gifts, grants, and other donations from any source for deposit into the account.

(e) Exempts the account from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. Requires TCLR by rule to establish:

- (1) training requirements for a third-party inspector;
- (2) registration procedures for a third-party inspector; and
- (3) policies governing the acts of a third-party inspector in conducting an inspection or investigation.

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

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

Sec. 802.063. INSPECTIONS. (a) Requires TDLR to inspect each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance with this chapter and rules adopted under this chapter.

(b) Requires that the inspection be conducted during the facility's normal business hours, and authorizes the licensed breeder or a representative of the licensed breeder to be present during the inspection.

(c) Prohibits TDLR or third-party inspector from providing advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility. Requires the licensed breeder or its representative, on request of an inspector, to assist the inspector in performing the inspection.

(d) Prohibits an inspector, in conducting an inspection under this section, from entering or accessing any portion of a private residence of a licensed breeder except as necessary to access animals, documents, records, or other property relevant to the inspection.

(e) Requires the inspector to submit an inspection report to TDLR not later than the 10th day after the date of the inspection on a form prescribed by TDLR and provide a copy of the report to the licensed breeder or its representative.

Sec. 802.064. INVESTIGATIONS. Requires TDLR or a third-party inspector designated by TDLR, on receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, to investigate the alleged violation.

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

Sec. 802.066. ADVISORY COMMITTEE. (a) Requires TCLR to establish an advisory committee to advise TCLR and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E.

(b) Provides that the advisory committee consists of nine members appointed by the presiding officer of TCLR with the approval of TCLR as follows:

- (1) two members who are licensed breeders;
- (2) two members who are veterinarians;
- (3) two members who represent animal welfare organizations;
- (4) two members who represent the public; and
- (5) one member who is an animal control officer as defined in Section 829.001 (Definitions), Health and Safety Code.

(c) Provides that members of the advisory committee serve staggered four-year terms. Provides that the terms of four or five members expire on February 1 of each odd-numbered year. Requires the presiding officer of TCLR, with the approval of TCLR, if a vacancy occurs during a member's term, to appoint a replacement member to serve for the remainder of the unexpired term.

(d) Requires the presiding officer of TCLR to designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. Authorizes a member to serve more than one term as presiding officer.

(e) Requires the advisory committee to meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of TCLR, or the executive director of TDLR.

(f) Prohibits a person from being a member of the advisory committee, except for the members described by Subsection (b)(1), if the person or a member of the person's household:

- (1) is required to be licensed under this chapter;
- (2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;
- (3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or
- (4) is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) Authorizes the presiding officer of TCLR to remove from the advisory committee a member who is ineligible for membership under Subsection (f).

(h) Prohibits a member from receiving compensation for service on the advisory committee. Authorizes a committee member to receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties, subject to TDLR's budget and any limitation provided by the General Appropriations Act.

(i) Provides that a decision of the advisory committee is effective only on a majority vote of the members present.

(j) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

[Reserves Sections 802.067-802.100 for expansion.]

SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS

Sec. 802.101. LICENSE REQUIRED. (a) Prohibits a person from acting as, offering to act as, or representing that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state. Authorizes a license for a single facility to cover more than one building on the same premises.

(b) Authorizes TDLR by rule to establish requirements for issuance or renewal of a license issued to a dog or cat breeder under this chapter.

Sec. 802.102. APPLICATION. Requires an applicant for a license under this chapter to:

- (1) submit to TDLR a completed application on a form prescribed by TDLR;
- (2) submit to TDLR the information regarding the applicant's facilities and operations requested by TDLR;
- (3) demonstrate that the applicant has satisfied the requirements of this chapter and rules adopted under this chapter; and
- (4) pay to TDLR the required fee.

Sec. 802.103. PRELICENSE INSPECTION. (a) Requires TDLR to inspect a facility before a license is issued for the facility, except as provided by Subsection (e).

(b) Prohibits TDLR from issuing a license to a dog or cat breeder until TDLR receives a prelicense inspection report from the inspector in a format approved by TDLR certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

(c) Requires each applicant to pay to TDLR the required inspection fee to be used to pay third-party inspectors and the reasonable expenses of TDLR related to its licensing and inspection duties under this chapter before the prelicense inspection may be conducted.

(d) Authorizes an applicant whose facility does not meet the requirements of this chapter and rules adopted under this chapter as revealed by a prelicense inspection to, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to TDLR.

(e) Prohibits TDLR from requiring a prelicense inspection of a facility for an applicant who:

(1) holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.); and

(2) submits to TDLR:

(A) a copy of the license; and

(B) on a form prescribed by TDLR, a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

Sec. 802.104. INITIAL LICENSE. Requires TDLR to issue a license to each dog or cat breeder who:

- (1) meets the requirements of this chapter and rules adopted under this chapter;
- (2) applies to TDLR on the form prescribed by TDLR; and
- (3) pays the required fee.

Sec. 802.105. TERM; NONTRANSFERABILITY. Provides that a license issued under this chapter is valid until the first anniversary of the date of issuance and is nontransferable. Requires TDLR to include the expiration date on each license issued under this chapter.

Sec. 802.106. LICENSE RENEWAL. (a) Authorizes a licensed breeder to renew the person's license by:

- (1) submitting a renewal application to TDLR on the form prescribed by TDLR;
- (2) complying with any other renewal requirements adopted by TDLR; and
- (3) paying the required fee.

(b) Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(c) Prohibits TDLR from renewing the license of a person if the person is in violation of this chapter or any rule adopted under this chapter at the time of renewal.

Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION. (a) Requires TDLR to deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.

(b) Requires TDLR to revoke a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction.

(c) Authorizes TDLR to deny issuance of a license to, refuse to renew the license of, or revoke or suspend a license held by a person who:

- (1) fails to meet the requirements of this chapter and rules adopted under this chapter;
- (2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;
- (3) has falsified any material information requested by TDLR;
- (4) has failed to meet a standard adopted by rule under this chapter; or
- (5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

[Reserves Sections 802.108-802.150 for expansion.]

SUBCHAPTER D. PRACTICE BY LICENSED BREEDER

Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. Requires a licensed breeder to:

- (1) prominently display a copy of the license at the breeder's facility;
- (2) maintain at the breeder's facility a printed copy of this chapter and rules adopted under this chapter as made available by TDLR;
- (3) include the license number in each advertisement of the licensed breeder; and
- (4) include in each contract for the sale or transfer of an animal by the licensed breeder:
 - (A) the license number; and
 - (B) the following statement: "Dog and cat breeders are regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, www.license.state.tx.us" or a similar statement adopted by TCLR rule that includes TDLR's name, mailing address, telephone numbers, and Internet website address.

Sec. 802.152. CHANGE IN LICENSE INFORMATION. Requires a licensed breeder to notify TDLR in a manner prescribed by TDLR not later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

Sec. 802.153. ANNUAL INVENTORY. (a) Requires a licensed breeder to submit to TDLR, not later than February 1 of each year, on a form prescribed by TDLR, an accounting of all animals held at the facility at any time during the preceding calendar year.

- (b) Requires the licensed breeder to keep copies of the items described by Subsection (a) at the licensed breeder's facility and to make them available on request to TDLR or a third-party inspector designated by TDLR.
- (c) Requires a licensed breeder that has more than one facility to:
 - (1) keep separate records for each facility; and
 - (2) submit a separate accounting of animals for each facility.

Sec. 802.154. ANIMAL RECORDS. (a) Requires a licensed breeder to maintain a separate record for each animal in the breeder's facility documenting the animal's care.

- (b) Requires that the record include:
 - (1) the date the animal entered the facility;
 - (2) if applicable, the name, address, and telephone number of the person from whom the animal was purchased or obtained;
 - (3) a description of the animal, including the animal's breed, sex, color, identifying marks, and weight;

- (4) the date of birth of the animal or approximate age if the date of birth is unknown;
- (5) any tattoo, microchip, or other identification number carried by or appearing on the animal;
- (6) if the animal is a breeding female:
 - (A) breeding dates;
 - (B) dates the animal gave birth to a litter;
 - (C) number of puppies or kittens for each litter of the animal; and
 - (D) the name and identification of the sire or tom for each litter;
- (7) all veterinary care provided for the animal, including a record of all inoculations, medications, and other veterinary medical treatment received by the animal while in the possession of the licensed breeder; and
- (8) for an animal that was at the facility but is no longer at the facility:
 - (A) the date of disposition or death of the animal; and
 - (B) as applicable:
 - (i) the name and address of the person to whom the animal was transferred; or
 - (ii) the animal's cause of death.

(c) Requires the licensed breeder to make the animal records available on request to TDLR or a third-party inspector designated by TDLR.

(d) Requires TCLR by rule to establish the retention period for records required under this section.

[Reserves Sections 802.155-802.200 for expansion.]

SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

Sec. 802.201. ADOPTION OF STANDARDS. (a) Requires TCLR to adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety, and well-being of each animal in the breeder's possession.

(b) Requires that the standards adopted under this section:

- (1) at a minimum, meet federal regulations;
- (2) require that, unless otherwise certified by a veterinarian in the manner prescribed by TDLR, a licensed breeder, if applicable, provide each dog 12 weeks of age and older with at least one hour of daily exercise in an area that:
 - (A) has a surface that has adequate drainage and that will not adversely affect the dog's health or well-being, and that may be composed of natural turf or soil;

(B) provides adequate protection against harsh weather, including exposure to the sun; and

(C) has at least three times more square feet than the dog's primary enclosure;

(3) require that an adequate period consistent with breed standards elapse between the breeding cycles of each adult intact female animal;

(4) require that a dog or cat breeder provide basic grooming to each animal, including bathing and nail trimming, as needed to prevent any condition that adversely affects the animal's health and cleanliness;

(5) require that all primary enclosures:

(A) be composed of materials that are safe for the animal based on the animal's breed, size, and age;

(B) have adequate space to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position;

(C) have adequate drainage; and

(D) if any portion of the floor surface is composed of wire or a slatted material, be free from any protruding, sharp surfaces and be designed so the animal's paws are unable to extend through, or become caught in, the floor;

(6) prohibit the placement of a primary enclosure of an animal on top of the primary enclosure of another animal, unless an impervious barrier designed to prevent the transfer of any liquid or animal waste from one enclosure to the other is placed between the enclosures;

(7) prohibit the stacking of the primary enclosures of dogs above three vertical levels;

(8) require at least one regular veterinary examination a year for a breeding animal;

(9) require that a dog or cat breeder maintain at each of the breeder's facilities a written health care management protocol that addresses routine and preventive care;

(10) ensure that necessary routine and preventive care is provided to each animal and that each animal receives appropriate care and treatment for any disease or illness that affects the animal's health or well-being;

(11) prohibit a person from euthanizing an animal or performing a surgical birth of an animal unless the person is a veterinarian;

(12) require appropriate training for any person whose duties and responsibilities include the handling of or caring for an animal in a dog or cat breeder's facility; and

(13) prohibit a dog or cat breeder from selling, trading, or giving away an animal before the animal is eight weeks of age.

(c) Authorizes TCLR by rule to modify existing standards and establish additional standards or requirements as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public.

[Reserves Sections 802.202-802.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. Provides that if a person violates this chapter or a rule adopted under this chapter, the person is subject to any action or penalty under Subchapter F (Administrative Penalty) or G (Other Penalties and Enforcement Provisions), Chapter 51 (Texas Department of Licensing and Regulation).

SECTION 3. Requires the presiding officer of TCLR, not later than January 1, 2012, to appoint the members of the advisory committee established under Section 802.066, Occupations Code, as added by this Act.

SECTION 4. Requires TCLR, not later than March 31, 2012, to adopt the rules, standards, procedures, and fees necessary to implement Chapter 802, Occupations Code, as added by this Act, and Section 5 of this Act.

SECTION 5. Provides that, notwithstanding Chapter 802, Occupations Code, as added by this Act, a dog or cat breeder is not required to:

- (1) hold a license under that chapter to act as a dog or cat breeder before September 1, 2012; or
- (2) comply with the standards adopted under Subchapter E, Chapter 802, Occupations Code, as added by this Act, before September 1, 2012.

SECTION 6. Effective date: upon passage or September 1, 2011.