

HOUSE BILL 386

By Sontany

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 1; Title 39, Chapter 14, Part 2; and Title 44, Chapter 17, to protect consumers from purchasing unhealthy companion animals by regulating commercial breeders; and to enact the "Commercial Breeder Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 44, Chapter 17, is amended by adding the following as a new part 7:

Section 44-17-701.

This part shall be known and may be cited as the "Commercial Breeder Act".

Section 44-17-702.

The purpose of this part is to ensure the humane treatment of companion animals used in commerce and to protect consumers from purchasing unhealthy companion animals sold in commerce.

Section 44-17-703.

As used in this part, unless the context otherwise requires:

(1) "Adult companion animal" means a dog or a cat that is over one (1) year of age or has reached sexual maturity, whichever occurs first;

(2) "Cat" means any live cat of the species *Felis catus*;

(3) "Commerce" means advertising, offering for sale, buying, selling or transporting from one (1) place to another in this state;

(4) "Commercial breeder" means any person who possesses or maintains twenty (20) or more adult female dogs in whole or in part for the purpose of the sale of their offspring as companion animals;

(5) "Commissioner" means the commissioner of agriculture;

(6) "Companion animal" means any dog or cat as defined in this part;

(7) "Dog" means any live dog of the species *Canis familiaris*;

(8) "Person" means any individual, firm, corporation, partnership, association, or other legal entity; and

(9) "Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

Section 44-17-704.

(a) It is an offense for any commercial breeder to advertise, sell, offer to sell, transport or offer for transportation any companion animal unless the commercial breeder has a valid license from the commissioner and has complied with the rules and regulations promulgated by the commissioner pursuant to this part.

(b) In addition to the provisions of title 39, chapter 14, part 2, it is an offense for any commercial breeder to kill or destroy a companion animal by any means other than euthanasia performed by a licensed veterinarian.

(c) A violation of this section is a Class B misdemeanor punishable by fine only.

Section 44-17-705.

(a) An application for a license as a commercial breeder shall be made to the commissioner on a form provided by the commissioner, which shall contain space for such information as the commissioner may reasonably require, including evidence of ability to comply with the standards, rules and regulations as are lawfully prescribed by the commissioner.

(b) Each application for a license shall be accompanied by a license fee based upon the following:

(1) Possessing or maintaining 20-40 adult companion animals per year- five hundred dollars (\$500); or

(2) Possessing or maintaining 41-75 adult companion animals per year- one thousand dollars (\$1,000);

Section 44-17-706.

(a) The commissioner shall issue a license to an applicant after determining:

(1) The applicant or the responsible officers of the applicant are of good moral character;

(2) An inspection has been made of the premises and a finding is made that it conforms to this part, the rules and regulations of the commissioner, and is a suitable place in which to conduct the commercial breeder's business;

(3) The commercial breeder has a valid sales tax registration number and is in good standing with the Tennessee department of revenue; and

(4) The licensee has never been convicted of any criminal offense set out in title 39, chapter 14, part 2, involving an animal.

(b) Each license shall be issued only for the premises and to the person or persons named in the application and shall not be transferable or assignable.

(c) Licenses shall be posted in a conspicuous place on the licensed premises.

(d) License numbers shall be included in all of the licensee's advertisements or promotions that pertain to a companion animal, including but not limited to, all newspapers, internet, radio, or flyers.

(e) Licenses shall not be issued to any commercial breeder who possesses or maintains more than seventy-five (75) unsterilized companion animals over the age of six (6) months.

Section 44-17-707.

(a) A license, unless sooner suspended or revoked, shall be renewable annually upon application by the licensee, an annual inspection by the commissioner and approval by the commissioner of an annual report upon such forms and containing such information as the commissioner may prescribe by regulation. The fee for renewal of licenses shall be based upon the following:

(1) Possessing or maintaining 20-40 adult companion animals per year- five hundred dollars (\$500); or

(2) Possessing or maintaining 41-75 adult companion animals per year- one thousand dollars (\$1,000);

Section 44-17-708.

(a) The license of any commercial breeder may be suspended or revoked by the commissioner for any of the following reasons:

(1) The violation by the licensee of the Tennessee Consumer Protection Act of 1977, codified in title 47, chapter 18, part 1.;

(2) Willful falsification of any information contained in the application;

(3) The licensee's conviction, or that of any responsible officer of the licensee, for any offense involving cruelty to animals or a violation of this part; or

(4) The licensee's nonconformance with this part; the rules and regulations of the commissioner; title 4, chapter 17, part 3; or title 39, chapter 14, part 2.

(b) If the commissioner has reason to believe that the license of any commercial breeder should be suspended or revoked for any of the above reasons, the commissioner shall give the commercial breeder ten (10) days written notice of the commissioner's intention to suspend or revoke the license of the commercial breeder and shall give the commercial breeder an opportunity for a hearing on the issue. The commercial breeder may produce evidence to show cause why the license should not be revoked or suspended. If the commissioner determines that conditions exist that warrant the suspension or revocation of the license, the commissioner may suspend the license for such period of time as the commissioner may specify, or may revoke it, and where appropriate, may make an order that the commercial breeder cease and desist from continuing any violation of this part. If the license is suspended, the commercial breeder may apply, after ninety (90) days, for reinstatement of the license.

(c) Any commercial breeder aggrieved by a final order of the commissioner issued under this section may appeal such order in the manner provided by the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

Section 47-17-709.

(a) Each commercial breeder shall file, on forms and at such times as prescribed by the commissioner, semi-annual reports containing the following information:

(1) The number of dogs or cats in the possession of the commercial breeder on the date the report is filed;

(2) The number of dogs and cats sold during the reporting period and the names and addresses of the persons to whom they were sold; and

(3) The number of dogs and cats received by the commercial breeder during the reporting period under circumstances other than purchase and the names and addresses of the persons from whom they were obtained.

Section 44-17-710.

Commercial breeders shall make and keep such records with respect to their purchase, sale, transportation, and handling of dogs and cats as the commissioner may prescribe.

Section 44-17-711.

(a) The premises of any commercial breeder, whether licensed or not licensed, shall be made available to the commissioner or the commissioner's representative for inspection at all reasonable times. The commissioner or the commissioner's representative shall make or cause to be made such inspections or investigations of the premises and records as considered necessary.

(b) The commissioner shall issue rules and regulations requiring licensed commercial breeders to permit inspection of their animals and records at reasonable hours upon request by legally constituted law enforcement agencies. Section 44-17-712.

(a) The commissioner may promulgate such rules and regulations as are reasonably necessary to implement this part.

(b) This part is in addition to, and supplementary of, title 39, chapter 14, part 2.

Section 44-17-713.

(a) It is an offense for a commercial breeder to operate or maintain a controlling interest in any releasing agency.

(b) It is an offense for a commercial breeder to violate this part or any rule promulgated by the department to implement this part.

(c) Unless otherwise specified, a violation of this part is a Class B misdemeanor, punishable by fine only.

(d) After the licensee receives notice from the commissioner of any violation of this part, each day of a continuing violation constitutes a separate offense.

Section 44-17-714.

(a) Subject to this part, the commissioner has the authority to confiscate companion animals maintained in violation of this part and to enter into cooperative agreements with local or federal animal welfare agencies or national humane organizations to house and provide for the humane treatment of such animals. The commissioner has the authority to transfer such portion of any security bond the commissioner petitions for and the court imposes pursuant to §

39-14-210(g) to the agency or organization housing the confiscated companion animals for the purpose of defraying the cost of housing and caring for such animals.

(b) The commissioner shall also have the authority to petition the court in which a violation of this part or title 39, chapter 14, part 2, is being heard to request that the commercial breeder or person commercial breeding in violation of this part be ordered to post security as provided in § 39-14-210(g).

(c) The commissioner may also enter into cooperative agreements with local and federal agencies for purposes of implementing this part.

SECTION 2. Tennessee Code Annotated, Title, 47 Chapter 18, Part 1, is amended by adding the following appropriately designated new section to provide as follows:

Section 47-18-1__.

(a) Notwithstanding any other law, and to be construed as supplementary to any other law, the following shall constitute a separate violation of this part:

(1) Each companion animal sold, offered for sale, or advertised while the dealer or commercial breeder is unlicensed or has had such license suspended or revoked; and

(2) Each unfair or deceptive statement, material omission, or action taken by a commercial breeder.

(b) Any commercial breeder who commits a violation of this section shall be subject to a remedial civil penalty for each separate violation not to exceed one-thousand dollars (\$1,000).

(c) Upon reason to believe that a commercial breeder is selling dogs or cats while unlicensed pursuant to title 44, chapter 17, part 7, the attorney general and reporter, after consultation with the director of the division of consumer

affairs, may issue a pre-filing request for consumer protection information in accordance with § 47-18-106. Should a person deny the representative access to the premises, the attorney general and reporter shall petition, without cost or bond, any circuit or chancery court of competent jurisdiction for an order granting access to such premises and records. The provisions of this part shall apply to the issuance of such request.

SECTION 3. Tennessee Code Annotated, Section 39-14-210, is amended by deleting the first sentence of subsection (g) and substituting instead the following:

The applicable district attorney general or the commissioner of agriculture, acting on behalf of any governmental animal control agency or any humane society, chartered by this state, into whose custody any animal victimized under this part or is placed, or into whose custody any companion animal is placed following a violation of title 44, chapter 17, part 7, may petition the court requesting that the person from whom the animal is seized, or the owner of the seized animal, be ordered to post security.

SECTION 4.

(a) Section 44-17-404(b) of the amendatory language of SECTION 1 of this act shall take effect upon becoming a law, the public welfare requiring it.

(b) This act shall take effect upon becoming law, the public welfare requiring it for the purpose of notifying the public, making staff arrangements, and for promulgating rules and regulations.

(c) For all other purposes, this act shall take effect January 1, 2010, the public welfare requiring it.