From: Mary Visser[redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/3/2012 12:18 PM
Subject: Comments and Concerns regarding licensed Dog And Cat Breeder proposed regulations

Melissa Rinard, Legal Assistant

General Counsel's Office, Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

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Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

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Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

Section 91.21. License Required—Presumptions.

"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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding."

I am particularly concerned with the rule above regarding proving you do not use an intact female for breeding. As a show breeder I always take back any dog I sell for any reason. This means I may have no proof that a female I take back is spayed. It also means that this will limit me from making this offer if you count these returns in my breeding stock when they are not. Do I force them into surgery again just to prove they are spayed? Also many older dogs I keep are not spayed yet they are not used for breeding. Spaying and neutering cause 2.5 % of all deaths of pets and my old dog may not be of sufficient health to warrant such superfluous surgery to satisfy some law that shows a lack of knowledge about show kennels and how they operate. Also, spaying and neutering cause cancer and early death of animals as well as kidney problems.

This is major surgery you enforce by this law. Also 4 month old intact animals can not be bred so why are they included as a breeding age of an intact animal? Most dogs do not come into heat until 7/8 months of age and no dog can be bred more than once a year depending upon how long they nurse the litter. So this idea of proving you are not using a dog for breeding should not be in this law at all as it is clearly an attempt to end all breeding. Show Breeders grow out puppies for future breeding and they may or may not be suitable or what the breeder wants to incorporate into their line. By not excluding show breeders as you have sporting dogs you will seriously damage future generations of purebred dogs. This law will artificially limit the gene pool. Realize that not all intact dogs are ever bred in a show kennels only the best are used. But you do not know what the best are until they are fully grown. This law limits the number and requires vague proof that is not clear of what is used for breeding. You should be able to tell just by the number of puppies born to a dog. There is no need to talk about intact dogs other then to stop or limit the gene pool from its diversity. This is an animal rights tactic to stop all show

dog breeding where the breeder is breeding for quality and may keep a larger gene pool incase dog dies or is not suitable to breed. You don't know until they are fully grown. I know many show kennels that keep a larger number of intact females that may never be used for breeding but are there incase or may be used only once in their life time. This part of the law should be expunged as it is unnecessary and will cause more harm to show breeders by artificially limiting the gene pool. And it will prevent show breeders from taking back any of their own dogs at any time.

"(a) A person may not act as, offer to act as, or represent 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."...

This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."

* *

"(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application."

Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the department shall approve the application."

Section 91.30. Exemptions.

"...(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

(1) evidence of agriculture activity or business operations using a dog described by this section; (2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events."...

Most of this law is injurious to Show Breeders on several points. Limiting the gene pool, making puppies count as breeding dogs, and keeping kennels at temperature ranges that do not help individual dogs. For example, new born puppies kept at 85 degrees will die as that is too cold and for some breeds of dogs like huskies 45 is too hot. Heavy coated dogs prefer colder weather and controlling humidity is really making the puppies not able to acclimate to real weather. A good breeder knows when their dogs are in distress and will take steps accordingly, but making artificial ranges of temperatures that do not exist in the real world actually hampers the ability of the animal to acclimate to reall world temperatures. This rule is too limiting and actually causes more distress in new born puppies and heavy coated dogs.

Section 91.59. Responsibilities of the Department—Reporting Violations; Eligibility of Applicant.

This part does not offer the breeder any protection from zealots of the

animal rights movement who harass them by making false accusations. You keep no record of the complainer, and no outcome to protect the breeder*. Additionally,
the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission**.* We have had such people put broken glass around the show buildings, put antifreeze in our dogs water buckets at shows, and make false charges repeatedly to the point most shows hire police protection or security guards. What kind of protection are you setting up for the breeder to prevent harassment? You make us pay a fee and for what services will we get for this fee other than more harassment. By the way the fees are so high most show breeders will not be able to continue. Show breeders do not make money on their dogs and barely cover their costs if at all. This law will end the breeding of quality show dogs by limiting the gene pools severely. It only takes five years of a bad law to end many breeds of dogs who already have low gene pools.

* *Section 91.112. Standards of Care—Veterinary Care.

... "(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal."

This section is vague and unnecessary. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? The required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. This is a decision best left up to the vet and the owner. Many diseases can be brought on by forcing a dog to skip a breeding cycle so the condition and history of the animal determine the ability to carry a litter to term in a healthy manner and that should be decided by the vet and the owner not the government.

Section 91.66. Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.

..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity."...

* *This law goes against entering ones home unless a warrant has been obtained. That is required to enter anyone's private residence. This is against one's constitutional rights.

* *

Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements: (1) General requirements.

..(B) Primary enclosures must be constructed and maintained so that they:
...

(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;".

This is not clear, Water 24/7 yes, unless a vet restricts water intake. But giving access to food all the time is very wrong as it will cause the pet to become obese. Keep tartar on the teeth and cause diabetes from overweight. This rule is not clear at all.

I strongly urge TDLR to address the concerns I highlighted above before adopting these rules.

Sincerely,

Mary Visser

Georgetown, Texas

From: Louise Epstein [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/2/2012 5:40 PM
Subject: HB 1451 Rules Comment–Humane Treatment of Dogs/Cats in Commercial Breeding Facilities
Attachments: Louise Letter to Protect Dogs Feb 2 2012.pdf

Good evening. Please see the attached letter. Thank you for your time.
Louise

--
Louise Epstein
President, eCampusTutors
an Austin Technology Incubator Company
Fellow, IC² Institute
University of Texas at Austin
[redacted]

eCampusTutors®

February 2, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
PO Box 12157
Austin, TX 78711

Louise Epstein
President

Re: HB 1451—Opportunity to Comment

Dear Ms. Rinard:

Thank you for the opportunity to comment on the proposed rules regarding humane treatment of dogs and cats in commercial breeding facilities.

I am a businesswoman and the former Entrepreneur in Residence at the UT McCombs School of Business. I am a former Austin City Councilmember. I am the President of an online tutoring company that was just recognized by the Chamber as one of the A-List Companies (fastest growing) in Austin.

I had never participated in legislation, at any level, regarding animal welfare. But on January 31, 2010 all that changed. That day I rescued a 13 pound West Highland White Terrier who had lived his entire six years in a wire cage that was coated with feces. Too sick to breed, the owner of this 200 dog breeding facility discarded this dog, who weighed in at only 2/3 of his normal size.

A few days later I took Toby (named for the tobacco-colored stains from rust and feces, that turned his white fur brown) to the vet. I was horrified to learn that he had to have 20 infected teeth pulled. He was dying of infection and in excruciating pain.

That Toby survived the surgery was a miracle. As he began to heal I began to understand the impact of the inhumane conditions he, and thousands like him, suffer. Toby had no muscles—his cage was too small for him to move. He had no coordination or sense of depth perception. He had no life experience. He was afraid of every sight—including butterflies—and every sound. He was a psychological wreck. And despite living on a fenced acre, once I did get Toby to urinate outside,

he searched out our rusty "yard art" objects—as rust was all he knew.

Mortified, I contacted the newspaper in Brownwood (from whence he came) and spoke to the editor. He told me that he had assumed that Toby's breeder had been closed down after they were cited by the authorities for water pollution—from the massive amounts of feces and urine, that fell to the earth from the wire-bottomed cages.

I would not have been able to sleep, let alone live with myself, if I did not take action to end the humane conditions I learned about, through Toby.

I commend the Committee for increasing the size of the cages to enable normal movement. I also commend them for requiring solid surfaces on one-half of the cage flooring. This is a good start. However I take issue with **grandfathering existing breeder facilities**. By doing so, the Committee creates two classes of breeders—something the Legislature never intended.

In addition, allowing stacking up to three levels is a bad idea. Stacking creates unhealthy conditions by making the care of animals in the upper tiers problematic. It also makes it more difficult to remove the animals in the upper tiers for their required daily exercise. If any stacking is allowed, it should be limited to one cage on top of another.

I also applaud the Committee's recommendation that euthanasia and surgical births be performed only by veterinarians. However, I am deeply troubled that the Committee wants to override the opinion of veterinarians and enable non-vets to dock tails, crop ears, declaw (remove the first digit), and remove vocal chords.

As Texans, we should be proud of our commercial breeders. With your help, we will. The humane treatment of dogs and cats is important to me, as it is for so many others. I thank you for your time. Please feel free to call me.

Sincerely,

Louise Epstein

Melissa Rinard - Proposed regulations for dog breeders.

From: "Painted Sky Farms" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/2/2012 4:23 PM
Subject: Proposed regulations for dog breeders.

Dear Ms. Rinard,

I am very concerned with some of the proposed rules for breeders as developed by TDLR. I probably have a very different view that some - you see I'm a breeder (occasionally), but first and foremost, I'm an exhibitor. I visit the great state of TX on a very regular basis to show my dogs and occasionally breed. Does TDLR know that those of us "in" dogs contributed over $90.2 Million dollars to the TX economy? Those are the 2010 stats... and our participation in TX has steadily grown. When we visit your fine state, we spend our hard earned dollars on hotel stays, restaurants at your gas stations, Wal-Mart's, auto dealerships when we have a breakdown - health clinics and local veterinarians should the need arise. When I come down to breed one of my girls, it's much the same only you can count on my visiting a reproduction specialist veterinarian several times during my visits.

Many of the proposals will have unintended consequences for those who are serious, responsible hobby breeders. I can attest that I make NOTHING on any litters I may have. Between showing my dog - often out of state as I have stated above, getting all health clearances on my dogs, vetting my dogs, feeding and caring for them - the cost of the stud fee - IF and that is a huge if, I break even, I consider myself very, very fortunate. I know that the bulk of hobby breeders are in the same boat. Your asking hobby breeders to spend $650.00 just to apply to be licensed - and just what does this license do for them??? I would have to figure out where on earth I am going to GET that $650.00 - as I already go in the hole with my "hobby"... last year I spent over $13,000.00 on my hobby and I didn't breed a single litter. What is my $650.00 going to give me ($475 per year after) and just what do you hope to accomplish by this licensing?

You see it comes down in the end to ethics - and our lawmakers SHOULD know by now that you cannot legislate ethics. The responsible hobby breeders will cease to be hobby breeders - that means that the State of TX will not continue to see $90.2 Million dollars poured into their economy - because people like me, will not have the stud dogs available, and frankly - if it's as restrictive and vague as it is written, I may never bother to come visit the state to show again.

All these proposals will do is make the good breeders quit breeding and those that are substandard breeders, those who already don't care about the laws - will simply go underground and won't bother to do the basics (think rabies vaccinations etc) for fear of being caught. PLEASE think this through thoroughly - it will have some serious unintended consequences that the State of TX cannot afford.

Thank you for your time and consideration -
Sharon K. Sherwood
Purpose Bred Golden Retrievers and Welsh Springer Spaniels

Greeley, CO
[redacted]
Greeley Chamber of Commerce
Member Services/Executive Assistant
Greeley, CO

Melissa Rinard - Regarding Texas Humane Legislation Network: Rulemaking Authority Under Texas Occupations Code, Chapter 802

From: "Denny, Barbara J." [redacted]
To: [redacted]
Date: 2/2/2012 3:14 PM
Subject: Regarding Texas Humane Legislation Network: Rulemaking Authority Under Texas Occupations Code, Chapter 802
CC: <erule.comments@license.state.tx.us>, [redacted] Voltmer, Alicia Sienne" [redacted]
Attachments: THLN Letter.pdf

Please see attached correspondence from Alicia Voltmer of Ogletree, Deakins.

Thank you.

Barbara J. Denny | Legal Secretary | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
[redacted]

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From: [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/17/2012 5:08 PM
Subject: CH 91: Proposed Dog or Cat Breeders Program

The thoughts of TDLR are appreciated when putting together this proposal. It is sad it has come to this since there is not enough manpower to enforce current cruelty laws. Those parties that abide by the law will continue to do so and those that don't, won't. I feel for the small kennels on the lower end of the spectrum, having the added expense of becoming licensed and possibly building an entire new facility just to keep their loved ones will force them into producing more litters to cover the added expense which is totally the opposite affect I think this bill was aimed at.

A couple things I for one am not clear on should I have a need to seek a license in the future.

Section 91.10 Definitions
(19) Wire or Wire Mesh - Certainly disapprove of floors being made of any type of wire, mesh, etc. whether it is coated or not. Animals deserve to have solid flooring. Is this definition however, intended to also not allow the manufactured kennel panels you see at retailers that have the 2"x4" squares and are typically available in 5x10 or 10x10 and used as free standing pens or as dividers between pens and runs? This seems that it would also apply to chainlink fencing ? Unless I have completely mis-understood this definition it appears that the animals are to be imprisoned with solid walls and not the best for their health and/or well being.

Section 91.22 License Required - Dog or Cat Breeder
(a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter of each facility that the person owns or operates in this state

Vague - is this to mean that someone who has less than 11 intact females and may only have a couple litters a year not consider themselves a "breeder" even though they probably take better care of their animals as a whole, do health clearances, and study pedigrees in order to produce the healthiest offspring possible. A "Breeder" should strive to raise quality not quantity.
Maybe this should read "may not represent themselves as a Licensed Breeder"

Section 91.30 Exemptions
(e) For purposes of this section a dog is presumed to count uner 91.10 (8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to: (1) evidence in agriculture activity or business operations using a dog
(2) entry registration forms or receipts issued by an entitity sponsoring, conducting or organizing competitive events...

Need clarification - What proof is acceptable that dogs are kept for agricultural purposes? Very hard to prove for instance a 7mo old pup does what it is intended to do as an adult. Dogs also are entered in competitive events such as agility, flyball, disc, conformation, would these be exempt?

Section 91.59 Responsibilities of the Department - Reporting Violations; Eligibility of Applicant
(a) .... establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

Will there be fines imposed on those filing false reports in an effort to obtain a reward ? Anyone that gets mad at someone else could be filing false reports causing excessive expense on the Department and causing unnecessary harrassment of breeders operating legally.

Section 91.102 Standards of Care - Sheltered Housing Facilities
(e) Surfaces
Regardless of licensing date, do animals not deserve to have a solid surface to stand on? Seems those licensed prior to Sept 1 who are somewhat abusing animals get to continue to abuse as long as they continue to timely renew their license. Those large kennels that do not wish to provide this should be the ones this bill is aimed at, not the smaller facilities that wish to comply.
Feel this should be standard for all facilities regardless of licensing date

Section 91.104 Standards of Care - Primary Enclosure
(B) Space
Should license date really determine proper enclosure size? (2x larger pending license date)

Thank you in advance for your review,
Raymond Peckham

From: "dynmark@att.net" [redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
Date: 2/17/2012 5:23 PM
Subject: Puppy Mill Legislation-Commentary
Attachments: a To Whom It May Concern.docx

Attachment with input.

Richard L. Vandervoet | 214.213.8411
[redacted]

To Whom It May Concern:

As an animal lover and advocate, I remain appalled, even a bit perplexed, that puppy and kitten mills still exist in a supposedly civilized society. Unfortunately, greed and selfishness often rule, so, hopefully, more stringent laws will be passed to ensure the best living conditions for these breeding animals.

Just recently, I read another heart-wrenching article on the subject of puppy mills, this one by a Dallas animal advocate, listing the major priority issues that must be changed. Given that the passage of the 2011 Puppy Mill Bill is critical to animal welfare, several of its rules are too weak and provide little, if any, protection for the dogs and cats unfortunate enough to be forced to live in these commercial breeding factories.

By toughening existing laws and creating new laws to clean up after ineffectual ones, Texas may well end this heartless travesty toward animals. In addition, get rid of the loopholes that allow existing breeders to be grandfathered in for several years due to the expense of meeting compliance. (If they cannot afford to be humane, they are in the wrong business.) Issues concerning wire flooring (the effects of which over time are unconscionable), cages sizes (no animal should be locked in a cage, especially a small one, for life or most of the time), cage stacking (encourages overcrowding, neglect, filthy conditions), and surgical procedures (should never be administered by lay persons).

With diligent supervision and inspection procedures provided by stronger animal protection laws, perhaps Texas can lead the nation in significantly reducing (eventually eliminating) the number of puppy/kitten mills, allowing only an exclusive few humane breeders to operate who can ensure the survival of healthy select breeds, thus allowing poorly human-engineered, defective breeds to become extinct.

I hope my comments and concerns serve as part of a larger effort by other animal lovers to help our lawmakers realize that the puppy mill issue is of major importance, along with other animal cruelty issues, to a large number of voters, and it is a reflection of our values as one of the largest and richest states in America.

Sincerely,

Linda Youngblood

[redacted]

From: mb0721 [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/17/2012 9:08 PM
Subject: Melissa Rinard - Concerns with Licensed Dog and Cat Breeder Proposed Regulations
Attachments: Mayra Bremer's letter to the TDLR.doc

Ms. Rinard, please see attached letter concerning the Licensed Dog and Cat Regulations

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Mayra Bremer

February 17, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

I have reviewed the Texas Department of Licensing and Regulation's regulatory proposal and I offer the following comments. (NOTE: Each section of concern is quoted below, with my comment and recommendation following in bold.)

I have been a professional breeder for several years and I have an excellent following and reputation. We have use innovation in our kennel. We have produced an excellent whelping and puppy kennel to ensure the safety and cleanliness of our breeders and their puppies. My puppies are sold all over the country and I even have sold puppies to customers in Germany. My customers send me emails with pictures of their puppies and I get a good amount of Christmas cards. My kennel has been inspected by AKC for the last nine years and it has been a pleasure to deal with the AKC inspector.

I have very healthy dogs because of the food I feed them and the way I care for them. When they are sick, I take them to the vet, with whom I already work closely already. I have been breeding for nearly nine years. We are a homeschooling families and raising puppies has given my children another perspective in life. Life is not meaningless. Losing a puppy is always a sad ordeal. My children are very well aware of the value of dogs as pets and protectors of the home. Needless to say that they love the job of playing with puppies. For that, I'm thankful.

I raise Cocker Spaniels, Boston Terriers and Golden Retrievers. My dogs are exercised regularly. They love to play with each other. But even, when the weather doesn't permit for them to exercise in the big runs, they have plenty of room to run in their kennel.

I'm not necessarily concerned about not passing the inspection for the license. My dogs are well taken care of and my customers love my facilities. The concerns I have are listed below. May you have the wisdom to sort all this out for the benefit of all involved.

§91.10.Definitions.
(8) Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is

engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.

Mayra Bremer's comment: Does this clause include brokers?

§91.23.License Requirements--Dog or Cat Breeder.
(2) provide a valid state tax identification number or exemption certificate number;

Mayra Bremer's comment: What is an exemption certificate? Who can be entitled to one?

§91.50.Inspections--Prelicense.
(c) Before the prelicense inspection may be conducted, applicant must pay to the department the required inspection fee and the reasonable expenses of the department related to its licensing and inspection duties under this chapter.

Mayra Bremer's comment: What do you mean by reasonable expenses? Do you mean you will charge more than the prelicense fee?

§91.51.Inspections--Prelicense Exemption.
The department may not require 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; and
(2) submits to the department:
(A) a copy of the license; and
(B) on a form prescribed by the department, provide a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

Mayra Bremer's comment: Is this a USDA license? Are we required to have had this license for a while or can we get it now before we are required to have a prelicense inspection?

§91.53.Out-of-Cycle Inspections.
(c) The owner of the facility shall pay the fee required under §91.80 for each out-of-cycle inspection.

Mayra Bremer's comment: The inspection fee is already high. I believe the prelicense inspection fee should be good for at least three inspections. If a fee for three or four inspections is required, that would be $500 to $700. Some breeders might not be able to pay these fees, and that would automatically put them out of business. It wouldn't take much to lose your income overnight if the fees are so high. I believe the purpose of the dog and cat licensing is to improve the wellbeing of dogs and cats being raised in Texas, not to put people out of business in a time frame that would be deplorable for their families. Breeders can be educated and worked with.

§91.54.Corrective Actions Following Periodic or Out-of-Cycle Inspections.

(2) within 15 calendar days after receiving the list of required corrective actions, the license shall complete all corrective actions and provide written verification of the corrective actions to the department.
Mayra Bremer's comment: 15 calendar days is not enough time to take care of some things, especially if the corrections require a large amount of money. 45 days would be my recommendation.

§91.55.Responsibilities of the Department--Directory. (a) The department shall maintain a directory of licensed breeders and of third-party inspectors
(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions.
(b) The department shall make the information maintained in the database available to the public.

Mayra Bremer's comment: Providing all this information to the public when a licensee is trying to comply with a new law that has been put in place doesn't seem right to me. If a breeder is not fit to be licensed, then he should not be granted a license, but providing all this information to the public could give the breeder a bad name even after the desired actions have been corrected. What I mean is that it could affect future sales even after the breeder has finally complied with the law in full.

§91.57.Responsibilities of the Department--Consumer Interest Information.
(a) The department shall prepare information of consumer interest describing:
(1) the functions performed by the department under this chapter; and
(2) the rights of a consumer affected by this chapter.
(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department.
(c) The department shall make the information available to the public.

Mayra Bremer's comment: Are other licensed occupations dealt with in this manner, for example, plumbers, electricians, etc.? It seems that it's too easy for the public to file complaints. Will the breeder be able to get notified about the complaint immediately and be able to put in information on his defense, just like the BBB does? The BBB gives you the chance to deal with the complaint before it goes public. Are the breeders going to have this opportunity?

§91.74.Responsibilities of Licensee--Mandatory Contract Provisions.
A licensed breeder must include in each contract for the sale or transfer of an animal:
(1) the license number; and
(2) 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 commission rule that includes the department's name, mailing address, telephone numbers, and Internet website address.

Mayra Bremer's comment: This seems a little overdone to me. The license number should be more than sufficient for an individual to trust the kennel they are getting a puppy from.

This seems excessive. Again, are other types of licenses requiring such amount of information on their contracts? Also, some of us have contracts already in place. This will require destroyed perfectly fine contracts and spend more money on new copies. Is having a contract mandatory or is this mandatory if you have a contract when you sell a dog?

§91.80.Fees.
(a) Application Fees.
(1) Dog or Cat Breeder License (11-25 Intact Female Animals):
(A) Prelicense Inspection Fee--$175 per facility.
(B) Original Application--$475.
(C) Renewal--$475.
(D) Periodic and Out-of-Cycle Inspections--$175.
(E) Duplicate License--$25.
(2) Dog or Cat Breeder License (26-60 Intact Female Animals):
(A) Prelicense Inspection Fee--$350 per facility.
(B) Original Application--$950.
(C) Renewal--$950. (D) Periodic and Out-of-Cycle Inspections--$350.
(E) Duplicate License--$25.
(3) Dog or Cat Breeder License (61 or more Intact Female Animals):
(A) Prelicense Inspection Fee--$700 per facility.
(B) Original Application--$1,900.
(C) Renewal--$1,900.
(D) Periodic and Out-of-Cycle Inspections--$700.
(E) Duplicate License $25.
(b) Revised/Duplicate License/Certificate/Permit/Registration--$25.
(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
(d) All fees are nonrefundable except as provided for by commission rules or statute.

Mayra Bremer's comment: The fees for licensing and inspections are very high in comparison to other license fees, in occupations that make a lot more money than breeders. See the electrician and plumber license fees below, just as an example:

The fees for Original License Applications are:

Master Electrician - $50.00

Master Sign Electrician - $50.00

Journeyman Electrician - $35.00

Journeyman Sign Electrician - $35.00

Residential Wireman - $25.00

Maintenance Electrician - $25.00

Residential Appliance Installer - $35.00

Residential Appliance Installer Contractor - $115.00

Electrical Contractor - $115.00

Electrical Sign Contractor - $115.00

Electrical Apprentice - $20.00

Electrical Sign Apprentice - $20.00

A Journeyman Plumber is someone who installs, changes, repairs, services, or renovates plumbing, or supervises any of those activities and works under the general supervision of a Master Plumber. To apply, contact the Texas State Board of Plumbing Examiners at 1-512-936-5200.The exam fee is $27 (which includes the license fee).

§91.112.Standards of Care--Veterinary Care
(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

Mayra Bremer's comment: We feed our animals very expensive food and take very good care of them. A dog that is not cared will not produce puppies. An underweight dog will not get pregnant. I don't see the need for this extra expense and extra amount of work. Taking several dogs to the vet is no easy task for a breeder. Plus, there is a lot of expense in providing these "well dog check ups". The vets will be making lots of money off the breeders. Is there any scientific proof that a dog or a cat or a human for that matter should not reproduce using the natural birth spacing. By doing this, you will cut production in half. Profits will automatically decrease. The breeders in Texas will give up breeding and customers will have to go elsewhere to get their puppies. I agree with the licensing law but making breeders not able to breed their females more than once a year without any proof of good health for the dog is making some of us reconsider and give up our professional production of puppies. I tell my customers when I can't provide them the puppy they want to make sure they get a puppy that has a guarantee. Now, that is just and right. We guarantee our puppies because we take good care of our breeding dogs. We can't afford not to produce healthy puppies. The accountability of a breeder doesn't end with a license. If you make it financially impossible for breeders to comply with the regulations, some breeders will have to not breed dogs and this income would disappear in a matter of months since it would be against the law in Texas.

§91.113.Standards of Care--Sales and Transfers.
A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned.

Mayra Bremer's comment: The second part of this statement is not clear, the 12 weeks part doesn't make a lot of sense.

I strongly urge TDLR to address the concerns I highlighted above before adopting these rules.

Respectfully,

Mayra Bremer

[redacted]

From: "Nancy Francis" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 9:00 AM
Subject: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Melissa Rinard, Legal Assistant

General Counsel's Office

Texas Department of Licensing and Regulation

PO Box 12157

Austin, TX 78711

By e-mail to <mailto:erule.comments@license.state.tx.us>
erule.comments@license.state.tx.us

Ms. Rinard:

I have been a Doberman owner since 1990, involved in showing since 1998, and a member of Doberman Pinscher Club of Houston since 2000. I currently own a Grand Champion male Doberman and a female rescue Doberman. I am a responsible dog owner and concerned citizen, and as such, I will be directly affected by the outcome of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR take into considerations my concerns as listed below before adopting the rules as set out in the regulatory proposal.

Section 91.19. The use of wire or wire mesh flooring is harmful to the animals' paws.

Section 91.21. I object to the presumption that all intact female animals in a breeder's possession will be used for breeding, and the proposed process for proving otherwise is vague and overbroad.

Section 91.22. Further clarification of the license requirements is necessary in order to eliminate several apparent loopholes.

Section 91.27. Notice of Proposed Denial, Opportunity to Comply should to revised to reflect the mandatory nature of the statute.

Section 91.28. Department Notifications should be provided by certified mail, return receipt requested for all registrants who do not provide an e-mail address.

Section 91.30. Exemptions. I request that TDLR provide more specific provisions.

Section 91.59. Reporting Violation, Eligibility of applicant. This section needs stronger protections for breeders. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. More specific information should be retained regarding each complainant and the department's investigation.

Section 91.66. The last sentence of subpart (C) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

Section 91.71. Please remove subpart (a) regarding false advertising, which is covered by Bus & Com section 17.46.

Section 91.80. Fees. Fees as set out in the proposal are so high as to discourage or even prohibit compliance.

Section 91.102. Standards of Care. It may be easier for licensees to comply with the proposed rule without reference to the TACC Scale, or in the alternative, include the TACC Scale and additional explanation in the rule.

Section 91.113. Standards of Care - veterinary Care. Section as written is superfluous and vague. DPCH suggests that the required veterinary care and resulting program of care for an animal should be sufficient to ensure breedings dogs are provided proper care. DPCH requests removal of this section.

Sectcion 91.113. Standards of care - Sales and Transfer. I suggest that the rule read "A licensed breeder shall not sell, trade or give away an animal before the animal is 8 weeks of age."

I strongly urge TDLR to address the concerns above before adopting these rules. The current version of the rules as drafted is generally vague and overbroad and will encourage noncompliance and/or prohibit compliance.

Nancy Francis

[redacted]

From: [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 4:01 PM
Subject: Concerns With Licensed Dog and Cat Breeders Proposed Regulations

Melissa Renard, Legal Assistant
General Counsel's Office, TDLR
Austin, Texas 78711

Re: Concerns with Licensed Dog and Cat Breeders Proposed Regulations

Dear Ms. Rinard:

I have already sent you one e-mail regarding the proposed regulations, but to keep my correspondence from being too lengthy, I have broken my suggestions into more than one letter. This is my second e-mail to you.

I have owned dogs most of my life, and since the early 1980's have been involved in exhibiting my dogs in AKC conformation dog shows, as well as training my dogs in obedience and tracking. I also have bred some of my dogs--generally when I need something else to show. Of course, not all puppies in a litter are of show quality, so I have sold some of my puppies to carefully selected pet homes.

My dogs receive the very best possible care, top quality dog food, proper housing, with constant access to fresh water. They see my veterinarian for vaccinations and any other time that there is a health problem.
I spend approximately $450.00 per month for food, electricity (my dogs are in a climate controlled environment), water, and vet care.

The following are additional sections that I have concerns with:

Section 91.59. Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.

I believe that this section opens up the possibility of malicious complaints meant only to disturb the normal operations of breeders, whether or not they meet the requirements for licensing. There should be a provision that in cases when an anonymous submission code is requested, the Department should still have on file the personal identification information of the complainant that is not made publicly available. A record of each complainant should be maintained detailing all complaints submitted by the complainant to the Department in order to establish patterns or habits of contact, and whether or not each complaint was substantiated.

Section 91.66. Responsibilities of Inspectors–Inspectors, Investigators, and Reports of Animal Cruelty.

Subpart (c) should be changed, and should contain a provision that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

Section 91.80. Fees

I believe these fees to be extremely high, if not exorbitant, especially for small breeders. I already spend approximately $ 450.00 monthly on my dogs, and adding annual fees of over $ 800.00 for licensing, and additional annual veterinarian fees of approximately $2000.00 will make it impossible for me to justify having the one litter of puppies that I may or may not have each year--I have had one litter of puppies

in the last 5 years. I only breed when I want something else to show, and sell only the puppies that are not kept to show. However, my females are intact (not spayed) because they cannot be shown in Conformation Shows unless they are intact. I have only sold 4 puppies in the last 5 years.

In addition to the above expenses, each litter I produce costs me at least $ 2000.00 in additional veterinary care for prenatal testing and care of the mother, whelping and care of the puppies, vaccinations and routine wormings, and post-natal care of the mother. This also does not include the additional $600.00 (or more) additional expense if the mother has to have a caesarian section

Section 91.102. Standards of Care–Sheltered Housing Facilities.

I truly believe that my facilities meet all of the proposed requirements. However, the Tufts Animal Care and Condition Scale is very difficult to understand and might lead to a patchwork of conditions and enforcement actions. I believe all mention of the Tufts Animal Care and Condition Scale should be removed from these regulations.

Section 91.112. Standards of Care--Veterinary Care.

I do not agree that every animal should have a complete physical exam by a veterinarian every year. When we take a healthy animal into an animal clinic or hospital, they are instantly exposed to whatever diseases, germs, and viruses have been brought in that day by sick animals. This would cause undue risk to our healthy animals. My dogs are routinely vaccinated as needed--however, I do not always have a complete exam--in fact, my vet prefers to come to my vehicle for the vaccinations unless there is something wrong with my dogs.

Also, under "(d) breeding cycles" I am not sure what is intended by adequate rest between breeding cycles. Does this mean an individual breeding female needs to skip a breeding cycle? Or, does it mean that she should not experience strenuous exercise or work between cycles? My opinion is that the necessary veterinary care of a breeding animal should be sufficient to ensure that breeding animals are provided with proper care.

Please consider and address these points in your deliberations before finalizing your rules and regulations.

Sincerely,

Kathryn Beard
Longtime Exhibitor and Breeder of Show Dogs
[redacted]

From: [redacted]
To: <[redacted].comments@license.state.tx.us>
Date: 2/18/2012 6:11 PM
Subject: COMMENTS ON DOG OR CAT BREEDER PROGRAM DRAFT RULES
Attachments: hb_1451[1].doc

I am submitting a memo with comments on the proposed draft rules re: HB 1451, now law. I would appreciate your attention to our comments on this issue. I am also enclosing our comments as an attachment.
Thank you for your attention
Mary K Condon, vice president
Seacoast Cat Club

TO: MELISSA RINARD, LEGAL ASSISTANT,
GENERAL COUNSEL'S OFFICE
TEXAS DEPARTMENT OF LICENSING AND REGULATION (TDLR)

FROM: MARY K CONDON, VICE PRESIDENT
SEACOAST CAT CLUB
NEW ENGLAND

RE: HB 1451 DRAFT RULES

DATE: FEBRUARY 17, 2012

In response to your request for comments on the draft rules for implementing the Dog or Cat Breeder Program subsequent to the passage of HB 1451 as law, we, the approximately 35 members of the Seacoast Cat Club, http://www.seacoastcatclub.org/ would like to offer the following input:

- Vigilance is needed to ensure that rules for dogs are not indiscriminately applied to cats. Felines are not little dogs. There are many differences in husbandry, housing, breeding, and socialization. We are also fearful that rules that are now applicable to dogs will become over generalized to other breeders/species such as cat hobby breeders for whom they may well not be appropriate.

- For example, breeding of a cat is very much dependent on the cat herself and her heat status.. (SEC. 802.004. PRESUMPTION OF USE FOR BREEDING. (see Draft Rules §91.21.License Required--Presumptions.) (See §91.30.Exemptions.)

- Cats are most frequently raised in a home situation; engineering standards are not appropriate for cats. Large numbers of cats are not the norm. A person or family's privacy should be maintained. (SEC. 802.056 AND 802.057 - ESTABLISH A PUBLIC DATABASE OF LICENSEES AND DISCIPLINARY ACTIONS. (see §91.55 and §91.56)

- Some cat hobbyists need only occasional assistance to provide daily appropriate care for their cats, e.g. when owners are out of town (§91.110.STANDARDS OF CARE--ONSITE PERSONNEL)

- If a breeder does not need licensing at this point, can he/she still advertise as a breeder? Will the number limits for this rule be lowered at some point in time? (802.101 LICENSE REQUIRED (See §91.22.License Required--Dog or Cat Breeder.)

- If licensed, If should breeders be required to have every cat in the cattery (home) examined by a veterinarian on a yearly basis? (§91.112. STANDARDS OF CARE--VETERINARY CARE)

In summary, we ask that the TDLR reject the proposed rules for the reasons stated by the SAOVA and RPOA. We wholeheartedly support the comments and concerns of RPOA and SAOVA.

Seacoast is a club composed of cat fanciers and breeders. Some of our members have acquired/sent cats to fellow breeders in Texas. Others have used cats from Texas cat hobbyists for breeding purposes. We have approximately thirty-five members from New Hampshire, Massachusetts, the other New England states, and other Northern states.

From: "Joanne Barnes" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 8:13 PM
Subject: Comments Regarding Proposed Breeder Rules
Attachments: NRKCLetter_TDLR_020812.pdf

Please see the attached letter for comments from the Nolan River Kennel Club.

Regards,

Joanne Barnes, President

Nolan River Kennel Club

[redacted]

Nolan River Kennel Club

February 18, 2012

Melissa Rinard
Legal Assistant
General Council's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Dear Ms. Rinard,

Members of Nolan River Kennel Club have reviewed the Texas Department of Licensing and Regulations Regulatory proposal, and we have several areas of concern where we would like to respectfully submit some suggested changes. Our comments are as follows:

- Section 91.10 Definitions.
  - (19) Wire or Wire Mesh - We feel a statement such as "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet." would be a reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness .

- Section 91.21 License Required – Presumptions.
  - We propose that if an animal is declared by the owner that it is not used for breeding (could be an intact older female, for example) to get a signed affidavit from the owner that the female is intact, but will not be used for reproduction.

- Section 91.22 License Required —Dog or Cat Breeder.
  - This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."

- Section 91.27 Licenses or Registration – Notice of Proposed Denial, Opportunity to Comply.
  - We think you should change that the department MAY approve the application to the department, to SHALL approve the application. It states that the department will approve the application if all rules are met.

- Section 91.28 Department Notifications to Licensee or Registrant.
  - We agree that you should notify an application by email, but should add at the end of the statement: "And also by certified mail, return receipt requested."

- Section 91.30 Exemptions.
  - We think that show dogs and cats should be exempted since it specifically says "similar organized competitive events". Also there is no exemption for service animals, such as seeing eye dog facilities, hearing dog training facilities that also breed dogs, government service dogs such as police dogs, narcotic dogs, or search and rescue dog facilities.

- Section 91.58 Responsibilities of the Department —Donations, Disbursements and Reporting.
  - We strongly feel that all donations should be made public record.

- Section 91.59 Responsibilities of the Department – Reporting Violations; Eligibility of Applicant.
  - Stronger protections for breeders should be included, to prevent malicious complaints. While we understand that reporting violations by others is an important way for the organization to look for violations, we are in agreement that some guidelines should be prepared and records of each complaint and informant maintained and reviewed for malicious intent.

- Section 91.66 Responsibilities of Inspectors – Inspectors, Investigators, and Reports of Animal Cruelty.
  - The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

- Section 91.112 Standards of Care – Veterinary Care.
  - This section is superfluous and vague. We believe that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. We recomm end removal of this section.

- Section 91.113 Standards of Care—Sales and Transfers.
  - The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. We recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."

- Section 91.202 Transportation Standards – Primary Enclosure Used to Transport Live Dogs and Cats.
  - We think that rules are alrea dy in place at with the airlines to provide safe travel.

We hope that you will consider the comments and changes that the Nolan River Kennel Club has submitted. Should you have any further questions, please feel free to contactus.

Respectfully Submitted,

Joanne Barnes, President
Nolan River Kennel Club
[redacted]

From: "Joanne Barnes" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 10:23 PM
Subject: Comments on Breeding Licenses
Attachments: Zvezda_TDLR_Letter_021812.PDF

Please see the attached letter regarding the proposed rules for a breeder's license.

Regards,

Joanne Barnes

Zvezda Siberians

[redacted]

February 18, 2012

Melissa Rinard
Legal Assistant
General Council's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Re: Proposed Licensed Breeders Administrative Rules

Dear Ms. Rinard:

We have read the rules proposed by the Advisory Board, and have a few comments. While we will not be required to apply for a license as the law now stands, the proposed rules will nevertheless affect us.

Currently we maintain a small "kennel" (they all live at our house) of show dogs. We have 11 dogs ranging in age from 2 years to 15 years old. Some of them are intact for dog shows and some have been spayed or neutered and are retired. Occasionally (every few years or so) we breed a carefully researched litter of puppies intended to provide us with a new dog to show but requiring us to place puppies in well-vetted and conscientious, loving homes. Our dogs are raised in our home, kept well-fed, well-groomed and given rigorous veterinary care.

As the rules are written now, apparently we will no longer be able to refer to ourselves as "breeders", even though we provide a very high quality animal with all health guarantees and years of study and care invested in producing that dog. On section **91.22**, we feel an more accurate alternative wording would be "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."

We feel there that, as written, there are not enough safeguards in place to prevent malicious complaints. As opposed to most of the concerns you license there is an organized and well-funded group whose agenda is to eliminate breeding entirely.

On section **91.30**, we think that show dogs and cats should be exempted since it specifically says "similar organized competitive events". Also there is no exemption for service animals, such as seeing eye dog facilities, hearing dog training facilities that also breed dogs, government service dogs such as police dogs, narcotic dogs, or search and rescue dog facilities. For instance, our kennel club purchases drug-sniffing dogs from a kennel/training facility in Texas and provides them to police officers in Hood, Johnson, and Somervell counties – we feel that type of facility should be exempted.

We have many concerns about housing, as there are apparently no provisions made for animals living in the same quarters as the people. With the intention stated by Senator Whitmire of (in the future) reducing the number of breeding bitches to three to require a license, we are VERY concerned about this. Should this law be applied to us in the future we will not be able to comply as it will be impossible to remove furniture from our bedroom (for example) and I am afraid I do not sanitize my kitchen floor every day. As the law is written now there could be people in our situation that already fall under its aegis, and we feel consideration should be given to breeders whose primary purpose is keeping the animals as pets and companions, with breeding as a secondary concern defined as a hobby and not a business.

On section **91.21**, we have issue with the presumption that all intact bitches are presumed to be for breeding purposes. We know a large number of people who show dogs as a hobby and maintain their bitches intact to show but not necessarily to breed. What evidence is acceptable that a bitch is not to be used for breeding? On a 2-year-old bitch, for instance, will you accept an owner's affidavit saying they do not intend to breed the bitch?

In closing, we feel the American Kennel Club has done an in-depth analysis of the proposed rules and made excellent suggestions that should help your department adequately define and enforce the law. Please take their recommendations into consideration.

Regards,

Bruce Barnes Joanne Barnes

Bruce & Joanne Barnes
Zvezda Siberians
[redacted]

From: "Michael Maddox" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 11:29 PM
Subject: PIJAC comments on Proposed Rule
Attachments: PIJAC Comments on Proposed Rulemaking.pdf

Ms. Rinard:

Please find attached comments of the Pet Industry Joint Advisory Council concerning the proposed rulemaking on licensing and regulation of dog and cat breeders. We appreciate your due consideration of these comments and welcome any questions you may have or requests for additional information.

Thank you,

Michael P. Maddox

Vice President of Governmental Affairs and General Counsel

Pet Industry Joint Advisory Council

[redacted]

PIJAC

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November 18, 2012

Ms. Melissa Renard
Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Austin, Texas 78711

The Pet Industry Joint Advisory Council (PIJAC) hereby submits its comments on the Texas Department of Licensing and Regulation ("TDLR" or "the Department") proposed rulemaking establishing Chapter 91, governing the licensing and regulation of dog and cat breeders, published in the Texas Register, Vol. 37, Issue 3, pp. 164-180.

I. Statement of Interest

As the world's largest pet trade association, representing the interests of all segments of the pet industry, as well as pet owners, throughout the United States, PIJAC counts among its thousands of members associations, organizations, corporations and individuals across the United States. More specifically, PIJAC represents pet product manufacturers, pet breeders, distributors and other pet animal dealers throughout the state of Texas who would be directly and substantially impacted by the proposed rule.

PIJAC has for many years provided a well-respected animal care certification program that is widely utilized by not only persons in the commercial pet trade but also a number of shelters as well. Our association has long been recognized as the voice for a responsible pet trade, and we routinely support legislative, regulatory and policy proposals to ensure the humane care of animals in the commercial pet trade. We have over many years worked with APHIS to ensure effective enforcement of the federal Animal Welfare Act relative to our many licensees, as well as agencies at the state level in countless jurisdictions, and continually engage in proactive efforts to raise the standard of care for animals in the pet trade.

II. Overview

PIJAC participated throughout the political process that ultimately resulted in the passing of House Bill 1451 (2011) which serves as the basis for this rulemaking, beginning with discussions with the sponsor and stakeholders prior to introduction of the bill. We testified in favor of a licensing program, and successfully achieved amendments to the measure, but reserved support on the final version of this legislation because of concerns about certain provisions which we believed could compromise effectiveness of the program. As the Department moves forward with implementation, we will continue constructive input.

III. Substantive Standards

As PIJAC observed in its testimony on HB 1451, prevailing standards of care for commercial kennels, based on extensive research, have been in place for many years in the form of regulations promulgated by the Animal Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture. Such standards are the basis for regulation of breeders in numerous other states, and should serve as the basis in Texas as well. Indeed, the underlying statute authorizing this rulemaking explicitly references these standards and they should presumptively serve as care requirements in Texas regulations. Absent specific statutory standards which deviate from federal requirements, or peer-reviewed research that clearly demonstrates the inadequacy of a specific standard in 9 C.F.R. Part 3, the federal requirements should be adopted. The proposed rule promulgated by TDLR reflects this approach and, to the degree the rule reflects such standards, PIJAC endorses it.

IV. License Fees

The underlying statute authorizing this rulemaking provided for establishment of "reasonable and necessary fees" for its administration. In proposing this rule, the Department appears to have taken into consideration only one half of this mandate. The reality is that by no objective criteria can the proposed fees be deemed reasonable. It would be far more accurate to characterize them as punitive.

Proposed license and inspections fees far exceed those imposed by agencies of other states administering similar licensing programs and, in fact, exceed fees charged by TDLR for many other programs it currently runs. Were the proposed fee schedule to stand in the final rule, many breeders in the state to which mandatory licensing applies under the new law would be effectively unable to continue operating. And those that aren't driven out of business altogether would have operation of their kennel compromised by the excessive fees, likely driving up the cost of pet animals excessively and unnecessarily and/or actually forcing breeders to divert resources that should be utilized for maintaining their kennels to the Department.

V. Conclusion

PIJAC commends the Department for its reliance on recognized standards of care in crafting the proposed rule, but believes that the excessive license fees proposed in the rulemaking only validate the concerns expressed by many critics of HB 1451 when it was before the legislature and upon it being signed into law. While the language of the statute explicitly directs that fees shall be reasonable, the failure to give more precise direction as to fee levels led many to predict the possibility that the fees imposed would be excessive. Even that pessimistic view of many didn't match the actual outcome reflected by this proposed rule. If the requirements to administer this program as the Department proposes demand fee levels set forth in the rule, then TDLR should revisit its processes to achieve a structure consistent with a more reasonable fee schedule.

Respectfully Submitted,
Pet Industry Joint Advisory Council
By: Michael P. Maddox
Vice President of Governmental Affairs and General Counsel

From: Vera Stern[redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/19/2012 11:29 AM
Subject: comments

Melissa Rinard
TDLR
P.O. Box 12157
Austin, Texas 78711

Re: Comments—pertaining to TDLR Regulations Dog and Cat Breeder Licensing under 16 TAC Chapter 91
TDLR rules have gone way beyond the requirements of the statute. By extending the rules, they are eliminating the ability of small to mid-size breeders to raise and socialize litters appropriately. Furthermore, they are eliminating hobby breeders and small breeders altogether. Finally, they are raising the costs of housing and state fees so as to eliminate the ability to breed. Below are but a few examples of the over zealous regulations that will put responsible breeders out of business. While this author understands that a few of the rules come from the USDA regulations, TDLR can define terms and narrowly define some key phrases in order to allow successful and responsible breeding. Furthermore, many rules outlined by TDLR go beyond what the codified USDA regulations require.
91.100 Standards of Care—Housing Generally.
"(a) Structure; construction. Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering."
Eliminate vague standard "good repair". Consider some "housing facilities" will be a person's home or a separate building. The definition of facility within the TDLR rules is "the premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property and confinement areas used to conduct the breeding business." Housing facility is not separately defined by TDLR. Good repair requirements are problematic. What happens if a house/building needs paint, or maybe some foundation work. If a gutter or shutter is hanging from the building, does the breeder lose a license because of disrepair. This section allows way too much leeway in the hands of the inspector. Considering there is no appeal process for a breeder either, you have to wonder where is the due process.
"Protect the animals from injury" should be eliminated. There aredetails on what not to use for housing animals throughout the rules. There is absolutely no way to provide exercise and a life for an animal or a person in a facility that "protects the animal from injury". An animal can be playing, swinging a toy around and hit its head on a wall. An animal can choke on food or toys. An animal can slide on a surface and injure itself. While this may sound ridiculous to the reader, remember that these are rules that must be enforced. It is one thing to make broad requirements like providing shelter and nutritious food. However, blanket statements of protecting an animal from injury are too broad.
"Restrict other animals from entering" is too broad. Remember the definition of facility includes all buildings and property. I suggest either changing the definition of facility or removing this language. A literal interpretation of the rule (and this is legal language so a literal interpretation is in order), you couldn't have more than one animal in a building. Perhaps facility here really means primary kennel. But that is not what is used. Besides, even if the definition is primary kennel, the litter could not be kept together, nor could it be kept with the dam.
"Contain the animals securely" won't work with the broad definition of facility either. Consider that the definition includes the entire property. So if someone has acreage, are they to place board on board 8 foot fencing with a concrete bottom around the entire property to meet the definition?
"(b) Condition and site. Housing facilities and areas used for storing animals' food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs. Housing facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks and raccoons are prevented from entering it."
"...Free of any accumulation of trash...junk...other discarded materials" and "Animal areas...must be kept neat and free of clutter" is a huge standard. In the food or bedding area, it is possible that someone would want to keep items such as stacked newspapers or recycling. Perhaps this particular breeder actually uses mats and or towels and blankets. Remember the bedding is not just for the litters, but for all animals at the facility. When it is time to throw away the blankets, they may be washed and placed in garbage bags. They are then trash, junk or discarded materials. Perhaps a breeder stacks unused toys in the food or bedding area. Would that be considered junk? Some breeders may reuse toys and have a bin of toys needing repair. That would be considered junk. Maybe the toys have been picked up and are awaiting laundering. Would that be considered junk? Certainly you can see that these type items could be considered clutter. The
regulations are going to require quite a bit of paperwork and documentation in order to comply. Therefore in the animal areas there will need to be computer equipment and/or paper records easily accessed. While these documents are waiting to be scanned or entered into their notebooks or onto the computer, certainly you could have a cluttered appearance.
I suggest deleting "clutter", "junk" and "discarded materials". These rules assume large commercial settings which is not the case in many of the now regulated breeders.
"Housing facilities must be physically separated from other business...." "Housing facility" is an undefined term. And "facility" means the entire premise as discussed earlier. Certainly a breeder who breeds in their home or in a kennel attached or adjacent to their home may have another business related or unrelated. The breeder may work from home in some capacity, and these regulations would not easily permit that. What of the breeder that sells pet supplies or food? What of the breeder who has a kennel? I suggest eliminating the two sentences discussing physically separate.
91.100(c)(3) Cleaning. Hard surfaces with which the dogs or cats come in contact must be spot-cleaned daily and sanitized...."

I'm not sure why something must be spot cleaned daily, nor do I know what that means. Clearly if an animal has relieved himself, that should be cleaned. But what about on rainy days? I can envision floors not being spot cleaned until the grounds are no longer damp.
How often do all the hard surfaces have to be sanitized? And does this include the walls? After all animals can come in contact with walls. Are these to be sanitized daily?
"91.100(d) Water and electric power. The housing facility must have reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements...The housing facility must provide adequate running potable water..."
"Housing facility" is not defined, but "facility" includes the entire premise. For the cleaning regs to make sense, the housing facility might be a kennel type setting. However, some breeders use rooms in their facilities. And what about outdoor facilities?
As for requiring adequate power, heating, cooling, ventilation and lighting, I suppose TDLR may be qualified since they do license HVAC technicians. However, I don't see third party inpectors qualified to do electrical power studies. Are they going to turn on all the lights, the a/c, run the washer, dryer, laser printers, space heaters all at once and see what happens? Really this wording is again way too encompassing.
If the housing facility is where the animal is kept (or a subset) where do you judge the ventilation and lighting? And would you really want electrical plugs in the kennel? What if the housing facility is a room or two of a house or a separate large room built on the breeder's property. Must water lines be run to that room? Finally these requirements are overbearing for the small breeder.
"91.100(e) Storage. ...All open supplies of food and bedding must be kept in leak proof containers with tightly fitting lids to prevent contamination and spoilage. Only food and bedding that is currently being used may be kept in the animal areas. Substances that are toxic to the dogs or cats but are required for normal husbandry practices must not be stored in food storage and preparation areas, but may be stored in cabinets in the animal areas."
The requirement of "leak proof" and "tightly fitting lids" for both food and bedding is excessive. Using plastic containers with lids should suffice for food. Most owners and kennels do not use leak proof containers. The requirement for bedding is outrageous. There are so many different kinds of bedding solutions that do not require this application. The regs are overreaching.
Storage of cleaning materials in cabinets in animal areas, but not in food/bedding storage areas is not practical in smaller settings. While this may be in the USDA requirements, it adds an extra burden in keeping the food areas clean.
Toxic is not defined. Is that toxic to human or animal? Since not all cleaning materials are toxic, the inspectors will have to know which materials are considered toxic. If toxic is defined as capable of causing injury that is too broad. If toxic is deadly to the animal this makes more sense. But then it becomes deadly at what level? Clarification is needed here. What about medications and vaccinations? Are they considered toxic? If they are refrigerated in the room is that allowable? If they are in the cabinet with the food is that permissible? According to the rules as currently written, medications would probably have to be kept in a different room. They could be in the animal area in a cabinet which dogs could open, but not in the food area.
"91.100(f) Drainage and waste disposal. ...Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. ...All drains must be properly constructed, installed and maintained....Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas."
The rulings only provide for large scale kennel operations in the assumption of use of drainage systems. How does a small breeder meet the drainage and disposal system?
"Animal areas" is an undefined term. If appropriate protocol is to place dead animals in a freezer until the bodies can be picked up for removal, and the freezer cannot be placed in the food area, then where can it be placed? Is everything else considered an animal area?
"91.101(d) Interior surfaces. The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture or be replaceable (e.g., a suspended ceiling with replaceable panels)."
"Housing facilities" is an undefined term. A smaller scale breeder is not going to be able to meet these standards if housing facility is a broad term. Making all surfaces an animal comes in contact with impervious to moisture is impractical in many facilities. If "housing facilities" encompasses the breeder's home, the breeder will not be able to meet the requirement. The effect of this ruling is to discourage/eliminate housing the animals in a well socialized environment. For breeders that rotate the animals into their homes and into a kennel setting, this rule eliminates the ability to do so. Requiring a dropped ceiling or an impervious ceiling seems arbitrary and capricious standard.
"91.104 Standards of Care—Primary Enclosure
(3)(B)(iii) The interior height of a primary enclosure must be at least 12 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position."
This requirement is completely arbitrary. No scientific, medical or veterinary evidence or practice that I am aware of supports this ruling. Traditional enclosures are not 12 inches taller than large and giant breeds. An owner might use a 48 inch wire crate which is typically 32 inches in height. Most large breeds will only have a few inches head room with these large crates. Why is a crate that is used by hundreds of thousands of people across the U.S. not sufficient for a breeder?
"(3)(C) Compatibility. All dogs housed in the same primary enclosure must be compatible as determined by observation. Not more than 12 adult nonconditioned dogs may be housed in the same primary enclosure....puppies under 6 months of age may not be housed in the same primary enclosure with adult dogs, other than the dam or foster dam. Dogs with a vicious or aggressive disposition must be housed separately."
I must admit ignorance on what nonconditioned dog means here. In training that would be a dog that is not trained to a particular routine. For show purposes that might be a dog with a coat not in shape for showing. And for health purposes that might refer to a dog that is not in good physical shape. Since I am not a commercial breeder, I don't know how to respond to this. Perhaps the term "nonconditioned dog" should be defined. Is it a dog not conditioned to living with the particular group of dogs?
Puppies under six months are old enough to be placed with other dogs for socialization. What happens when most of the litter is transferred leaving one or two. These pups would benefit from activity with other dogs or pups. Some breeders would want the pups weaned from the dam and experiencing life with other dogs long before six months in order to properly socialize the dog.
"Compatible as determined by observation" is too vague. Different breeds play differently. To expect an inspector to judge compatibility during a walk thru is unrealistic. Furthermore, when strangers walk through a facility, and breeders are tense, the dogs

are likely to act out. Barking, jumping and climbing on one another might be considered incompatible by inspectors. Dogs that are compatible in some breeds will have discussions occasionally that do not result in injuries, but could be considered incompatible behavior. Determining compatibility reaches beyond the underlying statutory requirements. A breeder has no incentive to keep non-compatible dogs in the same area. I suggest deleting the compatibility sentence.
"91.106 Standards of Care—Exercise for Dogs
(b) Dogs housed in groups. Dogs over 12 weeks of age...may be maintained in compatible groups, unless...(2) Any dog exhibits aggressive or vicious behavior."
Expecting an inspector to properly identify aggressive or vicious behavior is outside the scope of training for inspectors, and outside the scope of the underlying legislation. See above explanation on compatibility.
"91.107 Standards of Care—Feeding
(a) ...The food must be uncontaminated, wholesome, palatable..."
I suggest removing "palatable". How does an inspector determine if the food is palatable?
"91.108 Standards of Care—Watering. If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time,...Water receptacles must be kept clean and sanitized...before being used to water a different dog or cat or social grouping..."
The one hour offering is arbitrary. What medical and scientific basis is used here? If water is offered for 5 or 10 minutes and the animal is not drinking, the animal is not thirsty. The problem with leaving water out for long periods is a puppy (and even some dogs) will play in the water, dump the water bowl over, place toys in the water bowl, etc. Absent a scientific basis for this requirement, I suggest decreasing the offering time to a maximum of 15 minutes.
"91.109 Standards of Care—Cleaning, Sani[tation], Housekeeping and Pest Control
(a) Cleaning of primary enclosures...When steam or water is used to clean the primary enclosure...dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process."
I suggest removing "distressed". The cleaning process is brief. Determining if the animal is more distressed during cleaning or if the animal is more stressed when moved in another area and moved again seems like a decision best left to the breeder, and is quite subjective in nature. This rule exceeds the underlying statutory guidelines, and is overreaching.
"(b) Housekeeping for premises. Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this chapter, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals."
Since premises is the entire breeder's property, this requirement is too broad. For a facility with acreage, the inspector can shut down a breeder for leaving a pasture in hay. If breeder accumulates recycling or bulk trash, the inspector could shut the breeder down. If there is an old fence in a pasture not in use, this would violate the good repair criteria. If this paragraph is to be included (and I suggest deleting it), then TDLR should add a limit of within 30 feet of a primary enclosure.
Requiring surrounding grounds to be kept clean and in good repair is over reaching and unreasonable. It is also broader than the scope of the underlying statute.
"91.110 Standards of Care—Onsite Personnel.
(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards."
What are "these standards" in the last line referring to?
Why do all employees need to perform to "these standards"? Does this mean that a breeder can't have part time kennel help or maintenance help that may need to move dogs around? As long as the breeder and supervisor have an appropriate skillset, they should be able to train/delegate certain tasks to basic laborers.
"91.111 Standards of Care—Grooming
A licensed breeder shall provide basic grooming to each animal as needed to prevent soiling and matting of the fur, curled or splayed toenails, and other conditions that can hamper an animal's ability to maintain health and cleanliness."
Again this section is too broad. Basic grooming does not necessarily prevent soiling and matting if dogs are exercising outside and have long fur. Grooming can address these issues, but at any given time there are going to be dogs that need baths or brushing. In long haired dogs, even with regular grooming, an inspector would be able to find a matt or two. Is that enough to shut down a breeder? The current rules say the inspection fails if there are any violations and there is no appeals process for the breeder. Curled toenails should be trimmed, but unless they are curled under and touching a pad, this is too broad. The nails naturally curl on some dogs prior to touching the ground. Most owners do not trim the dog's nails adequately. If this is going to be a criteria to fail an inspection, I suggest the standard be more than just curled. I have seen some pretty nasty dog nails in the shelters, but the rule's language is too broad.
"Other conditions that can hamper an animal's ability to maintain health and cleanliness" is too broad a catch all. Many things might "hamper" an ability to maintain health, and yet the animal still is healthy. Deleting this sentence is appropriate.
"91.112 Standards of Care—Veterinary Care
(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. ..."
Requiring a breeder to provide any treatment recommended is taking away the breeder/owner's ability to make decisions. Vets can recommend, but it is the owner's decision as to what procedures and tests to perform. How often does a vet recommend a blood panel or dental work that could be considered optional? If a senior animal has cancer and vet recommends radiation/chemo is the breeder obliged to give this treatment to a senior dog? The vet decisions should remain with the breeder.
"(b) Routine and preventive care. A licensed breeder shall develop and maintain at each of the breeder's facilities a written health care management protocol approved by a veterinarian that addresses routine and preventative health care for each animal in the facility.
(1) The breeder shall ensure that the protocol is followed and that routine and preventive healthcare is provided to each animal in the facility and that each animal received appropriate care and treatment for any injury, disease, or illness that may affect the

animal's health or well-being....
(2) On transfer or sale of the animal, a copy of the written health care management protocol required by this section must be transferred with the animal and the original records retained by the licensee."
See response to (a) above.
This section goes even further by attempting to regulate all animals at the facility. Animals not under the jurisdiction of TDLR are non-owned animals such as animals in boarding facility or training facility, breeder's and breeder's family's personal dogs not in tact.
"Care and treatment for any injury, disease or illness" is too broad. A dog may receive a minor scratch that can heal on its own. A breeder should be allowed to decide what dental care (if any) the breeder wants to perform on the animal. In senior animals, different owners would make different decisions regarding care and treatment of issues in an aging animal.
How long does a breeder have to maintain the original records post transfer/death of the animal?
One final observation: The TDLR rules assume vets are available and willing to make "house calls" in rural and city settings. Are there enough qualified vets who are willing to come to the facilities as required in this statute?

Goldie, Dallas, TX

From: "Kendall Herr" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/19/2012 11:43 AM
Subject: Melissa Renard

Kendall Herr

Dickendall Labrador Retrievers

[redacted]

February 19, 2012

Melissa Renard, Legal Assistant, General Counsels Office

Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

Dear Ms. Renard:

I have been a breeder of Labrador Retrievers since 1964.The hobby started by my great love of dogs and all animals. The average hobby breeder is motivated for there love of dogs and the passion to develop their breed to be healthy, beautiful, and sound in temperament. For many of us this hobby encompasses our entire life. The pursuit of this hobby involves studying pedigrees, health issues, movement and conformation. Attending shows and trial events also contributes to the learning process, seeing many different dogs is very helpful in the continuing learning process.

Conformation and working events also generate a lot of income for the cities hosting the events as many exhibitors are from out of town, stay at hotels and motels and eat at local restaurants.

The hobby breeder sells the puppies they do not keep for showing and breeding to well interviewed pet homes. The new pet owner gets the benefit of the generations of quality breeding that has gone into the new puppy. In most cases it is healthy, beautiful, well mannered and a delight to own. A hobby breeder will also stipulate if the owner cannot keep the puppy for any reason at any age it will be returned to the breeder. In all my years of breeding I have yet to have a puppy returned and usually get a call to get a new puppy when the first one dies at 12 or 13 years of age. A hobby breeder is there to answer any questions at any time to help the new pet owner. A Hobby Breeder recommends puppy kindergarten and obedience classes to make the dog a good citizen.

I am a typical Hobby Breeder. I doubt if there are many well bred dogs in the shelters and if so it is a rarity. I feel you are approaching this dog law in the very wrong way. Most of the shelter dogs are mixed breeds, just go look around any shelter. They are from one dog owners who let the dogs run and have accidental litters or from poorly bred puppy mill dogs who are sold at pet shops and puppy mills. This is the problem. Your dog law needs to go in an entirely different direction.

This law will greatly penalize the good breeders and do nothing for the big problem. It will be devastation for those of us who spend our life attending shows, field events and obedience trials. It will be devastating for the people who want to own a quality dog. Please take another look at this Bill. It will only hurt those trying to do the right thing and do nothing to solve the real problem. The Hobby breeder is the key to education in responsible dog ownership. Hobby breeders are the stewards of the breed. They do all they can to protect breeding integrity in all ways possible. They have invested years and generations to maintain type and to improve the quality

of their dogs. This bill will greatly harm those trying to do the most good for responsible dog ownership.

Please do not pass this bill that has failed to look at the big picture..

Sincerely,

Kendall Herr

[redacted]

From: Lori Teller [redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
CC: Francis Brian <brian.francis@license.state.tx.us>, Johnson Charles <Char...
Date: 2/19/2012 3:50 PM
Subject: Teller Comments to TDLR on Breeder Rules 2-19-2012
Attachments: Teller Comments to TDLR on Breeder Rules 2-19-2012.pdf; Part.002

Attached please find my comments regarding the proposed rules for the licensure of dog and cat breeders.

My biggest concern is that we are creating a bureaucratic morass for the citizens of Texas that will do little to diminish the numbers of subpar breeders while greatly hurting the efforts of the breeders who work hard to advance the health and quality of the breeds with which they have chosen to work.

I sincerely hope that you take the suggestions to heart and that you give the members of the Licensed Breeder Advisory Committee time to consider all of the comments made by the general public. I also truly hope you give us access to ALL of the comments and do not try to condense them down and summarize them for us. I realize there will be an extremely high number to wade through, and I think it is important that we have that opportunity.

Texas Department of Licensing and Regulation
Office of the General Counsel
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February 19, 2012

RE: Public Comment on sections of Chapter 91 related to the Dog or Cat Breeders Program.

§91.10 Definitions

91.10 (8) Provides a definition of "*dog or cat breeder*" from HB 1451. However, when this rule is read in conjunction with §91.22(a) any individual that does not fit the definition of a "*dog or cat breeder*" is prohibited from representing themselves as such unless they hold a license under the chapter. I do not believe that it was the intent of the legislature to prohibit the use of the term "*dog or cat breeder*" for small breeders who do not meet the threshold subjecting them to regulation in the enabling legislation, and I believe this definition does more to discourage good breeders from continuing their efforts to improve their breed and does almost nothing to discourage poor breeders from selling poor quality, sickly or genetically deficient dogs or cats to the unsuspecting citizens of the state. This is further evidenced by the fact that the legislature saw fit to exempt certain types of special purpose breeders from the licensing act in Section 802.005. Prohibiting the use of these terms places an unfair burden on many individuals such as American Kennel Club (AKC) "*breeders of merit*" or other distinctions that are common in the dog or cat showing arena. Clarification should be added into the rules specifying that this section only applies to individuals who are required to be licensed under the act.

Perhaps better wording would be:

A person may not act as, or represent that the person is a licensed 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.

In addition to the comments above, I also believe that the list of definitions in §91.10 should include a definition of "*positive physical contact.*" The model regulations to assure appropriate care for dogs intended for use as pets from the American Veterinary Medical Association (AVMA) defines ***"positive physical contact" as petting, stroking or other touching, which is beneficial to the wellbeing of the dog or cat.***

§91.40 Inspector Registration Requirements

91.40 (a)(1) & (2) authorize a fire department employee to become an inspector. I most definitely believe that this section should be clarified to include volunteer fire department personnel as authorized inspectors. The majority of the state of Texas is protected by either volunteer fire departments or a combination of volunteer and paid fire departments.

§91.76 Responsibilities of Licensees—Annual Inventory

§91.76(a) requires breeders to submit an accounting of all animals held at a facility during the preceding calendar year. The proposed rules fail to account for a common and popular business arrangement between breeders, the co-ownership of the animals. Another common arrangement between breeders is to obtain possession an animal for a short period of time in order to breed. The intent of HB 1451 is to improve the health safety and welfare of animals in breeding facilities while protecting the public from substandard breeders. Often problems with substandard breeders arise as a result of a long term neglect type situations and not as a result of temporary custody situations. These common short term arrangements should be accounted for in the rules so that these animals are not counted towards the breeder's full number of animals. A breeder with a non-possessory ownership interest or temporary custody of an animal should not have that animal and its offspring counted for the purposes of subjecting the breeder to additional fees and levels of regulation.

§91.100 Standards of Care—Housing Generally

The end of the second sentence in §91.100(b) seems to mistakenly include the phrase "and research needs." Because the enabling legislation in no way relates to or covers research institutions or research animals it looks like this language was accidentally left intact from the USDA Animal Welfare Act language that it was taken from and should be removed.

I would like to see all references to temperature requirements be **removed** in §91.101 and 91.102 be removed and instead be replaced with the following statement in this section:

Dogs and cats shall be protected from extreme temperatures so as to maintain their health and render their environment comfortable. When climatic conditions pose a threat to a dog's or cat's health or well-being, taking into consideration such factors as the dog's or cat's age, breed, overall health status and acclimation, appropriate measures must be taken to alleviate the impact of those conditions. Adequate ventilation shall be provided to minimize odors, drafts, ammonia levels, excessive humidity levels, and to prevent the condensation of moisture, while allowing for circulation of fresh air into the housing facility.

I believe this will alleviate concerns regarding if the temperature in a housing facility has been out of the range of 45-85 degrees for more than 4 hours and give breeders better latitude in

utilizing temperature ranges suited for the comfort and maintenance of the specific breeds in their facilities (i.e., Husky vs. Mexican hairless).

Inspectors and veterinarians should utilize the Tufts Animal Care and Control (TACC) Scale to determine a dog's comfort in its housing facility. This takes into consideration the dog's body condition, which will reflect the dog's nutrition and exercise status and will determine if a female is of appropriate condition for breeding. It also takes into consideration the environment in which the dog lives and determines if it is appropriate for the dog's day-to-day comfort and lifestyle. It was developed for Animal Control Officers to utilize, so with some basic training, any lay person should be able to use it and read it without difficulty.

If the rules must contain the temperature range, then in order to alleviate concerns about how long the housing facility's temperature may have been out of compliance (such as greater than 4 hours), each facility should be required to have a temperature data logger. A HOBO Temperature Data Logger can be obtained for ~$65. This would easily allow an inspector to determine if the animals have been exposed to temperature extremes for an extended period of time (currently defined as 4 hours).

Finally all dogs and cats need a Retreat Area. Per the AVMA's Model Dog Welfare Act:

All dogs shall also be provided in their primary enclosure some form of a den, which shall comprise at least a solid floor and visual barrier, as to allow rest and retreat.

<u>§91.101 Standards of Care—Indoor Housing Facilities</u>

§91.101 (a) seems to be inconsistent with its counterpart §91.102 (a). This should be corrected by adding the following to the end of §91.101(a) before the period, "*established by the attending veterinarian and documented in the medical records for each animal based on Tufts Animal Care and Condition Scale.*"

§91.102 (e)(1)(A)(i) and (ii) effectively prohibit the use of 100 percent wire or mesh slatted material for the flooring surfaces of cages after Sept. 1, 2012. I believe that the health, safety and welfare of cats and dogs are better protected when the animals have the ability to stand on at least partial solid flooring. I agree with the AVMA model bill which states that "*The primary enclosure shall provide at least partial solid flooring. Nonsolid flooring must be safe for the breed, size and age of the dog; be free from protruding sharp edges; and be designed so that the paw of the dog is unable to extend through or become caught in the flooring.*"

However, I also believe that dates grandfathering the types of flooring to be used in §91.101 (e)(1)(A)(i) & (ii) should be changed to a more clearly defined time for compliance with an eventual cut off period, perhaps a 3 year grace period so that all breeders must provide at least partial solid flooring by September 1, 2015. It is likely that any final regulatory scheme for cat and dog breeders will not be in place for several months. After that, it will take some time for the

Texas Department of Licensing and Regulation to reach out and inform breeders about the need to comply with licensing requirements. I believe that the effective date in §91.102 (e)(1)(A)(ii) should provide breeders with more time to comply so that they are not required to cease business, perhaps March 1, 2013.

§91.103 Standards of Care—Outdoor Housing Facilities

§91.103(a)(2) provides that animals with an unknown acclimation status should not be kept in certain cold temperatures. However, the rule fails to mention, what may be more likely in the state of Texas, a hot weather or high heat index scenario. For example, it may be contrary to the health safety and welfare of certain breeds of dogs (Malamutes, Huskies) to be kept outdoors in extremely high temperatures.

§91.104 Standards of Care-Primary Enclosure

I believe the wording in §91.104 (1)(B)(xi) would be better stated as such:

Shall provide for sanitary and safe housing for dogs and cats, and shall provide adequate space appropriate to the age, size, weight, and breed of the dog or cat, and that allows for the dog or cat to engage in normal body movements, including the ability to sit, stand up fully, turn about freely, or lie fully recumbent in a natural position.

§91.108 Standards of Care-Watering

In addition to the specified times that water is offered, water should also be made available during the entire daily exercise period and for an extended period during the day for pregnant and nursing bitches and queens.

§91.112 Standards of Care Ð Veterinary Care

I strongly believe that the following language should be added to the end of §91.112(c), "*including internal and external parasite control*." The addition of this requirement is essential because parasites can negatively impact the health safety and welfare of companion animals, pass expenses related to their elimination to consumers who purchase animals, and potentially spread zoonotic disease to the humans exposed to these infectious animals.

I also strongly believe that Section 91.112 should be replaced in its entirety with the following from the Society of Theriogenology's position statement on the breeding of dogs:

Dogs intended for breeding should be evaluated for hereditary disorders before being bred. Owners of breeding dogs should develop a breeding plan with a veterinarian to minimize or eliminate production of puppies with hereditary defects.

Bitches should not be bred before they are physically mature and should not be bred on the first estrous cycle without the advice of a veterinarian. Bitches may be bred on consecutive estrous cycles if they maintain or regain their breed appropriate body condition and are deemed healthy on the basis of veterinarian examination prior to the onset of the next proestrus.

Bitches approaching or exceeding the critical age at which reproductive efficiency for their breed or type declines and pregnancy-associated risks increase should not be bred without the counsel and advice of a veterinarian

If you have any questions about these comments please contact me at 713-723-8612 or by email at drlteller@gma il.com.

Sincerely,

Lori Teller

Lori M. Teller, DVM, DABVP (canine/feline), CVJ
Meyerland Animal Clinic
[redacted]

From: [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 8:45 AM
Subject: Breeder Rule Comments
Attachments: Kathleenscomments.docx

Kathleen Kirby
[redacted]

Melissa Rinard
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157, Austin, Texas 78711
Fax: (512) 475-3032 erule.comments@license.state.tx.us

My comments on the proposed TDLR rules for Licensed Dog or Cat Breeders

I am a hobby breeder. I enjoy my dogs, like having them with me, and want to have only the best example of the breed. I have found the best way to have that perfect example is to breed them selectively. To show myself they are the best, I show them and interact with show breeders. I do not breed for a profit, but it would be nice if my husband didn't have to cover dog food costs occasionally. My breed is not rare or exclusive, which means the puppies that do not meet my standards for showing are sold as pets (under a spay/neuter contract) and can't be sold for enough to cover the costs these rules would charge to make me licensed. My dogs mean the world to me, which means they have good cages, my husband lost his attached garage and had to put in air conditioning for it. We have large outdoor runs they use when the weather is not excessive, and my dogs get exceptional care. I don't believe this new law will help anyone take better care of their dogs, and will just support a new bureaucracy. I don't intend to support it.

However, I do know the Commission is only trying to implement a flawed law. I submit my comments on these new rules.

The mention of "grandfathering" usually means accepting some existing standard in lieu of a new more stringent one. This is applying a new, stringent housing requirement (the USDA standards) now so you don't have to use a newly created excessive standard which is twice as big. If you are trying to make sure no one can afford to implement your standard, you are doing a great job. And if the USDA standard is considered adequate care and protection (which it must for you to accept it as an initial requirement in a new program), then the standard being applied after September is purely punitive. My cages right now are a reasonable size – the dogs feel safe and "homey" but aren't encouraged to use it as a bathroom. The USDA standard is very close (a few square inches bigger) so would be the same. The eventual standard proposed is, well, ridiculous. It is designed as a constant enclosure, not as a bed chamber, and it is not supposed to serve that purpose at my house.

Section 91.52.b requires inspections during normal business hours. Since I don't run a business (the definition is by the IRS, which requires a business to aim to make a profit), I don't have business hours. I don't have public access to my private property. All of which means there isn't a good time to inspect me, no place to mount a license. This is my home, not my business. My dogs are my pets, my companions, and my home is maintained for their comfort.

Section 91.55. I do not run a public business, and I value my privacy as an individual. I strongly oppose any public database that includes any information that violates my privacy. Since the requirement to create and manage that database is not your decision, I count you the Commission to make it something that doesn't violate individual privacy.

Section 91.59.b includes a provision that exceeds the authorizing law. If someone is going to accuse me of something, as an individual I believe I have the right to know who is accusing me. I do not believe an anonymous bounty hunter provision is warranted. These anonymous accusations are pushed by fanatical animal rights groups whose express purpose is to put any breeders out of business. They fly drones over property (South Carolina last week!), they leave notes, send letters, make phone calls – and this program would just help that extremism.

Section 91.72 again would require me to post any license I might have to have at a public location that does not exist on my property.

Section 91.80 will require me to invest much more than I "make" selling anything to just have the right to use my property for my enjoyment. If my hobby was big enough to make it a business I would accept that as a cost of doing business. But a cost of doing my hobby? It is excessive, and if those rates are somehow mandated by law then the law is flawed.

Section 91.101.d is another that would require me to invest significantly in "improving" my perfectly functional kennel. I don't clean my kennel with steam or a water hose. My walls can be cleaned, and I breed toy dogs. What is going to happen to my ceiling?

Section 91.104 says I have to keep other animals out of primary enclosures. If my dogs are in outdoor runs, do you really expect me to be able to keep squirrels, raccoons, and other small climbers out?

Section 91.104.3.B would take the USDA standard that already exceeds the standard in the law and doubles it! Is someone there working for cage manufacturers? No, I can't afford the cages or space that meets these ridiculous rules. The USDA standards are a proven standard, and have been accepted as humane and proper. Isn't it a bit presumptuous to come new the game and think you need to improve it?

Section 91.106 and others reference my "attending veterinarian". I see where these phrases are copied liberally from the USDA standards, but this phrase is adding a requirement not in the law. I don't have an attending physician, the law doesn't require one, and I can't afford one. I'm pleased I have a vet I like and is good, though like most he doesn't provide emergency care – I have to use the emergency clinics like everyone else.

Section 91.112.b leaves out parts of the authorizing law. Under the law, I am allowed to provide euthanasia to puppies.

Section 91.112.d implies my breeding program must be developed with my veterinarian. The law doesn't require that and I don't need his help. And it would add more expense to a hobby that doesn't pay for itself as it is.

Hopefully, you can see that there are many sections that exceed the law and significantly raise my costs past the point of reasonableness. I hope the Commission can make some repairs.

Hobby breeders cannot begin to produce the pets the nation demands. Commercial breeders are a necessary industry, and should not be treated like criminals. And this punitive regulatory atmosphere will just lower the supply, increasing demand, and encouraging a new black market – which encourages substandard treatment. This is your goal?

From: "mkralik" <[redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 9:28 AM
Subject: COMMENTS TO TDLR RE LICENSED BREEDER BILL RULES & REGS

Melissa Rinard, Legal Assistant

General Counsel's Office, Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below instead of adopting these rules.

I am 71 years old and have had pets all my life. I have owned Smooth Fox Terriers for about 50 years and in the most recent 25 years have gone to the show dog community to get the quality of hunting and pet quality dogs I wanted.

I have taken several of our dogs to their Championship winning awards for their representation of our breed.

I have also worked diligently to rescue, foster, and home the small number of this breed showing up in shelters.

Upon review of the proposed rules & regulations, many exceed the original statute.

I strongly urge TDLR to adopt the original statue and disregard the proposed rules & regulations.

And I would like very much to see TDLR include Breeder representation in definition of future rules & regs since the 2 Breeders on the BAC cannot even vote as decided by TDLR - the Breeders Advisory Committee provide NO representation for Breeders - unlike the rest of the 'trades' regulated by a group of their peers in TDLR.

The BAC also needs to specifically define sporting, herding, and hunting dog exemptions using input from those communities - recent comments from the Chairman of TDLR indicate that none of this has been done.

I strongly urge TDLR to address the concerns I highlighted above.

Sincerely,

Martin Kralik

[redacted]

From: "PK" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/15/2012 12:59 PM
Subject: proposed dog licensing comments
Attachments: Doc9.wpd

February 8, 2012

Melissa Rineard
Legal Assistant
General Council's Office
Texas Department of Licensing and Regulation
P. O. Box 12157
Austin, Texas 78711

RE: Dog & Cat Breeders Program

Dear Ms. Rineard:

As a kennel owner and breeder of dogs for over twenty years I have experienced many adjustments and adaptations to a variety of different situations regarding the health and welfare of my dogs. I am always seeking better alternatives and useful information for their well being. After having objectively studied the new proposed licensing regulations I have some concerns that I would like to address that I think would directly effect me as a breeder.

It appears that the costs of enforcing and administrating the new proposed rules is going to be covered by the fees imposed on the breeders. The additional costs of implementing changes to comply with the standards set forth are wholly on the part of the responsible breeders. This will result in the increase in prices to the potential buyer, thus preventing the average person from being a pet owner. In the depressed economy we as Texans are experiencing, it has become very difficult if not impossible to market a puppy for profit. There are many costs that have escalated in the past few years (Labor, Feed, Medical Supplies, Cleaning Supplies, Advertising, Professional Care, Utilities, Maintenance, etc.). I believe the added burden of expenses incurred with the new proposed dog breeders program will result in many people making the hard decision to not continue in their chosen profession. Unfortunately, the majority of our placements comes from the families that wish to add a companion to their lives and the additional costs involved in the purchase and care of that pet will prevent them from purchasing a puppy.

I would like to address some of the specific areas that I am concerned with, and I appreciate your taking the time to respond to them.

SECTION 91.10 - Definitions

(19) Wire or Wire Mesh.....flooring or walls or ceilings .....must be completely encased with a plastic or rubberized coating.

QUESTION: What about the outside pens constructed with wall and gate panels of heavy duty panels that are welded to 1 ½ x 1 ½ square tubing (this product is not available in coated material) Also, outside areas that are attached to structures by doggy doors?

SECTION 91.21 - License Required - Presumptions

For the purpose....presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department.....reasonably acceptable to the department....

QUESTION: What is the "satisfaction" of the department and "reasonably accepted" definitions?

SECTION 91.28 - Department Notifications to Licensee or Registrant unless otherwise.....

QUESTION: Should this not be mailed with return receipt requested due to the frequent problems with internet service?

SECTION 91.30 - Exemptions

(a)

(2) hunting.....

QUESTION: What would the follow-up procedures be to see if a dog is being trained and used for hunting?

(e) For purposes....acceptable to the department.

QUESTION: What is "acceptable to the department"

(f) All evidence.....Uniquely and conclusively.

Question: What is "uniquely and conclusively"?

SECTION 91.50 - Inspections - Prelicense

(c) ..... pay to the department the required inspection fee and the reasonable expenses.

QUESTION: what are the "reasonable expenses"?

(d) .....request another prelicense inspection by paying the required fee to the department.

QUESTION: Does the "reasonable expenses" wording apply to the reinspection?

SECTION 91.52 - Inspections - Periodic

(a) Each.....at least once in every 18 month period.

QUESTION: Does this mean it could be more often, and if so, how many more times and for what reasons?

(d) An inspector.....except as necessary to access animals or other property relevant to the care of the animals.

QUESTION: What is necessary to access animals or other property relevant to the care of the animals?

(k) The department may assess administrative penalties and/or administrative sanctions.

QUESTION: What type of penalties and sanctions may be assessed?

SECTION 91.53 - Out-of-Cycle Inspections

(h) Facilities on an .....in four consecutive inspections,.....

QUESTION: Are four consecutive inspections necessary once a compliance has been made?

SECTION 91.59 - Responsibilities of the Department - Reporting Violations

SECTION 91.60 - Responsibilities of the Department - Payment of Rewards

QUESTION: What about breeder protection against "grudge" or "nuisance" reports? And
are inspection fees incurred for investigation of such reports?

SECTION 91.65 - Advisory Committee

(h)

(I) A decision .....of the members present.

QUESTION: Should there not be a minimum number of committee members present or a quorum met for such decisions?

(g)

(1) .....the training procedures and protocols approved by the department

QUESTION: What are the procedures and protocols of the department?

CHAPTER 91.77 - Responsibilities of Licensee

a. A licensed.....a separate record....documenting animal care.

QUESTION: Can this be kept with the ownership records or is it required that there is a completely separate file for such records?

(c) .....a description....and weight.

QUESTION: Can the "weight" portion be deleted due to the variance in a dog's weight at different times?

(iii) .....number of puppies.....

QUESTION: Is this the number of puppies at birth or at weaning (there can be death loss in newborn puppies)?

(2) Records required.....are in addition to records related to the preventative and therapeutic veterinary care provided each animal.

QUESTION: Are there going to be approved forms and can these records be kept in one ownership file?

SECTION 91.80 - Fees

QUESTION: The fees are quite expensive and will put quite a hardship on most breeders. Could you explain the basis for the cost. Also, is there any provisions for changing fees if the number of animals changes during the course of the year? It would beneficial to also know if the proposed fees will be based on numbers in the future and if the number of breeders and number of dogs will affect the basis of the cost.

SECTION 91.90 - Administrative Sanctions and Penalties

QUESTION: What administrative sanctions/penalties?

SECTION 91.100 - Standards of Care - Housing Generally

b. Condition and site.....Housing facilities must be physically separated.....

QUESTION: What determines "physically separated"?

c. Surfaces

1. General Requirements

Be free of excessive rust

QUESTION: Materials that come in contact with cleaning requirements and urine will rust in time. These materials can be painted over to allow proper cleaning, is this method of control acceptable?

SECTION 91.101 - Standards of Care - Indoor Housing Facilities

(a) Heating, cooling, and temperature. .....(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperatures does this also apply to them?

SECTION 91.102 - Standards of Care - Sheltered Housing Facilities

(a) Heating, cooling, and temperature .....(such as short-haired breeds).

QUESTION: If short-haired breeds are acclimated to lower temperature does this also apply to them?

SECTION 91.103 - Standards of Care - Outdoor Housing Facilities

(a) Restrictions

(1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian and

documented
by the attending veterinarian in the medical records related to each dog or cat to which the exemption applies.

(A) Dogs.....

(B) Breeds.....

QUESTION: Should the (short-haired breeds) that are acclimated to the temperatures prevalent to the area be included?

In closing I would like to say that I know in starting a new program there will always be questions and problems as well as solutions to those problems. It will be beneficial to know as much as possible about the procedures and any changes that occur due to any modification of the rules. As always, change can be quite a challenge, there will be breeders that just cannot make the adjustments that the program will require. Our economy certainly affected many of the things we took for granted several years ago, and we are restricted in some aspects of our profession. Any consideration on the cost effectiveness that will be incurred by the breeders will be appreciated.

Respectfully submitted,

Paula Kay Callahan
Cowboy Kennel
[redacted]

From: Jeremy Rine [redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
Date: 2/17/2012 10:10 AM
Subject: U.S. Sportsmen's Alliance Comments on Proposed Dog Breeder Regulations
Attachments: USSA TDLR Dog Breeder Regs Comment Letter - 2-15-12.pdf

Dear Ms. Melissa Rinard,

Attached are comments submitted by the U.S. Sportsmen's Alliance in regards to the proposed dog and cat breeder regulations. Please contact me if you have any questions or if you are unable to open the attached .pdf file.

Sincerely,

Jeremy D. Rine
In-House Counsel & Assoc. Dir. of State Services
U.S. Sportsmen's Alliance
U.S. Sportsmen's Alliance Foundation
[redacted]

February 15, 2012

Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711
erule.comments@license.state.tx.us

Protecting & Advancing America's Heritage of Hunting, Fishing & Trapping

RE: Chapter 91. Dog Breeder Program Proposed Rules

To Whom It May Concern:

On behalf of the U.S. Sportsmen's Alliance, I am writing to express concerns over the proposed rule implementing House Bill 1451 codified in Chapter 802 of the Occupations Code. USSA has a coalition of sportsmen who devote their lives to hunting with and training sporting dogs, called the Sporting Dog Defense Coalition (SDDC). Through this coalition, USSA has extensive experience working with legislation effecting sporting dog owners. USSA's membership includes sporting dog owners in Texas.

We respectfully ask §§ 91.30(e) and (f) of the proposed rules be removed.

Background and Proposed TAC Rules Concerning Occupations Code § 802.005 Exemptions

USSA and a large coalition of sportsmen and sporting dog groups opposed the passage of the Dog and Cat Breeder bill now codified in Texas Occupations Code Chapter 802 et seq. In the legislative process, compromise language was created to address the concerns of sporting dog owners. The compromise language is codified as Occupations Code § 802.005 and exempts persons who breed sporting and other special use dogs from regulation as commercial breeders.

TDLR has proposed a new rule, TAC § 91.30, which would add new requirements to the existing statutory exemption requirements in § 802.005. The rules proposed are inconsistent with both the adopted statutory language in the Code and the legislative intent of the special use dog exemption.

801 Kingsmill Parkway, Columbus, Ohio 43229-1137 • phone 614 888-4868 • fax 614 888-0326
email us at [redacted] visit our website at [redacted]

TDLR Does Not Have Authority to Shift the Burden to Require Owners to "Prove" Special Use Exemption

Under proposed §§ 91.30(e) and (f), sporting dog owners are required to "prove" the exemption applies to them. This runs contrary to the plain language and intent of Occupations Code § 802.005.

Specifically, the TDLR regulations in §§ 91.30(e) and (f) require:

> *(e) For purposes of this section a dog is presumed to count under § 91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:*
>
> *(1) evidence of agriculture activity or business operations using a dog described by this section;*
>
> *(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.*
>
> *(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.*

TAC proposed § 91.30(e) creates a new presumption that all dogs are counted for the purposes of the threshold in the dog or cat breeder definition in § 802.002(8) of the Code. TDLR's creation of this new presumption goes against the plain language and intent of the exemption included in the bill. In § 802.005, the burden to prove whether or not a dog fits the special use exemption falls on the state and not on the dog owner. Proposed § 91.30(e) upends § 802.005 and places the burden on the dog owner by presuming that a dog does not fit the exemption until the owner submits "evidence acceptable to the department demonstrating the dog meets an exemption...."

The legislature clearly did not intend that this burden fall on the person claiming the exemption and would have specifically stated otherwise if it so intended. For example, the legislature included specific language in preceding § 802.004 that clearly shifts the burden from the state to the dog owner to show that their dogs are not used for the business of breeding. Section 802.004 states:

> *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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.***

No similar statutory language or intent was provided for § 802.005 leaving the burden to prove or disprove compliance, through lawful investigation, of the statutory exemption on the state.

The adoption of proposed §§ 91.30(e) and (f) by TDLR would go against the statutory language and intent of § 802.005 of the Code and is not within TDLR's authority granted to it by the legislature. As such, we ask that TDLR remove § 91.30(e) and corresponding § 91.30(f).

Evidence Required to Be Submitted as "Proof" under Proposed §§ 91.30(e) and (f) is Inconsistent with Occupational Code § 802.005

TAC proposed §§ 91.30(e) and (f) require dog owners to submit evidence that a dog fits an exemption under § 802.005. This proposal seems to seek affirmative confirmation ("registration forms or receipts") to prove to TDLR that a dog is being used for hunting or other exempted purposes.

Section 802.005 specifically refers to dogs bred "with the intent" that they be primarily used for one of the exempted purposes like hunting or field trialing. The type of "proof" TDLR is seeking in §§ 91.30(e) and (f) seems to ignore this statutory language and the intent for why the particular language was adopted.

This language in § 802.005 was crafted to not only cover exempted dog owners, like sporting dog owners, who are actively using a dog for an exempted use but to also cover those who intend to use a dog for that use in the future.

Many sporting dog owners have dogs that are not actively hunting or field trialing but are certainly intended to be used as hunting dogs in the future. No affirmative "proof," like a receipt, will exist for these dogs. Owners of these dogs may be waiting to see certain characteristics in the dog before taking the dog afield, may be training the dog and not actively hunting the dog yet, or may have a dog taking a season off because of injury.

The proposed language in §§91.30(e) and (f) does not seem to take into account these types of situations that the statute clearly envisioned and provided for. These new requirements would inappropriately limit the statutory definition of persons who qualify under the special use dog exemption. We ask that TDLR remove §§ 91.30(e) and (f).

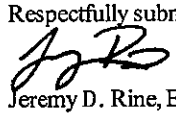
Conclusion

In summary, TDLR does not have the authority to shift the burden of proof onto the individual dog owner, nor does the proposed rule account for situations for whom the legislature clearly intended exemption.

As such, the USSA respectfully requests that TDLR remove §§91.30(e) and (f) from the proposed rules.

If you have any questions or would like to discuss this matter further, please feel free to contact me.

Respectfully submitted,



Jeremy D. Rine, Esq.
In-House Counsel
Associate Director of State Services

From: Jo Kimes [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/17/2012 3:47 PM
Subject: writing to the TDLR regarding TX HB1451 - and preserving your right to breed dogs!

SEC. 802.004. PRESUMPTION OF USE FOR BREEDING. (see Draft Rules §91.21.License Required--Presumptions.) (See §91.30.Exemptions.)
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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding. Clarification is needed regarding what documentation is acceptable to prove an intact female was not bred and whether this applies to being bred in a given year or at any time.

xxxx Many breeders keep back young females to ensure through health tests, performance evaluation, temperament, whether or not they will ever be bred. The OFA, for instance will not certify a dog free from hip dysplasia until it is 24 months old. Many breeders keep their retired/older females intact because they do not want to put them under anesthetic and the risk of surgery. Do you intend to count all these dogs?

SEC. 802.005 – EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL PURPOSE DOGS.
This section purports to exempt dogs bred and used for herding livestock, hunting, including tracking, chasing, pointing, flushing, or retrieving game, or competing in field trials, hunting tests, or similar organized performance events. However, the exemption has been narrowed with further stipulations in the Proposed Rules by requirement of proof including but not limited to:
(1) evidence of agriculture activity or business operations using a dog described by this section;
(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.

xxxxThere is no known competition for livestock guarding dogs (who save the lives of hundreds of thousands of sheep every year in this country) or for hog hunting dogs who are used in an attempt to control a terrible threat to Texas agriculture and a danger to humans. It appears that you have decided not to exempt these important dogs even though the Representatives and Senators who voted for this bill did so with the exemption in the bill. Many ranchers who use stockdogs are not training for trial work and not breeding for a trial dog. Their dogs are used and bred for real life tasks. The vast majority of hunting dogs are also used by private owners for their own use as hunters, and many people who do not compete in field trials breed sound superior dogs.

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.
Is proof of event competition required for every dog owned in order to qualify for the exemption? Is this an annual requirement or is the possession of any field trial or hunting test title sufficient to prove the dog is working in the capacity for which it was bred? Does "similar organized performance events" include lure coursing, Earthdog and other working/sporting dog events?

xxxIt takes a great deal of time to train a competition stockdog or hunting dog. Many breeders test their dogs in the areas they are breeding for privately to ensure they will produce the traits necessary for the tasks the dogs are bred for. They do not spend the money and time to compete with them- if competition for their instincts is even available.
What about dogs bred to be used for Police work, search and rescue, cadaver dogs, drug sniffing dogs, service dogs such as seeing eye dogs or dogs for the deaf, seizure alert dogs, therapy dogs used in hospitals and rehab centers? Serious breeders do breed for the traits that enable dogs to do these jobs because the tasks do require specialized talents.

SEC. 802.056 AND 802.057 - ESTABLISH A PUBLIC DATABASE OF LICENSEES AND DISCIPLINARY ACTIONS. (see §91.55 and §91.56)
Due to the low thresholds of the law, breeders who utilize their homes will be regulated and licensed. Thus private homes will become subjects of public information. The draft regulations should clarify what information is absolutely necessary for inclusion in this public database so as not to create opportunities for harassment by activists or predators. (see §91.55 and §91.56)

xxxBreeders who utilize their homes will be put into a public database? Why?

SEC. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. (See §91.60.Responsibilities of the Department--Payment of Rewards)
An account is established to pay "rewards" for information leading to discovery of unlicensed breeders. The Draft Rules propose a $1,000 "bounty" not to exceed $1,000. There is no statement in the Draft Rules to warn of penalties for false reporting, a crime under Texas Penal Code, in order to avert potential breeder harassment.

xxxx Wow, now the state of Texas is going to pay people to turn in others they may not like and to spy on dog and cat breeders to earn reward money? So breeders are now being treated as criminals and Big Brother can show up at the door at any time because of a phone call. Is there a penalty for false reporting?

802.101 LICENSE REQUIRED (See §91.22.License Required--Dog or Cat Breeder.)
The law and Proposed Rules make it a crime for a person to represent themselves as a dog or cat breeder unless the person holds a license for each facility owned or operated. As written this law attempts to silence free speech and prohibit small dog and cat

breeders who are legally under the new threshold from using the term "breeder" in reference to their hobby. This requires clarification.

xxxx So now in the state of Texas those who breed dogs or cats can no longer refer to themselves as a Dog Breeder or a Cat Breeder without being licensed? How far a great state known for agriculture and animals has fallen. Is the goal here to end the breeding (there, that word again) of domestic animals entirely? It is appearing that way. There have long been laws against animal cruelty and abuse, but this entire bill and now this even more restrictive way of administering it have nothing to do with cruelty or abuse. They have everything to do with driving people who love their dogs and cats to extinction.

From: "Gail" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 12:07 PM
Subject: Proposed regulations that will cover licensed dog breeders

Melissa Rinard, Legal Assistant

General Counsel's Office, Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

Although I have had a relationship with dogs as pets all my life, my hobby with dogs blossomed 25 years ago when I purchased my first purebred Labrador retriever. I have trained and exhibited in many venues over the years including, tracking tests, hunt tests, obedience trials, agility trials and conformation shows. Every couple of years I breed a litter of pups with the purpose of keeping one or more. My hobby is expensive and seldom do I meet expenses when breeding a litter. I do extensive health tests on the parent dogs (OFA hips and elbows, annual CERF eye exams, DNA tests for PRA, EIC, CNM). Breeding dogs are selected for health, temperament and structure. Homes for the puppies are carefully screened and pups are sold with a written warranty. A book on training and caring for the dog is included for each new owner. Pups are micro chipped before leaving my home as well as having initial vaccinations and a vet health check.

I am a responsible dog owner, exhibitor and occasional breeder. I am very concerned about the new rules and how they will impact my hobby. Some of my greatest areas of concern are listed below.

Section 91.21. License Required-Presumptions

What forms of proof will be deemed reasonably acceptable to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding. I do not spay females at 6 months of age. At that age I have no way of knowing which females would be my choice to breed as to the best health, temperaments, trainability or conformation. It may take 3-5 years for a decision to be made as to which dogs are the best and should be bred. All my breedings are carefully planned and it is not uncommon for me to breed a female for the first (and usually only) time at 5 or 6 years of age. Therefore I may have multiple unspayed females which are not (and may never be) used for breeding.

Section 91.22. License Required-Dog or Cat Breeder

This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person

Is a licensed [underlined for emphasis] 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."

•

Section 91.30. Exemptions

How does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? It sometimes takes years to train a dog for a performance event before entering a formal organized event. While in training, there is no documented evidence that they will be entered in an organized event. Additionally, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events to evaluate their merits as breeding dogs, but the statute and proposed regulations are unclear as to whether they are exempt. The dogs cannot obviously be neutered for this competition and many are not entered until after they are mature at 2 years of age or more and it may take years of competition before decisions are made about breeding them.

Section 91.59. Responsibilities of the Department-Reporting Violations; Eligibility of

Applicant.

Stronger protections for breeders should be added here. Nothing in the

Proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or

habit of contact and a record of whether or not each compliant was substantiated by department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission. It seems obvious that individuals and organized groups that do not believe Americans should have pets will be constantly submitting complaints as they try to drive breeders out of their business/hobby. These complaints will also drive those of us who only breed a litter every few years out of our chosen hobby because of needless harassment.

Section 91.104. Standards of Care-Primary Enclosure

Subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? You do NOT give continuous access to food to Labrador Retrievers. They would quickly become grossly overweight and unhealthy. Continuous access to water with this breed is also a problem as they play in the water which sets them up for skin and ear infections caused by the constant moisture. No Labrador breeder could possibly follow this regulation for the protection of the health of their dogs.

I strongly urge TDLR to address the concerns I highlighted above before adopting these rules.

Sincerely,

Gail Rosson

[redacted]

Erule. Comments - Re new licensing for breeders, TX

From: Dot Snowden <[redacted]>
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>
Date: 2/19/2012 11:08 PM
Subject: Re new licensing for breeders, TX

Dot Snowden
[redacted]

Hello,

A few comments on the new proposed licensing requirements for cat and dog breeders, State of Texas.
First of all I was a small breeder, who bred my own dogs for show and had several champions. I had 4 litters in 11 years and never sold a puppy, all who were not show quality were given away for the cost of their spay (Except one who had cancer) or neuter.
While I disagree with the *animal rightist* in their spay-neuter everything on the planet, slave owner approach to breeders and legislation, I DO believe that there should be common sense regulation of the pet breeding industry. While the HSUS and PETA have a well organized and well funded approach to opposition to all things *breeder*. I think that any (usually thousands) out-of-state *opinions* should be ignored.
I am puzzled though by the lack of regulation in this licensing of *roadside* or *parking lot* puppy sellers. The ones who are there every weekend selling puppies from the back of trucks and at flea markets. THEY need as much or more regulation, since every case of suspected rabies in this state has been from puppies bought roadside. THEY should be forced to show a license and shot record.

At any rate in reading the proposed licensing and it's sub-text I noticed a few things that I think should be changed, if you get too creatively restrictive on one particular animal husbandry group, ALL will start barking at you and the current governor has made it clear he considers it to be *job killing,* or more correctly *profit killing*

So on to the statutes:

91.55
(b) The department shall make the directory available to the public

This needs to be private, unless the breeders have been found guilty of a crime..to allow public access to breeder addresses allows the *animal rightest* to terrorize a legitimate breeder. The D.H.S. has issued warnings for several animal rights groups as domestic terrorist. I think you need to heed that when discussing making records public.

§91.10.Definition

(8) Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration ...

Oddly enough I think this should be dropped to 6 or more intact females, even the AKC labels a *hobby breeder* as 5 females.
Also 2 or more intact Males should be included since the sale and transfer of SEMEN is a big business. The sale or transfer of semen should also be licensed.

Exceptions for fees should be for licensing IF a breeder can prove a intact male or female is CURRENTLY in the show ring, (since they can not be neutered and be showing) or a certified service dog or police/military dog. With a current

show catalog showing names of dogs OR a copy of a show websites entry with the dogs names & ID/Reg number and owners names (ex: www.onofrio.com will show dates, dogs entered etc)

The License fees are to high, should be halved.
A per litter fee of $10 should be instituted if a baby is advertised for sale.

The puppies/kittens should have proof of all age appropriate shots before transfer of ownership.

Besides legitimate Texas ID there should be proof of income (previous years tax returns) to show they are paying for profit on income.
Proof of income should be amended to include retirement income and disability income.

Just WHO will *train* kennel help? There is no course offered or school that does such. This needs to be redacted.

Cages should not be required to be 12" above a sitting dogs head, 3"-6" is optimum, even many veterinarians have smaller closures.

The two seats on committe should be on a ROTATING basis of Established TX 501-3c rescues, not limited to HSUS or other big name groups and should be able to PROVE they actually rescue animals in THIS state, not just a lobbying/fundraising arm. IE: run a shelter, rescue group, rescues animals from shelters and or rescue strays. (PETA and HSUS do NOT operate or fund shelters) unlike the local humane societies or SPCA that do.
A legitimate rescue group will spay or neuter all animals BEFORE placing. This can be proved by S/N certificates provided by a licensed TX veterinarian.

My opinion,
Dot Snowden

Erule. Comments - Comments on the Proposed Licensed Breeder Regulations

From: Jeanne ONeil <[redacted]et>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 6:53 PM
Subject: Comments on the Proposed Licensed Breeder Regulations

February 20, 2012

I previously submitted comments via email through the Texas Humane Legislation Network and am writing again to add some additional comments. I understand from TDLR's website that the deadline for submitting comments is February 20, 2012.

§91.108.Standards of Care--Watering.
If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and sanitized in accordance with §91.109(b), and before being used to water a different dog or cat or social grouping of dogs or cats.

For the health and well-being of the dogs and cats in breeding facilities, water should be available at all times, not just for 1 hour every 12 hours. Animals can easily become dehydrated if they don't have access to water, especially during hot weather when continuous panting causes them to loose water at a faster rate. Dehydration under those conditions can quickly escalate to a life-threatening condition. Unlike humans, who have the forethought to drink before they become thirsty, a dog may not feel the need to drink until they have experienced significant water loss. At that point, they should not have to wait hours for a simple drink of water. In addition, I doubt you would find many, if any, veterinarians who would agree that limiting an animal's access to water on a regular basis is appropriate or humane.

The only reason I see for allowing a breeder to only provide water for 1 hour every 12 hours is to create a loophole or excuse for negligent breeders. If animals are found without water, the owner can claim that the dog or cat had water within the past 12 hours, and there is no way for an inspector to verify this is true. For their health and well-being, dogs and cats should have continuous access to potable water. This should not be a difficult requirement for breeders to meet.

§91.112.Standards of Care--Veterinary Care.
(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.
(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical procedure such as caesarian birth.

I am very pleased to see that a "hands on" veterinary examination will be required every twelve months. My concern with this section is with part b. "Surgical procedure such as caesarian birth" is too vague and needs to be further defined. As I read this, I'm left wondering if tail docking, ear cropping, declawing, and debarking would be considered surgical procedures. It is not obvious from the way this is written, and without clarification, it appears that breeders would be allowed to perform these actions themselves. These are serious procedures that should only be performed by a licensed veterinarian to protect the puppy or kitten from unnecessary suffering and pain. This section could be improved by adding "tail docking, ear cropping, declawing, and debarking" after "caesarian birth."

§91.102.Standards of Care--Sheltered Housing Facilities.
(e) Surfaces.
(i) floor surfaces in facilities ***licensed on or before September 1, 2012****, may consist of flooring that is 100 percent wire or*

wire mesh or slatted material; and
(ii) floor surfaces in facilities ***licensed after September 1, 2012****, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;*

§91.104.Standards of Care--Primary Enclosure.
(3) Additional requirements for dogs.
(A) Space--Facilities ***Licensed on or before September 1, 2012****.*
(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated 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 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(B) Space--Facilities ***Licensed after September 1, 2012****.*
(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated 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 6 inches; then divide the product by 144 then multiply that result by 2. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) x 2 = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

I have serious concerns about grandfathering in breeders who register by September 1, 2012 and exempting them indefinitely from having to meet the additional cage space and solid flooring requirements. Exempting them from ever having to meet these requirements is **not** consistent with the intent of the law, which was passed by the legislature in order to assure more humane care for breeding dogs and cats. A more acceptable option would be to require breeders who register by September 1, 2012 to meet the additional space and partially solid flooring requirement in a designated amount of time (12 to 18 months seems reasonable).

§91.104.Standards of Care--Primary Enclosure.
(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie without its body being in contact with at least one side of the shelter walls in a comfortable, normal position, and to ***walk in a normal manner****.*

Even the larger cage size only allows for 12 inches of space in front of the dog's face, when they are standing with their rear touching the back of the cage. I fail to see how this would allow a dog to "walk in a normal manner." I also don't see the point of adding "without its body being in contact with a least one side of the shelter walls."

§91.101.Standards of Care--Indoor Housing Facilities.
(a) Heating, cooling, and temperature. Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, ***using best efforts****, the ambient temperature in the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C).* ***Using best efforts****, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.*
(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when ***using best efforts****, the ambient temperature is 85° F (29.5° C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.*

§91.102.Standards of Care--Sheltered Housing Facilities.
(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be

sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. ***Using best efforts****, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C).* ***Using best efforts****, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.*
(b) Ventilation. The enclosed or sheltered part of sheltered housing facilities for dogs and cats must be sufficiently ventilated when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, doors, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air-conditioning, must be provided when ***using best efforts****, the ambient temperature is 85° F (29.5° C) or higher.*

Throughout these sections, I find the repeated use of the phrase "using best efforts" to be troublesome and vague. It would be difficult for inspectors to apply "using best efforts" in any consistent manner when evaluating breeding facilities. In addition, please consider that when the temperature is even below 60 degrees, a dog confined to a small cage for hours on end and unable to move around would most likely be shivering and miserable. This is a far different situation than that of a dog in a yard in cold weather that has the opportunity to move around to generate body heat. Obviously, the rules exist to establish standards. In order for breeders to meet these standards, they should be clearly stated, with no gray areas. Inclusion of the phrase "using best efforts" has the potential to provide a loophole for breeders to skirt around the requirements for temperature control. Obviously, in some situations there may be extenuating circumstances which could be taken into consideration by inspectors without the inclusion of the phrase "using best efforts." I propose that it be eliminated from the document.

Thank you for considering my comments. I am very disappointed (and I think it's very telling) that the AKC hasn't taken more of an interest in the actual care and well-being of animals in breeding operations in Texas and other states. Instead, they have chosen to focus on protecting breeders' interests, and they seem intent on keeping the rules as weak as possible, to the detriment of the animals. As stated in my previously sent comments, I personally don't see how anyone who has ever loved a dog or a cat can find it acceptable that breeding dogs and cats have to spend their lives in small cages and in deprived environments 24 hours a day. The least we can do is to try and provide them with some measure of comfort by enacting strong standards for their care.

Respectfully submitted,

Jeanne O'Neil
[redacted]

Melissa Rinard - HB1451

From: sky yearwood <[redacted]>
To: "advisory.boards@license.state.tx.us" <advisory.boards@license.state.tx.us>
Date: 2/16/2012 12:53 PM
Subject: HB1451
CC: "general.counsel@license.state.tx.us" <general.counsel@license.state.tx.us>

DOG OR CAT BREEDER PROGRAM DRAFT RULES
HB1451

SEC. 802.004. PRESUMPTION OF USE FOR BREEDING. (see Draft Rules §91.21.License Required--Presumptions.) (See §91.30.Exemptions.)
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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding. Clarification is needed regarding what documentation is acceptable to prove an intact female was not bred and whether this applies to being bred in a given year or at any time. Furthermore, a six month old cat or dog is not an adult and should not be considered as such before 12 months of age.

SEC. 802.005 – EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL PURPOSE DOGS.
This section purports to exempt dogs bred and used for herding livestock, hunting, including tracking, chasing, pointing, flushing, or retrieving game, or competing in field trials, hunting tests, or similar organized performance events. However, the exemption has been narrowed with further stipulations in the Proposed Rules by requirement of proof including but not limited to:
(1) evidence of agriculture activity or business operations using a dog described by this section;
(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.
(f) All evidence submitted under this section must uniquely and conclusively

identify and relate to the specific dog or dogs for which an exemption is requested.

Is proof of event competition required for every dog owned in order to qualify for the exemption? Is this an annual requirement or is the possession of any field trial or hunting test title sufficient to prove the dog is working in the capacity for which it was bred?

Does "similar organized performance events" include lure coursing, Earthdog and other working/sporting dog events?

Hunters going after wild hogs and other game are not competing in organized events and will not have "event" receipts to submit in order to gain a kennel licensing exemption.

SEC. 802.056 AND 802.057 - ESTABLISH A PUBLIC DATABASE OF LICENSEES AND DISCIPLINARY ACTIONS. (see §91.55 and §91.56)
Due to the low thresholds of the law, breeders who utilize their homes will be regulated and licensed. Thus private homes will become subjects of public information. The draft regulations should clarify what information is absolutely necessary for inclusion in this public database so as not to create opportunities for harassment by activists or predators. (see §91.55 and §91.56).

Physical or mailing addresses of compliant licensed breeders should not be available to the public as there is ample proof of activist harassment of breeders (regardless of facility size) nationwide.

SEC. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. (See §91.60.Responsibilities of the Department--Payment of Rewards)
An account is established to pay "rewards" for information leading to discovery of unlicensed breeders. The Draft Rules propose a $1,000 "bounty" not to exceed $1,000. There is no statement in the Draft Rules to warn of penalties for false reporting, a crime under Texas Penal Code, in order to avert potential breeder harassment.

There should be NO MONETARY REWARD for reports of supposed

unlicensed breeders.

802.101 LICENSE REQUIRED (See §91.22.License Required--Dog or Cat Breeder.)
The law and Proposed Rules make it a crime for a person to represent themselves as a dog or cat breeder unless the person holds a license for each facility owned or operated. As written this law attempts to silence free speech and prohibit small dog and cat breeders who are legally under the new threshold from using the term "breeder" in reference to their hobby. This requires clarifiction.

Sec. 802.201. ADOPTION OF STANDARDS. (b)(11) prohibit a person from euthanizing an adult animal or performing a surgical birth of an animal unless the person is a veterinarian;

This has been modified in §91.112. Standards of Care--Veterinary Care. (b) to read "perform a surgical procedure such as" caesarian birth. This changes intent and opens the law to be interpreted as prohibiting common practices such as dewclaw removal and tail docking. 91.112 should be corrected to read as the law intended.

Dewclaw removal and tail docking have usually been performed regularly by a majority of breeders because these procedures are quickly and easily accomplished with resulting minimal stress or discomfort and should not be considered a surgical procedure. Transporting new puppies to a Veterinarian is stressful to the mother and exposes her puppies to contagious diseases.

§91.53.Out-of-Cycle Inspections.
A Tier I violation of the rules related to records required by this chapter would require an out-of-cycle inspection resulting in an additional $175 fee for the breeder. A record-keeping error could be as simple as a missing health record for one of the dogs/cats. The correction is noted on the inspector's report and of copy the necessary corrected item could easily be sent to TDLR electronically. This would eliminate cost of a repeat inspection and save time/money for TDLR inspectors.

§91.104.Standards of Care--Primary Enclosure
(3) Additional requirements for dogs. (A) Space--Facilities Licensed on or before September 1, 2012.
"(iii) The interior height of a primary enclosure must be at least 12 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position"

This unnecesarily exceeds the requirement of 6 inches in USDA standards and arbitrarily penalizes breeders who cannot afford to comply with the new law by September 1st.

§91.110.STANDARDS OF CARE--ONSITE PERSONNEL
(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter.
Due to the low thresholds of the law, hiring even one employee could be cost prohibitive. If the goal is to meet required care set forth in the Dog and Cat Breeder Program, employees should be utilized only on an "as needed" or "on call" basis without penalty to the breeder.

§91.112. STANDARDS OF CARE--VETERINARY CARE.
(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.

Federal regulations Title 9 CFR, Part 3, Subpart D Attending Veterinarian and Adequate Veterinary Care (a) (1) require that dealers have formal arrangements made with a veterinarian that include a written program of care and regularly scheduled visits to the premises. Neither HB1451 enacted into law or federal regulations require an annual "hands on" examination of every animal on premise as required in §91.112.Standards of Care-Veterinary Care. A hands on examination of animals who visually, in the veterinarian's opinion, appear to be vigorous, active, in appropriate weight, free of hot spots or skin irritations, should not require a hands on examination. This requirement exceeds the law at

great cost to the kennel/cattery owner.

I am very disappointed in Texas Legislators voting for HB1451 because this means they are supporting radical Animal Rights Activists, enabling them to further constrict breeding and owning pets and livestock in Texas.

Sonia Yearwood, [redacted]

From: Vickie Fisher <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 5:41 PM
Subject: Comments regarding Texas Dog and Cat Breeders Act
Attachments: Texas Legislative Comments.pdf

Attached are comments from The International Cat Association.

Also, faxing, just in case.

Respectfully,
Vickie Fisher, President

Vickie Fisher, President
[redacted]
PH/Fax [redacted]

Wherever you are, you're in TICA's world.

February 20, 2012

Melissa Rinard
Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
PO Box 12157
Austin, TX 78711

Dear Ms. Rinard:

The International Cat Association (TICA), is the world's largest genetic registry of purebred and household pet cats, with individual and club members worldwide. TICA promotes caring, responsible ownership and breeding of cats, working together to promote the preservation of pedigreed cats and the health and welfare of all domestic cats. TICA is a resource for information related to cat genetics and better breeding practices, promoting healthy, happy pet cats. Our members and exhibitors have a vested interest in how Texas chooses to implement the Texas Dog and Cat Breeders Act (Breeder Law) now and in the future.

Breeders and TDLR are stuck with the requirements of the ill-considered law. TICA understands that many of the problems with the law can only be changed by legislation and that everyone must make the best of a bad situation. TDLR has the opportunity to make the best of a bad situation as it makes and implements the rules currently being considered. TICA is submitting its comments on the rules in the hope that it will help TDLR in this endeavor.

TDLR may or may not be aware that proponents of the Breeder Law assisting in the development of the rules recommended by the advisory committee generally have little knowledge about dog and cat breeding, especially in the home. Some would prefer that no breeding were allowed in Texas at all. Those who are knowledgeable about in home breeding operations would never suggest the Code of Federal Regulations for Standards (CFR or USDA standards) requirements as a minimum as they are inappropriate standards in the bedrooms of America. Others will want to make the Texas standards more restrictive than the USDA standards.

TDLR needs to be aware of where these additional restrictions are occurring and their effect as many will be counterproductive to TDLR's statutory mandate of being self-funding. Why? The harder and more expensive the standards and licensing process are to meet, the fewer breeders will be willing to undergo licensing process and the less revenue for TDLR's enforcement of this legislation.

Even among breeders who choose to keep breeding operations at a level that would require licensing, excessive regulations and costs run the risk of causing the strategic purpose of the breeding program to be consumed in excessive efforts and costs of compliance. Eventually such breeders who strive for great compliance may quit breeding as their strategic purpose gets lost in the efforts of compliance.

Many requirements of the CFR presume a business operation, not hobbyists who may get caught up by the Breeders Act definitions of dog or cat breeder. For example, mandated engineering standards (frequently not suitable for a home environment), allowing enhancement without considering practical implementation or costs, passing a pre-license inspection when what it will take to pass such inspection is not clear in either the law or the proposed rules, and requiring documented training of employees (or family members for the hobbyist).

Many of the rules are vague or unclear making it difficult for the average person to know if they are required to be licensed or even what it will really take to become compliant so a license could be obtained.

Much of the statutory language is included in the regulations. This enables TDLR to essentially enforce laws that would otherwise require the level of due process an accused would be entitled to in a criminal investigation, law enforcement and the courts. Again, to encourage greater participation in the licensing program, TDLR should look to make rules now that would make participation easier and in the future encourage legislative changes that would understand the one size fits all approach will not work in such a diverse "industry".

Rewriting the CFR into the rules makes it incumbent upon TDLR to have someone constantly monitoring the CFR for changes to notify TDLR whenever there is a change so that the process of rewriting the rules to accommodate CFR changes can occur.
This adds to the expense of the program as the federal government will not forego making changes because it inconveniences the state.

Also TDLR should consider whether anyone considered whether the requirements in the rules will be compatible with the International Air Transport Associations (IATA) Regulations rather than merely copy them from the CFR? Carriers commonly allowed for air transport should be allowable. Also IATA allows use of absorbent diaper padding in the bottom of the carrier which can be safer and certainly less messy than litter.

Attached are TICA's specific comments regarding our concerns or objections to the proposed rules and the rule involved. Please give them careful consideration as we feel they will help clarify how the Breeder Law will be enforced and the standards that will be applied as well as increase the likelihood of TDLR meeting its mandated statutory requirements.

Respectfully,

Vickie Fisher, President
The International Cat Association, Inc.
[redacted]

The International Cat Association, Inc.
Comments

§91.10.Definitions.

(14) Possess--To have custody of or control over.

This is defined too vaguely to adequately determine which animals count towards the 11 female limit. Many dogs or cats not owned by a person will count in this definition without additional consideration. As one example, females are frequently sent to the males for breeding purposes and may well be boarded by the stud's owner for weeks or even months until breeding and pregnancy has been accomplished. Yet the stud's owner has no ownership interest in the female.

§91.21.License Required--Presumptions.
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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

Again there is the issue of what is possessed which can be addressed by fixing the definition of possess. Also there is the issue of how to prove a female will not be used for breeding purposes. One of the reasons for "innocent until proven guilty" directive in criminal cases is that it is extremely difficult to prove a negative. TDLR needs to provide better guidance as to what proof would be required to prove an animal is not to be used for breeding. As suggested by the American Kennel Club an attestation that a particular animal will not be used for breeding that year would be reasonable alternative evidence. Also TDLR needs to define the time frame during which the female will not be used for breeding. It should be limited to the year for which the license is being applied for or renewed only.

§91.22.License Required--Dog or Cat Breeder.
(a) A person may not act as, offer to act as, or represent 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.

This could be interpreted to mean that even breeders who are not required to be licensed under state law may not refer to themselves as breeders. Unlike "software engineers" who have alternate titles to use, such as software developer, there aren't too many terms for breeder. However, it would be appropriate to say a breeder could not call themselves a "licensed dog or cat breeder" in Texas. Changing this rule will also help to ensure that complaints based upon this rules will be less likely to arise out of a misunderstanding of this rule. Such investigation will utilize TDLR resources and funds that can better be used elsewhere.

(c) For purposes of this section, each noncontiguous premise or physical location is a separate facility and must obtain a license under this chapter.

Some home hobby breeders work together under one cattery/kennel name yet reside separately in noncontiguous premises. A better alternative would be to allow one license but require separate inspection fees for each noncontiguous area.

§91.23.License Requirements--Dog or Cat Breeder.
To be eligible for a Dog or Cat Breeders license, an applicant must:
(4) successfully pass a criminal background check for each applicant and controlling person;

Successfully passing a background check is defined in the Breeder Law section 802.107 and is used with explicit clarification in rule 91.25(a). To use "pass a criminal background check" without the qualifications in the statute or used elsewhere in the rules implies this utilizes a much broader standard. Animal cruelty is a crime which would be directly relevant to whether a person should be utilized by a breeder, yet there are many crimes which have no relevance to taking appropriate care of an animal and under this rule they could be used against the applicant or applicant's employees. Adding "in accordance with section 802.107" to this sentence clarifies this issue and prevents the potential for misunderstanding.

§91.24.License Requirements--Dog or Cat Breeders License Renewal.
(a) To renew a breeder license, an applicant must:
(4) successfully pass a criminal background check for each applicant or controlling person;

See comment to 91.23 as this is the same issue.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal--the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.

There are many unexpected situations that may interfere with a person's ability to file a timely renewal. There could easily be a hurricane, wildfire or any number of other possibilities disrupting a person's ability to comply strictly or a death in a family may occur that could cause a complete disruption in a hobbyist's household or even a business if the person is a key person. As it is hard to tell a pregnant queen to not have its babies, and it would behoove the breeder to place kittens or puppies already born, there should be a mechanism whereby the breeder can obtain an extension that would cover females already pregnant or existing animals while not allowing additional breeding during the extension time period. Also there is no provision for when the lapse is caused by TDLR during which the breeder should be able to continue operation.

§91.27.License or Registration--Notice of Proposed Denial, Opportunity to Comply.
(a) If the department recommends denial of an application for a license or registration under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.
(b) The notice must state the reason for the department's decision.
(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.
Neither the statute nor the rules provide a potential licensee sufficient guidance to ensure that reasonable people will be able to meet all requirements of the pre-license the first time. Allowing for a conditional approval gives the applicant the opportunity to come into compliance, however, there is no guarantee with the poor guidance available that all issues will be fixable in 14 days, especially if licensee must wait on contractors to do the work. The time frame should be more flexible and consider the entirety of the situation. Also if a denial is based on inability to complete the work in the timeframe allowed by TDLR, will this count as a denied license in the case of reapplication as the statute and these rules indicate it might?

§91.28.Department Notifications to Licensee or Registrant.
Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

To help prevent unknown notice failure, emails should be sent read receipt requested. If no read receipt is received or no email is provided, written notice should be sent by certified mail with at least delivery verification required. In the alternative the email should be sent as a courtesy with everyone receiving written notice sent by certified mail with at least delivery verification required.

§91.59.Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.
(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.
(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.
(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.
(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.
(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.

This subjects both TDLR and breeders to abuses from people with malicious intent. It is one thing to honestly report alleged abuses because a person lacks knowledge to know if a place is truly noncompliant, it is quite another to use anonymous reports as a form of harassment. Not only is this unfair and costly to the breeder but it is costly for TDLR as well. Anonymous should only mean not publicly disclosed. TDLR should keep a record for internal purposes of the identification of otherwise anonymous reports in order to identify individuals who demonstrate malicious intent. TDLR should also have the ability to sanction/fine individuals who use the system with malicious intent. For on-line submissions, a record of the IP address of the computer used to submit reports would also be useful.

§91.66.Responsibilities of Inspectors--Inspections, Investigations, and Reports of Animal Cruelty.

(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity.

The last sentence of this section should be removed. Alternatively it should be clarified that investigation of unlicensed activity that requires access to private property must do so to pursuant to a search warrant.

§91.72.Responsibilities of Licensee--Display of Breeders License.
A licensed breeder shall prominently display at the breeder's facility, in an area readily accessible to the public, a copy of the department issued breeders license.

In a private home, there is no area readily accessible to the public. Alternative language should be provided for home hobbyists that get caught up in the Breeding Law.

§91.92.License Revocation and Suspension.
(a) The department 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.
(b) The department may 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;

There should be some requirement for reinstatement if breeder is successful on appeal or a decision is overturned. The breeder should be allowed to sell or place animals conceived but not born prior to the revocation or existing at the time of revocation.

§91.102.Standards of Care--Sheltered Housing Facilities.

(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

To encourage compliance and licensing, TDLR needs to clearly set out what is expected and simplify it as much as possible. The TACC scale is not in the Breeder Law and is difficult to understand. TDLR should remove this reference to facilitate licensing and compliance.

§91.103.Standards of Care--Outdoor Housing Facilities.

(a) Restrictions.
(1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog or cat to which the exemption applies:

The Breeder Law does not require documentation by the attending veterinarian in the records of the animal. Many times the breeder is far more familiar with what is best for their particular breed than veterinarians, especially the more rare breeds. Requiring veterinarian documentation in the medical records just unnecessarily adds to the cost of compliance.

§91.105.Standards of Care--Compatible Grouping.
Dogs and cats that are housed in the same primary enclosure must be compatible, with the following restrictions:
(3) Puppies or kittens 6 months of age or less may not be housed in the same primary enclosure with adult dogs or cats other than their dams or foster dams, except when permanently maintained in breeding colonies;

CFR only requires a 4 month age limit. Kittens need to interact with other cats for better cat to cat socialization and at 16 weeks would have all their distemper vaccinations except the final vaccination recommended to occur after 16 weeks to ensure lasting protection. TICA recommends changing the age limit back to 4 months.

§91.112.Standards of Care--Veterinary Care.

(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

This section is vague and may cause more harm than good. What is adequate rest? How is breeding cycle defined? When a cat develops pyrometria, it is generally recommended she be bred on her next heat cycle. This may fall into an "adequate rest" period.

§91.113.Standards of Care--Sales and Transfers.
A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned.

This far exceeds the statutory section 802.201 (13) and CFR which both require only that a breeder shall not sell, trade, or give away an animal before the animal is at least 8 weeks of age. Many breeds of cats and dogs frequently are not 2 pounds at 8 weeks of age. Among breeds of cats these would include the Singapura, Burmese, Peterbald, Siamese, Balinese, Oriental Shorthair, Oriental Longhair, Colorpoint Shorthair (a CFA breed), Devon Rex, Cornish Rex, Sphinx, and Japanese Bobtails as a start. In fact most breeds of cats, exclusive of the large breeds, are likely to fall into this category, especially the females.

Erule. Comments - COMMENTS TO PROPOSED DOG & CAT BREEDER RULES

From: "[redacted]" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 11:53 PM
Subject: COMMENTS TO PROPOSED DOG & CAT BREEDER RULES
CC: <[redacted]>, <[redacted]>
Attachments: MY COMMENTS.pdf

To Whom It May Concern:

Attached is a pdf document containing my comments on the proposed Licensed Dog & Cat Breeder program rules.

Thank you for the opportunity to comment.

Sincerely,
Diane K. Coker
[redacted]

[redacted]

February 17, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Comments on Proposed Rules to Implement House Bill 1451, 82nd Legislature, Regular Session, 2011

Dear Ms. Rinard:

I have reviewed the above-referenced proposed rules and have several comments and questions which are listed below. I respectfully request that the Texas Department of Licensing and Regulation (TDLR) address these items before adopting the rules.

Comments

1. The TDLR and the Licensed Breeder Advisory Committee have done a great job of putting together the rule package. It could not have been an easy task and all are to be commended for their efforts.

2. The pages of the proposed rules pdf file (Chapter 91 Proposed Rules.pdf) are not numbered; please sequentially number the pages of any future version.

3. The TDLR Licensed Breeder home web page lists three documents which were "the main documents discussed during the [December 7, 2011] meeting [to discuss and consider rules for the licensed breeders program]."

   One of the three main documents was prepared by the American Kennel Club (AKC), a national organization whose primary business is the registration (for a fee) of purebred dogs. The AKC has a direct financial stake in the new licensed breeder program, since its primary business is the registration (for a fee) of purebred dogs.

   Question A: Why were comments of a private stakeholder group considered before all others; i.e., before the proposed rule was officially available for public comment and before it was published in the Texas Register?

   Question B: Did the Department or Advisory Committee solicit comments from any other national or state-wide organization, or individual(s), in order to consider them during the drafting of the proposed rules before publishing in the Texas Register? If so, please provide the names. If not, why not?

4. Proposed rule preamble (?) paragraph which begins:

   Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect. . .

   And continues:

In consideration of the potential cost increases and balancing the interests and welfare of the animals, the Department believes that grandfathering the size of the enclosures (§91.104(3)) and the required solid flooring (§91.102(e)(1)) will minimize eliminate [sic] those potential cost increase [sic] to persons complying with the licensing requirements by September 1, 2012, the date of statutory compliance.

Comment: The purpose of HB 1451 is to create a licensing program for dog and cat breeders 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. (HB 1451 Bill Analysis, Texas Legislature Online, 4/26/2011) The Department's arbitrary decision to license some commercial breeders without also making them comply with all applicable regulations defeats the purpose and intent of the bill and sends the message that humane treatment of companion animals in Texas is of little importance. This was not the intent of the bill. Reducing breeders' compliance costs is desirable but not if it results in increased animal suffering.

The grandfathering concept as conceived by the Department should:

a. only apply for 180 days maximum, after which the breeder must come into full compliance with all applicable regulations or lose his/her license; or

b. be abandoned altogether.

5. Section 91.23(5): *To be eligible for a Dog or Cat Breeders license, an applicant must successfully pass a facility prelicense inspection conducted by a department approved inspector or provide a valid Class A animal dealers license number. . . .*

Comment: Some Class A animal dealers may have unresolved violations outstanding. This problem was identified during an audit of the Animal and Plant Health Inspection Service's (APHIS) Animal Care (AC) unit, which is responsible for enforcing the Animal Welfare Act (AWA). The results of the audit are outlined in detail in the May 2010 USDA Office of the Inspector General report, *Animal and Plant Health Inspection Service Animal Care Program – Inspections of Problematic Dealers.*

Class A animal dealers with violations should not be licensed in Texas until all violations are resolved and monetary penalties paid. Therefore wording of 91.23(5) should be changed to:

To be eligible for a Dog or Cat Breeders license, an applicant must successfully pass a facility prelicense inspection conducted by a department approved inspector or provide a ~~valid~~ current Class A animal dealers license number issued under the Animal Welfare Act. The Class A license should be valid and in good standing and shall have no associated violations, citations or warnings which are unresolved or monetary penalties unpaid . . . .

6. *Section 91.51. Inspections—Prelicense Exemption.*

The department may not require 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;

should be changed to:

The department may not require 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. *The Class A animal dealers license should be valid and in good standing and shall have no associated violations, citations or warnings which are unresolved or monetary penalties unpaid* . . . ;

7. To protect animals from ingesting or being exposed to cleaning chemicals their housing facilities, a sentence should be added as follows to the following paragraph.

   Section 91.100.Standards of Care—Housing Generally.

   (b) Condition and site. Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs. Cleaning chemicals or other substances toxic to the housed animals shall be stored in a manner so as to be inaccessible to the animals. *Housing facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks, and raccoons are prevented from entering it.*

8. Wording in the following paragraph should be changed slightly for clarity.

   Section 91.101.Standards of Care—Indoor Housing Facilities.

   (d) Shelter from the elements. Dogs and cats must be provided with adequate shelter from the elements at all times to protect their health and well-being. The shelter structures must be large enough to allow each animal to turn about freely and to *sit, stand, and lie* in a normal manner *without its body being in contact with at least one side of the shelter walls* ~~*in a normal manner and to turn about freely*~~.

9. Same section as previous comment (*Section 91.101.Standards of Care—Indoor Housing Facilities*), different subsection.

   (e) Surfaces.
   (1) The following areas in sheltered housing facilities must be impervious to moisture:
   (A) Indoor floor areas in contact with the animals; provided that:
   (i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and
   (ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;

As discussed previously in comment #4 above, the Department's decision to go backwards in time, basically negate the intent of HB 1451, and put a Texas government stamp of approval on the inhumane treatment of cats and dogs is not required by the bill and is simply unacceptable. If the Department insists on letting some breeding facilities off the hook at the initial licensing deadline of September 1, 2012, it should only be to allow an additional 180 days to give all facilities time to come into complete compliance. After 180 days all facilities should be subject to the "100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;" requirement.

10. Paragraph 91.103(a)(1)(C) should be amended as follows:

    (C) Sick, infirm, aged or young dogs or cats or puppies or kittens.

11. Paragraph 91.104(1)(B)(xi) should be amended as follows for clarity:

    (xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position *without its body being in contact with at least one side of the shelter walls ~~in a comfortable, normal position,~~ and to walk in a normal manner* as enclosure size allows.

    Comment: It's difficult to imagine how a dog housed by itself in a tiny primary enclosure sized for that dog could actually walk at all in the small space, on wire, while dodging its own excreta.

12. Paragraph *91.104(3)(A) Space—Facilities Licensed on or before September 1, 2012.*

    (3) Additional requirements for dogs.
    (A) Space--Facilities Licensed on or before September 1, 2012.
    (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated 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 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

    Comment: As discussed previously in comment #4 above, the Department's decision to go backwards in time, basically negate the intent of HB 1451, and put a Texas-sized government stamp of approval on the inhumane treatment of cats and dogs who have the misfortune of happening to live in a commercial breeding facility is not required by the bill and is simply unacceptable. If the Department insists on letting some breeding facilities off the hook at the initial licensing deadline of September 1, 2012, it should only be to allow an additional 180 days to give all facilities time to come into compliance with the larger cage size. After 180 days all facilities should be subject to providing primary enclosures which are described in 91.104(3)(B).

13. Please explain what is meant by the word "nonconditioned" in paragraphs 91.104(2)(G) and 91.104(3)(C). Perhaps an additional definition is in order under Section 91.10.

14. Section *91.104(3)(E) Prohibited stacking of primary enclosure. Primary enclosures may not be stacked above three vertical levels.*

    Comment: Stacking of cages should be disallowed completely or at most should not exceed two – one cage stacked upon one other cage. Even with collection trays separating the stacked cages -- assuming trays are in good repair and are actually used -- there is really no effective way to totally prevent the constant raining down of wastewater, urine and feces from the higher cages down upon the animals in the lower cages. Cage stacking, along with wire flooring, is the kind of thing that if you saw your neighbors keeping their dogs this way, would cause most decent people to call the police or animal control. It is simply inhumane and should not be allowed.

15. Section 91.105(4), reads *Dogs or cats may not be housed in the same primary enclosure with any other species of animals, unless they are compatible. . .*

Question: If dogs or cats are housed with other species of animals with which they are compatible, how will primary enclosure size be determined?

16. Section *91.108.Standards of Care—Watering.*

> *If potable water is not continually available to the dogs and cats, it must be offered to the dogs and cats as often as necessary to ensure their health and well-being, but not less than twice daily for at least 1 hour each time, unless restricted by the attending veterinarian. Water receptacles must be kept clean and sanitized in accordance with §91.109(b), and before being used to water a different dog or cat or social grouping of dogs or cats.*

Comment: Water should be available at all times to the animals. Unlimited access to water is needed to help keep the animals cool and to properly flush out waste products through the kidneys and intestines. Imagine being thirsty for several hours every day. This is not something that the animals should have to endure.

16. *Section 91.112.Standards of Care—Veterinary Care.*

> *(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical procedure such as caesarian birth.*

Comment: The meaning of "surgical procedure" is not clear. Debarking – outlawed as a form of mutilation in the United Kingdom – requires anesthesia and hopefully pain medication, if done correctly and humanely, and should only be performed by a veterinarian. Other procedures may also require pain meds and/or antibiotics which can only be prescribed by a veterinarian.

The following amended language is suggested:

> *(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform ~~a~~ surgical procedures such as caesarian birth,* debarking, ear cropping, tail docking, or claw removal.

Thank you for the opportunity to comment on the proposed Dog or Cat Breeder Program rules.

Sincerely,

Diane K. Coker
[redacted]

Erule. Comments - TDLR Comments Submitted in Response to Proposed Rule (Dog/Cat Breeder Licensing Program)

From: anna [redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>
Date: 2/19/2012 9:07 PM
Subject: TDLR Comments Submitted in Response to Proposed Rule (Dog/Cat Breeder Licensing Program)
Attachments: Comments to TDLR Rules (Final).doc; Comments - Exhibits A and B.pdf

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Att. **Melissa Rinard,** Legal Assistant
Office of General Counsel
Texas Department of Licensing and Regulation

Attached please find Comments of **33 breed club organizations, representing 19,549 total cumulative individual members**, submitted in response to the proposed Rules of TDLR published in the *Texas Register* on January 20, 2012.

The 33 breed club organizations, and each of their 19,549 members, submit these Comments, in their collective and individual capacities as "interested persons," in opposition to the proposed Rules implementing the Dog or Cat Breeders' Act.

In the interest of conservation of agency and environmental resources, as well as for your convenience, we have consolidated these comments in one submission, with the understanding and request that the Department/Commission accord the same weight to this submission as if each association and its members had made separate filings.

Thank you in advance for your attention to this matter. In the event you should have any questions regarding the attached Comments, please feel free to contact the undersigned.

Anna Matthews
[redacted]

February 19, 2012

STATEMENT OF COMMENTS OF

SELECT BREED CLUBS IN RESPONSE TO

TDLR'S PROPOSED RULES

(DOG/CAT BREEDERS PROGRAM)

INTRODUCTION

This Statement of Comments is submitted by and on behalf of the following **33 organizations, and their collective 19,549 members** ("Interested Persons"), in response to the Texas Department of Licensing and Regulation's ("TDLR" or "Department") proposed Dog/Cat Breeders' Program Rules published in the *Texas Register* on January 20, 2012:

- American Fox Terrier Club
- American Shetland Sheepdog Association
- Bluebonnet Pug Dog Club
- Caddo Kennel Club of Texas
- California Responsible Pet Owners
- Cavalier King Charles Spaniel Club of North Texas
- Cavalier King Charles Spaniel Club of Southern California
- Cavalier King Charles Spaniel Club of Greater San Diego

- Cavaliers of the West
- Cavaliers of the Northeast
- Cavaliers of the South
- Chihuahua Club of North Texas
- Claremore Kennel Club
- Cocker Spaniel Club of Dallas
- Cowtown Chinese Crested Club
- Dallas-Fort Worth Toy Club
- Dallas-Forth Basenji Club
- Dal-Tex Basset Hound Club
- Faith City Kennel Club
- Fort Worth Kennel Club
- German Shepherd Dog Club of America
- Great Dane Club of Greater Dallas
- Greater Collin Kennel Club
- Irish Setter Club of Fort Worth
- Lone Star Fox Terrier Club
- Longview Kennel Club
- National Animal Interest Alliance
- Papillion Club of Tulsa
- Pekingese Club of Texas

- Southern California Den Dogs Club
- The Cavalier King Charles Spaniel Club, USA
- Travis County Kennel Club
- Tyler Texas Kennel Club.

On the basis of the facts, statutory authority, and arguments set forth herein, the Respondents respectfully request that the Department defer adoption of the proposed Rules published on January 20, 2012, and amend the proposed Rules to: (1) Reflect current, empirical research regarding the anticipated number of breeders who will apply for licenses and related economic impact factors; (2) Reflect the accurate facts with respect to the cost and economic impact of proposed Rules; (3) Correct the unsubstantiated conclusion in Notice of Proposed Rules that the "public benefits" of the proposed rules outweigh such costs; (4) Review, modify and revise other substantive provisions of the proposed Rules to correct legal deficiencies and to accommodate compelling breeder interests.

COMMENTS

I. Deficiencies in Notice of Proposed Rules Relating to Cost and Economic Impact Factors (37 TexReg 166).

The Administrative Procedure Act ("APA"), Tx. Gov't Code, Sec. 2001, *et seq.,* requires a state agency to file a "notice of proposed rule" with the Secretary of State prior to adoption of a rule. Tx Gov't Code Sec. 2001.023. That notice must include, in pertinent part, a fiscal note stating the anticipated five-year projected cost and economic impact of enforcement/administration of the proposed rule on State and local governments, as well as on persons required to comply with the rule. *See* Tex Gov't Code Sec. 2001.024(4).

The APA also mandates that before proposing a rule, the state agency shall determine whether the rule may affect a local economy and prepare, for inclusion in the rule, a local employment impact statement. Tx Gov't Code Sec. 2001.022. In addition, where, as here, rule compliance is directed primarily at "micro" or small businesses—in this case, breeders of dogs and cats, including small to mid-size in-home breeders--the state agency is also statutorily required to prepare and include in the rules notice an "Economic Impact Statement" that accurately assesses the potential impact of a proposed rule on small businesses and a "Regulatory Flexibility Analysis" that considers alternative methods of achieving the purpose of the proposed rule. See Tx Gov't Code Sec. 2006.002 (as amended by HB 3430).

In addition, the APA requires inclusion in the notice of proposed rules of a note about "public benefit and costs" stating, for each year of the first five years the rule will be in effect, the "public benefits expected as result of adoption of the proposed rule." Tx Gov't Code Sec.2001.024(5)(A).

As we show below, the fiscal conclusions of the Department in its

notice of proposed rules are factually inaccurate and/or without sufficient basis and rationale. The Department also has failed to consider the tangible adverse economic effect of the rules on the many "micro" and small business breeders which comprise almost 100% of this industry segment, and to prepare the requisite small business Economic Impact Statement and Regulatory Flexibility Analysis. Finally, the Department has failed to show that the alleged public benefits identified in the proposed rules, even if *prima facie* valid (which we contend they are not), outweigh the substantial State costs, adverse fiscal impact on small/micro businesses, and the negative economic impact on State and local economies resulting from implementation of their proposal.

Accordingly, we respectfully request that the Department reevaluate and weigh the significant anticipated cost of its proposed rules to the State and local governments, as well as the adverse economic impact on small businesses operated by breeders against the minimal, potentially counterproductive, contribution of those Rules to the public welfare, with a view toward filing a statutorily compliant amended rules notice which accurately reflects those facts.

A. The Estimated Additional State Cost of Enforcing And Administering the Proposed Rules Greatly Exceeds Anticipated State Revenues from Breeder Licensing And Inspections Fees. (37 TexReg 166).

In its notice of proposed rules, the Department is required to include a fiscal note stating for each year of the first five years the rule is in effect:

"(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule; and

* * * *

(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments...." Tx Gov't Code Sec. 2001.024(4).

The brief fiscal statement in the proposed Rules asserts, without factual basis or rationale, that there will be no anticipated increased costs or other fiscal implications for the State or units of local government for each year of the first five-year period the proposed new rules are in effect. (37 TexReg 166). That "zero cost" finding was prerequisite to the Department's statutory authority to implement the statute because the legislature clearly required that this legislation was to have been administered and enforced **without additional cost implications for the State.** *See* HB 1451, Sec. 802.051 ("The commission shall ... establish reasonable and necessary fees in amounts sufficient to cover costs of administering and enforcing this chapter."); *see also* Fiscal Note to HB 1451, 82nd Legislative Regular Session (April 14, 2011) ($0 estimated impact to General Revenue Related Funds for HB 1451 through the biennium ending August 2013; Agency is "statutorily required to generate sufficient revenue to cover its costs of operation.... [of HB 1451].")

The stated basis for the Executive Director's questionable "no additional cost" conclusion is that the annual $565,000 "expected cost" of enforcing and administering the Rules will be covered entirely by revenues generated from the licensing and inspection fees established by the proposed Rules ("Fees which are included in the proposed new rules, have been set to generate revenues sufficient to cover these costs.") (37 TexReg 166). The above conclusion was reached, without explanation of its factual basis, despite the fact that elsewhere in the Rules, the Department readily acknowledges that "the number of potential licensees [from whom licensing/inspection fee revenue will be generated] is unknown...." (37 TexReg 166).

We contend that the $565,000 estimated anticipated cost figure is unrealistically low. Moreover, that estimate undoubtedly will be substantially inaccurate, if the Department proceeds forward with utilization of the costly, nonmandatory "third-party inspector" program it has initiated through dissemination of an RFP for training of those inspectors. If the optional third party inspector program is utilized, it is anticipated that the annual contract cost alone for the estimated 50 inspectors would be approximately $150,000 (see LBB, Fiscal Note, 82nd Legislative Regular Session (May 18, 2011)). In addition to the above inspector contract cost, the training program cost proposals for inspectors (whether for third-party inspectors or pre-existing Department inspectors) likely would entail estimates of several hundred thousand dollars—an expense which does not appear to have been factored into the Legislative Budget Board's program cost estimate prior to passage of HB 1451. When the additional Department fiscal expenses attendant to enforcement and administration of the Rules are factored in, including but not limited to salaries/employment benefits of the additional Departments staffing required (estimated additional staff of six full-time TDLR employees (LLB, *Fiscal* Note (May

18, 2011), *supra*), TDLR "reward" payments under the proposed rules (up to $1,000 each) for public tips regarding statutory violations, plus compensation packages of existing Department employees (such as an Assistant General Counsel) who will be called upon to perform work in this matter, etc., **the true anticipated cost figure for implementation more accurately approaches the original legislative annual cost estimate of $1,300,000.** (See LLB Fiscal Note (April 14, 2011), *supra.*)

However, for the sake of this discussion, we will assume that the Department's $565,000 projected annual cost estimate is accurate. We show below that the anticipated revenues expected to be generated during the first year (and beyond) of enforcement of the proposed Rules fall **far short** of that cost estimate--and of the "zero cost" enforcement scheme promised by the Department and mandated by the legislature.

The Legislative Budget Board's conclusion that the revised cost estimate of $565,242 for statutory implementation (LBB *Fiscal Note* (May 18, 2011), *supra*) would be covered, at no loss to the State, by licensing revenues generated was predicated upon the assumption that approximately 600 "commercial dog and cat breeders" would be subject to licensure. (LLB *Fiscal Note* (May 18, 2011), *supra.*) Pursuant to information obtained from the Department, that "600 breeder" annual applicant figure forms the basis of the agency's assurance in the proposed rules that sufficient revenues will be generated from license/inspection fees to cover program cost. That breeder-applicant estimate—which we contend is unrealistically high, if not patently inaccurate—apparently was sourced from anecdotal research conducted prior to adoption of HB 1451 consisting of: (1) informal research of licensing applicant statistics from breeder licensing

programs in other states such as Kansas, Nebraska, Missouri (programs with significantly different statutory licensing standards than the Texas statute); and (2) an anecdotal survey of select Texas entities, such as City and County municipalities (*e.g.*, Animal Control officials). It does not appear that any current empirical research was conducted by the Department, subsequent to adoption of HB 1451, with respect to the in-fact anticipated number of breeders who actually intend to apply for licenses (*e.g.*, via direct survey of dog and cat breeders as opposed to non-empirical research regarding other State licensing programs and requested estimates from non-breeder interests such as animal control officers, rescue organizations, Municipalities, etc.).

We dispute the accuracy of the Department's projected "600 breeder" statistic—which figure is pivotal to the Department's "no cost" conclusion. **Our informal, direct contact with an extensive network of breeders across the State suggests that a substantially less number Texas breeders can be expected to apply for licenses—a number which will generate significantly less revenue than sufficient to cover program operational costs.**

To the best of our knowledge, on the basis of informal discussions with numerous dog breeders across the State, including show breeders of pedigreed dogs, the "600 breeder" figure appears to be at odds with the facts. **The primary segment of anticipated licensee applicants who realistically can be relied upon by the Department to pay licensing revenues during the first year of enforcement is a starkly smaller subset: The 34 Commercial Texas breeders of dogs and cats who currently hold USDA "Class A" breeder licenses.**

Discussions with a cross section of knowledgeable breeders in the State, especially show breeders of AKC registered pure-bred dogs, suggest that few, if any, non-federally licensed Texas dog breeders intend to apply for a State breeders' license. As set forth in the Statement of Dale Martenson ("Exhibit A" hereto), a Texas show breeder of with considerable background in this matter and industry contacts, a number of dog breeders who possibly may have been subject to the licensing requirement have already relocated their breeding operations outside the State or intend to do so prior to September 1, 2012. (See Exhibit A, p. 5.) Many other dog breeders, especially show breeders of AKC registered purebred dogs, intend to down-size their breeding operations to lawfully avoid statutory licensing (or have already done so). To that end, a number of breeders intend to reduce (or have already reduced), their number of intact bitches used for breeding and/or number of animal sales below the statutory licensing threshold. Other breeders, unable to shoulder the substantial costs of licensure and/or unwilling to expose themselves to ongoing invasive inspections and potential harassing complaints, have begun to sell, auction *en mass,* or spay their intact bitches for the above reason—decisions which, in some instances, will not support the welfare or humane treatment of the dogs involved or advance the benefits to canine health derived from expansion of longstanding breeding programs designed to perfect breed type and gene pools of purebred dogs. (See Exhibit A, p. 5).

As consequence of the above facts, our informal "real world" contact with networks of Texas breeders suggests that few, if any, non-federally licensed dog breeders currently intend to apply for the State license/inspection upon which the Department's estimate of generated revenue is premised. Indeed, the Department has failed to produce any factually substantiated information or explanation to the

contrary or to explain the current empirical basis (as opposed to theoretical statistical assumption) for its 600-breeder applicant estimate. Its reliance upon evaluation of breeder licensing programs in other States, such as Kansas, is misplaced, as the scope of statutory coverage, and threshold licensing requirements of those states, differ substantially from the Texas statute, as does the "breeder landscape" (*e.g.*, Texas has a high concentration of select show breeders of pedigreed dogs).

Any attempt by the Department to rely upon AKC statistics pertaining to the number of pedigreed dogs registered in Texas or the number of AKC Texas breeders subject to that organization's inspection protocol for that figure is unfounded, as the AKC statistics clearly are not predictive of the in-fact number of anticipated dog breeders who can be expected to apply for a license by or after September 1, 2012. AKC does not maintain records which accurately reflect or identify the number of Texas breeders of purebred d*ogs* registered with it who would be subject to the State licensing requirement. *I.e.*, it does not maintain data regarding the current number of intact bitches possessed or controlled by a breeder or sales of dogs registered with AKC. Instead, it utilizes the annual number of "registered litters" figure for inspection requirement purposes. We understand that its position is, and always has been, that the number of dogs or litters sold is the only accurate way to identify high-volume breeders. **Accordingly, the non-empirical statistical projections utilized by the Department and Legislature in estimating that there will be at least 600 expected licensing applicants during the first year of the licensing program lacks credible factual basis and is intrinsically unreliable.**

At present, the only reliably accurate source of statistics for predicting the in-fact anticipated number of dog and cat breeder licensees in 2012 are the Department of Agriculture's list of USDA licensed "Class A" Texas dog and cat breeders—all of whom are readily identifiable and potentially would be required to apply for a state breeders' license. Those Department of Agriculture statistics show that, as of this date, there are a total of only **34 cat and dog breeders in Texas who hold active USDA "Class A" Breeder licenses.** (See Dept. of Ag. licensing statistics at www.aphis.gov.) That figure includes 32 licensed dog breeders and only two licensed cat breeders, all or most of whom presumably will be subject to the State Breeders' Licensing statute, assuming they remain in business through September 1, 2012.

Assuming that all 34 "Class A" licensed breeders apply for the state license before September 1, 2012, the high-estimate average annual revenue that subset of breeders would generate for the State under the proposed fee structure, is approximately **$2,600 per breeder, for a total estimated annual sum of $88,400.** That calculation is based upon:

> Anticipated licensing revenues generated from 34 breeders for "maximum tier" license (*i.e.,* breeders with 61 or more intact female animals), from the following fees: Original Application fee ($1,900), plus one periodic and out-of-cycle inspection fee ($700), for a total of $2,600 per "Class A" licensed breeder applicant.

Because the statute and proposed Rules exempt "Class A" breeders from pre-license inspection requirement, that fee ($700 maximum) is excluded from the above calculation. Note that this $88,400 figure is a

high estimate, given that it presupposes payment of the maximum fee structure by all, notwithstanding the likelihood that some of the "Class A" breeder applicants with less than 61 intact female animals will pay lower annual fee amounts. In addition, the $88,400 figure includes payment of one annual "periodic/out-of-cycle inspection fee ($700 maximum), which fee will not necessarily be required of all breeders in a given year. Consequently, an anticipated revenue amount of less than the $88,400 revenue estimate is a more realistic figure.

Based upon the above anticipated estimate of licensing application revenues from current federally licensed dog/cat breeders, even if we were to round that figure upward (to $100,000 annually) and double it (to $200,000 to provide for possible revenues generated from other breeder applicants), that sum falls **far short—i.e., less than 40%--**of the Department's $565,000 annual program cost estimate. We therefore urge the Executive Director, before implementing this program, to carefully reevaluate the factual basis for the critical cost estimate relating to in-fact anticipated licensing revenue through empirical field research and survey of Texas breeders, and to amend its notice of proposed Rules accordingly to include a factually accurate, APA-compliant analysis of the rationale and basis for its cost projections, through which the statutorily required "zero cost" legislative mandate will be attained.

B. Enforcement or Administration of the Proposed Rules Will Result in Loss of Other Revenues to State and Local Governments.

By statute, the Department also is required to include in its Notice of proposed rules, a fiscal note stating for each year of the first five years that the rule will be in effect:

> "the estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule." TxGov't Code Sec. 2001.024(4).

In its notice of proposed rules, the Executive Director asserts that enforcement of the proposed rules will have no adverse impact on the revenues of the State or "anticipated fiscal implication for units of local government." (37 TexReg 166). No factual substantiation or rationale is provided by the Department for that conclusion.

We contend that a close analysis of the facts supports the opposite conclusion. If, as the facts suggest (see, *e.g.*, Statement of dog breeder, Exhibit A hereto), many dog breeders in the State intend to down-size their operations or to relocate their businesses outside of the State to lawfully avoid the statutory licensure, both the State and local economies inevitably will be adversely affected. In some instances, breeder relocation decisions likely will result in closing of other ancillary businesses (such as grooming, boarding businesses) (see Exhibit A hereto) or businesses of family members of the breeder forced to relocate. As consequence, revenues previously generated for the State and local economies not only by such breeding operations, but by other related family businesses, invariably will decline. Lost revenues to State and local governments include not only income tax and sales tax

revenues previously paid by breeders, but also loss of revenue derived from the substantial sum of money breeders—especially breeders of purebred show dogs—spend on high quality pet food, nutritional supplements, kennel supplies, grooming products and groomers, veterinarian services, employment of kennel staff, professional dog handlers/trainers, etc.

In addition, the significant anticipated impact on the State and local economies of declining breeder participation in AKC-related events within the State cannot be overlooked, as that those figures are substantial. The American Kennel Club represents more than 5,100 dog clubs nationally, with 305 of those clubs located in the state of Texas—all of which conduct meetings and events which generate revenue for the State and local economies. A number of the purebred dogs which competed in the recent 2012 Westminster Dog Show, some of whom won awards, were the product of careful breeding programs based in Texas which clearly are not "puppy mills." **Pursuant to AKC statistics, it is estimated that the AKC licensed and sanctioned 957 events in the state of Texas, in which more than 177,300 dogs participated, and related spending on purebred dogs in the state generated approximately $90,200,000 in annual revenues for the State's economy.** (See American Kennel Club publication entitled "Economic Impact of AKC Purebred Dog Ownership in Texas," a copy of which is attached hereto as "Exhibit B.") Pursuant to informal discussions with a cross-section of breeders of purebred dog breeders in the State, **the anticipated down-sizing, closing or relocation of their breeding operations as consequence of implementation of the proposed rules, will result in substantially reduced participation in revenue-generating AKC sanctioned and other breed club events.**

The above loss of revenue statistics should have been considered by the Department and reflected in the statutory fiscal statement set forth in its notice of proposed rules. We therefore request that the Department carefully research and analyze the "in fact" adverse impact of the proposed rules on State and local revenues, inclusive of the above factors, with a view toward amending its notice of proposed rules to reflect the anticipated tangible loss of revenues to the State and local governments resulting from implementation and enforcement of the proposed Rules.

C. The Department's Notice of Proposed Rules Fails to Accurately Assess and Reflect the High Compliance Cost to Breeder Licensees.

The Administrative Procedure Act requires inclusion of a statement in the notice of proposed rules showing the "**probable economic cost to persons required to comply with the rule**" for each year of the first five years the rule will be in effect. (TxGov'tCode, Sec. 2001.024(5)(B); emphasis added.). Pursuant to statutory directive, the Department is required to consider that factor in determining whether the "pubic benefits expected" as result of adoption of the proposed rule outweigh the economic disadvantages to persons required to comply with the rule.

In its notice of proposed rules, the Department concludes that, aside from the licensing fee structure, "there will be no new economic costs

imposed on businesses that comply with the licensing on or before the September 1, 2012 effective date...." (37 TexReg 166). In so concluding, it concedes that "the number of potential licensees is unknown" and that it is without knowledge of their facilities. Notwithstanding its admitted lack of knowledge regarding the above factors, it concludes that the alleged "grandfather" concessions included (re enclosure size and solid flooring) will "minimize [or] eliminate those potential cost increase[s]" [sic]...." (37 TexReg 166).

The Department has invited interested persons to "provide additional cost estimates for implementation...." (37 TexReg 166). Unfortunately, the limited "breeder perspective" representation on the Breeders' Advisory Committee (*i.e.,* two commercial breeders from the "licensed breeder" category who lack voting rights) cannot serve as an adequate research basis in this respect. Surely the Department should have foreseen the understandable reluctance of reputable Texas breeders to come forward and volunteer their cost estimate figures for fear that their facilities would be targeted by the Department for inspection and licensing and subjected to exposure/harassment by members of animal rights organizations whose goal is to eliminate all breeding operations. Given the Department's statutory obligation to analyze and include an accurate (empirically researched) assessment of compliance costs in its notice of rules, it would seem to have been incumbent on that agency, before publishing the proposed rules, to have affirmatively surveyed a representative cross-section of breeders across the State (possibly with an assurance of anonymity) who were potentially subject to licensure, including the many breeders of purebred dogs who intend to substantially down-size their breeding programs to lawfully avoid statutory coverage. In researching this issue, the Department should have anticipated the understandable reluctance of good faith breeders to come forward with compliance cost estimates and to discuss and

expose their breeding operations, given the likelihood of potential recrimination and undue agency scrutiny. Its *post hoc* inclusion in the proposed rules of an "invitation" to produce such evidence or alternative means of compliance simply is inadequate.

Our informal discussions with a cross-section of breeders of purebred dogs potentially subject to licensure (none of whom operate "puppy mills" and all of whom provide humane care and veterinary services for their dogs) overwhelmingly suggest that the compliance cost of conforming their operations to the standards imposed by the Rules would be exceedingly high, if not cost prohibitive. (*See, e.g.*, Statement of Show Breeder Martenson, Exhibit A hereto.) The disproportionately high proposed fee structure alone, which includes the possibility of multiple pre-inspections, with repayment of pre-inspection fees, and a potentially unrestricted number of out-of-cycle or periodic inspections, likely will deter many breeders from applying for a license. Those fees are considered to be sufficiently punitive, even without factoring in the substantial additional costs of conforming their operations to the rigorous proposed enclosure/care standards of the proposed rules.

As set forth in the Statement of one long-term Texas show breeder who has already decided to relocate his breeding operations ("Exhibit A" hereto), the initial estimated cost of conforming his mid-sized, noncommercial AKC-inspected "Breeder of Merit" kennel facilities to the requirements of the rules is approximately $50,000, exclusive of licensing fees. In the opinion of that breeder, the so-called "concessions" made in the rules re enclosure sizing, flooring would not "minimize or eliminate" the above costs. (See Exhibit A, pp. 3-4.) A number of other reputable show breeders of dogs whose animals are housed in their homes, where they enjoy humane care and attention of

the breeders' family members, have indicated that the specifications of their home environment simply would not satisfy the proposed rule requirements. In those instances, conforming their homes to the unreasonable "cookie cutter" federal standards imposed would entail substantial home renovation projects and costs.

In addition to the cost-prohibitive breeder estimates of re-building kennel/housing facilities to comply with the proposed rules, the additional cost factors imposed by the rules would be considerable, and, in some instances, counterproductive to the health interests of the dogs involved. Thus, for example, the requisite rigid veterinary care requirements would appreciably increase health care costs for "non-puppy mill" breeders of pedigreed dogs (such as the long-term show breeder interviews (see Exhibit A hereto)) who already provide high quality veterinary care (*e.g.*, specialized veterinary care including annual Board certified veterinary health screenings for heart/eyes, etc.) which **exceeds** rule requirements for their animals. (Exhibit A, pp. 5-6). In addition, there is evidence that the proposed rules regarding veterinary care and record keeping would, in some instances, have the counterproductive effect of **discouraging** veterinarians from providing medical care for dogs of licensed breeders (which requires veterinary "sign offs" on the requisite annual exam records) because of feared potential involvement in administrative/legal proceedings and related liability. It also appears that a number of veterinarians would require individual "in office" appointments for each dog subject to the statutory medical exam—which requirement would be cost prohibitive for many of the mid-sized or higher volume breeders. Very few, if any, veterinarians were found who would be willing to conduct on-site kennel visits for purposes of performing the statutorily required examinations or to schedule "group" office visits for a breeder's dogs. (See Exhibit A, p. 6.)

The above informal research , which we suggest is representative of the prevailing breeder perspective--particularly among show breeders of purebred dogs-- overwhelmingly is at odds with the Department's "no new economic costs" conclusion in the proposed rules. At a minimum, we contend that the Department should have conducted "real world" research of the facts by interviewing a cross section of breeders and veterinarians across the State (if necessary, with guarantees of anonymity)—as opposed to reliance upon theoretical observations of the animal rights community or animal control officer representatives, shelter/animal rescue personnel, whose exposure to and knowledge of reputable show breeder facilities (as opposed to substandard commercial "puppy mill" operations involved in seizure cases) is limited or nonexistent or research of out-of-state licensing programs—prior to arriving at its "no cost" conclusion set forth in its notice of proposed rules.

D. The Notice of Proposed Rules Fails to Meet the Statutory "Ecomomic Impact Statement" and "Regulatory Flexibility Analysis" Requirements.

Pursuant to the Administrative Procedure Act, the Department was required to determine whether the proposed rules "may affect a local economy before proposing the rule for adoption" (TxGov'tCode, Sec. 2001.022) and to include that local impact statement in its notice of proposed rules. (TxGov'tCode, Sec. 2001.024(6).

The "small business impact" amendment to that statute (TxGov'tCode

Sec. 2006.002) also requires that a state agency considering adoption of a rule that would have an "adverse economic effect" on small businesses or micro-businesses "shall reduce that effect...." That statute legislatively authorizes the agency, via rulemaking processes, to exercise broad administrative authority to mitigate adverse effects on small businesses through measures such as establishment of separate compliance or reporting requirements for small businesses; use of "performance standards in place of design standards" for those businesses; or exemption of small businesses from "all or part of the rule." (TxGov'tCode, Sec. 2006.002(b)).

The above statute also provides that before adopting a rule that "may' have an adverse economic effect on small businesses, a state agency **is required to** prepare the following analyses in statement form for inclusion as part of the notice of proposed rules:

> "(1) an **economic impact statement** that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on small businesses, and describes alternative methods of achieving the purpose of the proposed rule; and
>
> "(2) a **regulatory flexibility analysis** that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule."
>
> (TxGov'tCode, Sec. 2006.002(c), (c-1)).

All or most of the breeders potentially subject to the proposed rules easily satisfy the statutory definition of small or micro businesses. See TxGov'tCode, Sec. 1006.001(1), (2) ("micro-business" defined as an independently owned business with not more than 20 employees; "small business" defined as an independently owned business which has fewer than 100 employees or less than $6 million in annual gross receipts). Many of the breeders potentially subject to state licensure, including the larger, more commercialized "Class A" federally licensed breeders, are small-scale businesses staffed primarily with family members and a few additional workers.

The Department's proposed rules fail, both procedurally and substantively, to comply with the above statutory small business provisions. The unsubstantiated conclusions of the Executive Director in the notice of proposed rules to the effect that there are no anticipated fiscal implications for State or local government clearly cannot excuse such non-compliance, especially where, as here, there is factual evidence that enforcement of the proposed rules will have tangible adverse impact on many breeders who will be forced to close their operations, down-size their businesses, or relocate their businesses if the proposed rules are implemented as written. See, *e.g.,* above discussion, *supra;* Exhibit A hereto. The Department is or should have been on notice that the proposed rules would have a significant adverse impact on small or micro businesses in the State. Accordingly, it was required to carefully analyze that impact via preparation of a factually documented "economic impact statement" as well as a "regulatory flexibility analysis," neither of which requirements is met in the notice of proposed rules. Clearly, the Department's assertion that there is no economic impact or that it is "without information" to assess that effect (see 37 TexReg 166) and/or the *de minimis* mitigating effect of its alleged concessions re "grandfather" provision with respect

to enclosure size and solid flooring, fall far short of meeting the statutorily requisite agency obligation to reduce adverse economic effect on small businesses.

The terms of the Licensed Breeders' Act plainly confer rule-making authority on the Department to "modify" the statutorily imposed rigid minimum federal standards of "care and confinement" "to protect or improve the health and well-being of animals" or "to protect the health and safety of the public." (HB 1451, Subch. E, Sec. 802.201(c)). That statutorily conferred authority, coupled with the express APA small business requirements relating to preparation of a "regulatory flexibility analysis" through which the agency is authorized to consider alternative methods of achieving the purpose of the rule (including exemption from rule requirements) provide clear legal basis for the Department to have mitigated the effect of the proposed rule standards imposed on small business breeders. **Such modification of the imposed rigid federal standards is particularly appropriate for categories of breeders such as show breeders of AKC purebred dogs who maintain home-based or small-scale home-adjacent kennels or breeders of purebred dogs whose kennels are inspected and approved annually by the AKC—as most of those humane breeding operations substantially support and contribute to the welfare of their animals, but simply do not and cannot conform to imposed federal standards which originally were designed for laboratory animals and high volume dealers.**

E. The Alleged "Public Benefits" of the Proposed Rules Do Not And Cannot Justify the Substantial Costs and Adverse

Economic Impact.

In its notice of proposed rules, the Department was required to include a statement about "public benefits and costs" which indicates for each year of the first five years the rule will be in effect "the public benefits expected as a result of adoption of the proposed rule." TxGov'tCode, Sec. 2001.024(5)(A). Review of the APA requirements with respect to the requisite "public benefits-cost analysis" suggests legislative emphasis on the agency's obligation to analyze, weigh and mitigate the countervailing economic impact factors of enforcement of the proposed rules as opposed to prioritization of public interest benefits. See TxGov'tCode, Sec. 2001.022; Sec. 2001.024(4)-(6); Sec. 2006.002.

The notice of proposed rules of the Department posits the alleged "public benefit" which, under its analysis, justifies the significant adverse economic effect of the rules on State and local revenues and businesses, as follows:

> "the licensing of dog and cat breeders engaged in the breeding and sale of dog and cats ensuring the quality of life of the animals is maintained at a safe and humane level.... [and]
>
> "[to] more clearly level the competitive field between regulated breeders by requiring they maintain records and provide medical care for each animal thus standardizing basic levels of care."
>
> (37 TexReg 166).

We show below that a realistic analysis of the "real world" effect of the proposed rules pertaining to standardized kennel facilities and uniform medical care would not, in many cases, promote the public benefit of enhancement of humane treatment of animals—much less such a public benefit that would justify the significant adverse economic effect on breeders and on State and local revenues.

First, as discussed above, the primary segment of anticipated breeders who will apply for licenses are the 34 current Texas USDA "Class A" Licensed dog and cat breeders. That target group of federally licensed breeders presumptively is already operating within federally-imposed standards of animal care and confinement, as they are subject to mandatory federal inspections. Accordingly, it is highly unlikely that this group of "Class A" licensed breeders operate "puppy mills" in which animals are abused or subjected to inhumane conditions. Clearly, application of the essentially duplicative proposed State Rule standards to that group will do nothing to enhance the "public benefit" by correcting humane treatment of animals or to ensure that the "quality of life of the animals is maintained at a safe and humane level." (37 TexReg 166). Nor will it serve the alleged public interest of leveling the "competitive field" among this category of federally licensed breeders, all of whom are already subject to the same federal standards imposed by the Department's proposed rules.

To the contrary, the principal impact of the proposed Rules on that federally licensed and inspected group of breeders will be to substantially increase their operational costs through imposition of additional fee payments of an unreasonably high nature—which, in some instances, are higher than the federally imposed fee structure. The effect of "doubling" the estimated annual licensing costs of those

breeders invariably will adversely affect the quality of animal care provided. In an effort to recoup those costs, those small businesses likely will be forced to resort to cost-cutting measures such as feeding lower quality pet food, eliminating or decreasing use of nutritional supplements to enhance their animals' health, down-grading quality of grooming products and kennel supplies, cutting back on kennel staffing who provide care and attention for the animals, and possibly cutting back the frequency and quality of veterinary care previously provided to animals (which, in some instances, exceeded the basic rule requirements).

Second, as to the small segment of non-licensed commercial, high volume breeders whose animals undoubtedly would benefit from improved animal care and kennel conditions (e.g., the so-called "puppy mills" which the Statute and Rules were intended to target), it is highly unlikely that any in-fact public benefit will be attained through enforcement of the proposed rules. Realization of any such public benefit presupposes breeder statutory compliance. And, it would be unrealistic for the Department to presume that any segment of that group of unscrupulous breeders with truly inhumane conditions will voluntarily come forward and apply for a State license. It is more likely that such breeding operations will endeavor to avoid or evade statutory coverage, *e.g.,* by further concealing kennel operations where detection is unlikely, by relocating to another state, or by closing their operations and selling their breeding stock "at auction" under less than humane conditions. It is therefore unlikely that any of the alleged "public benefit" interests posited by the Department, such as ensuring quality of life of the animal and leveling the "competitive field," will be served in this instance. And, to the extent such benefit interest could be served by confiscation of the animals housed in substandard conditions, other more appropriate, cost expedient statutory vehicles

already exist for better accomplishment that objective *(e.g.,* State animal cruelty laws).

Third, as to the group of reputable breeders potentially subject to licensure whose operations will be most harmed by the proposed rules, with no public benefit return--particularly the show breeders of pedigreed dogs in the State who generate substantial State and local revenue—it is highly unlikely that either of the Department's asserted "public benefits" will be achieved by enforcement of the proposed rules to that segment. Thus, for example, because many of the dogs owned by the above group presumptively enjoy a high quality of care and quality of life (*albeit* one which may not conform to all of the rigid rule-based standards), often in home settings, in which they have access in any one day to a variety of "primary enclosures" (*e.g.*, "run of the house," occasional confinement to crates which do not satisfy the "primary enclosure" requirements of rules, confinement to a particular room in the home which is large enough for the family, confinement to the owner's bed at night where they sleep, etc.), which do not necessarily comply with all rule-imposed standards (*e.g.,* with respect to drainage, "primary enclosure" requirements) imposition of proposed rigid statutory commercial housing standards which were originally designed for laboratory animals and the dealer trade, clearly will not enhance quality of life for those animals. To the contrary, in many cases, such requirements could **diminish** the animals' standard humane of care and opportunity for human contact, while imposing undue financial burdens on the show breeder.

Moreover, because a number of small-scale show breeders of purebred dogs within the State potentially could fall subject to the proposed rules through a combination of factors unique to show breeder

practices, yet overlooked by the Department in its proposed rules, including, *e.g.,* "co-ownership" of bitch arrangements in which bitches co-owned by a Texas breeder may live elsewhere (often as "pets" in family homes of co-owner, sometimes outside the State), and the practice of retaining ("running on") select young puppies until one year or more of age to determine show potential, application of the proposed rule standards to that group would be patently unreasonable and fraught with jurisdictional issues. Thus, for example, a show breeder theoretically could be required to obtain a license if in one year, hypothetically, that breeder: (a) retained only a few intact brood bitches (e.g., five) in their facility in Texas; (b) owned greater than 25% interest in several (*e.g.*, six) in-tact bitches living elsewhere in co-owners' homes within or outside the State; and (c) met the statutory annual sales number because of sale of a few older "run on" puppies (to select show or pet homes), sale of a few puppies from their small annual number of litters produced, sales (at reduced prices) of older, retired show dogs placed in "pet" homes, combined with sales of out-of-state puppies produced by co-owned bitches in which they owned partial interest). In such instances, aside from the jurisdictional issues presented, if the proposed Rules are construed to cover co-owned intact bitches of a Texas breeder who are kept outside the State, enforcement of those Rules in the above instances could result in diminished standards of housing, animal care (quality of food, supplements, etc.) and veterinary care, due to the increased costs imposed (*e.*g., licensing fees, building costs of conforming housing to federal standards, etc.) on a segment of breeders which already spend considerable sums of money on care of their dogs, with little or no financial profit. Standardization of housing and animal care, in the case of that segment of show breeders, clearly would not benefit the public through enhancement of animal care. In fact, it will have precisely the opposite effect.

With respect to the rigid veterinary care standards imposed by the rules, most show breeders of pedigreed dogs already provide a high quality of veterinary care for their animals, which is requisite to maintenance of the dogs in optimal condition to compete in competitive conformation or performance events. It is common practice for such show breeders to spend appreciable sums on nutritional supplements, premium food, sub-specialized veterinary care (such as Board certified veterinary care, canine chiropractic care, acupuncture, etc.) to optimize the animal's health and appearance. Dogs subjected to inhumane conditions and substandard care simply could not compete in the rigorously competitive conformation or performance events on which the breeders spend thousands of dollars to exhibit their dogs. The proposed rules fail to acknowledge the above breeder practices and to modify (via regulatory flexibility analysis statutorily authorized for small businesses) the rigid rules standards imposed on that group to reduce the adverse economic impact of compliance.

Nor would application of the proposed Rules to this segment of breeders serve the asserted public benefit of leveling the competitive field between regulated breeders by requiring record keeping and standardized levels of care. Indeed, the breed registries for pedigreed dogs—especially AKC—already impose strict record-keeping (including DNA samples) and registration standards on all pedigreed dogs being exhibited. Most breed registries, including those of named respondents, also have strict standards regarding acceptable breeding practices for its members, inclusive of how often female dogs can be bred and the age cutoff for same. In short, the Department's proposed rules standards would do nothing to enhance those standards of

humane animal care in a manner which yields public benefit. The more likely effect would be to force reputable show breeders of pedigreed dogs to lawfully avoid licensure by down-sizing their breeding operations, relocating breeding operations to another State, or possibly closing their businesses or to diminish the standards of care provided to animals to avoid licensure and/or to recoup the excessive costs imposed by the proposed rules fee structure and related inspections.

Ultimately, the public interest will be damaged, not advanced, by imposition of the proposed rules standards to the segment of reputable show breeders of purebred dogs, as the pool of available quality, carefully bred puppies produced invariably will decline and costs will increase. Public access to healthy, carefully bred purebred dogs—which dogs appreciably enhance the public welfare by providing companionship, comfort and often emotional/physical therapy benefits -- would decline and/or become cost prohibitive. Ultimately, the valuable bond between dog and human—which relationship provides increasingly recognized human health benefits—would be adversely affected.

We request that the Department defer adoption of the proposed amended rules, undertake additional research in this matter, and amend its statement of asserted "public benefits" in the notice of proposed rules to accurately reflect the facts.

II. Deficiencies with Other Select Provisions of Proposed Rules (37 TexReg 167-180).

The crux of our position is that the Department lacks statutory authority to implement the breeder licensing program through adoption of the currently proposed Rules. As shown above, the statutory "zero operational cost" mandate, as well as other statutory requirements relating to cost and economic impact factors, simply have not been, and cannot be, met under the terms of its proposal. We therefore urge the Department to defer adoption of its proposal, pending further substantive research into the in-fact cost and economic impact--especially regarding the in-fact number of Texas breeders who can be expected to apply for licensure the first year and resulting anticipated revenues —before proceeding forward in this matter.

Upon such review, we ask that the Department amend its rules proposal to accurately reflect the critical cost and economic analysis factors required by the Breeders' Licensing Act (*i.e.,* zero operational cost to State) and APA. While we object to a number of other provisions of the proposed rules, we expressly reserve, and request the opportunity, to comment further on those provisions at the public hearing in this matter and at a later date when the proposed rules are amended to establish agency basis basis of statutory authority.

In advance of that, we itemize below select examples of proposed Rules to which we object:

- **Sec. 91.22(a). License Required—Dog or Cat Breeder.**

"A person may not act as, or offer to act as, or represent 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 the state."

Comment:

The phrase "dog or cat breeder in this state" should be changed to read: "**licensed** dog or cat breeder in this state."

The statute applies strictly to "licensed breeder[s]" which term is defined as "a dog or cat breeder who holds a license issued under this chapter." (Act, Sec. 802.002).

For narrow statutory purposes, the term "dog or cat breeder" is defined to mean "a person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, now fewer than 20 animals in a calendar year." (HB 1451, Sec. 802.002(8)).

The Department's rule-making authority in this matter is limited to implementation of the statutory provisions. It lacks administrative authority to expand the narrowly defined statutory term "dog or cat breeder" to preclude use of the generic term "breeder" of dogs or cats in a non-statutory context. Nowhere does the statute prohibit dog or cat breeding without licensure in instances in

which breeders do not meet the defined statutory threshold requirements.

Thus, for example, a person engaged in the *bona* fide breeding of dogs, as recognized by AKC or other breed club standards, but who is not covered by state licensure standards, cannot lawfully be prohibited by the Department from describing themselves as a "breeder," provided they do not represent that they are a "licensed breeder."

The Department's unauthorized attempt to preempt and restrict use of the term "breeder" in the above instances would undermine and impermissibly interfere with the long-standing right of national and local dog breed clubs to establish rules which define and set standards with respect to matters such as breeding protocol, ethical restrictions, for their breed club members.

It also could be interpreted to have the potential effect of inhibiting the right of established breed clubs to conduct the traditional "bred by" conformation events to which "breeder" status is prerequisite (*e.g.,* gender-based conformation classes in which dogs "bred by" the exhibitor compete) or of a breed club's right to identify and list the "breeder" of dogs who win awards in show premiums or reported show results. It also would impermissibly interfere with the established, legally protected right of non-for-profit kennel clubs to utilize official Club communications to publish membership "breeder" lists or "puppy search" listings of "breeder" members who are not licensed.

- **Section 91.27 License or Registration – Notice of Proposed Denial, Opportunity to Comply.**

"(a) If the department recommends denial of an application for a license or registration under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application."

Comment:

The proposed Rule fails to provide for: (1) the right of administrative appeal by licensee applicants, in the event their application is denied; and (2) other due process procedures relating to applicable administrative review or challenge of such decisions, inclusive of the right to an administrative hearing. Subsection (c) should also be amended to require the Department to state the reason for its refusal to enter a "temporary" denial, with 14-day right of compliance, in instances in which a final order of denial excluding that right is entered.

Considerable discretion is afforded to the department, *e.g.*, in Section 91.25(b), to adversely affect or preclude operation of the business of a licensee-applicant which otherwise complies with

State and local business requirements. Revocation of that right to conduct business, without application of basic procedural due process protections, inclusive of the right to administrative challenge hearing and appeal, could be subject to legal challenge.

A clear statement of all due process rights available to the licensee should be included in this section for notice purposes.

In addition to above comments, we concur with the AKC's position in this matter, which provides, in pertinent part: "Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, '...the department shall approve the application.'" (AKC Comments, p. 2).

- **Sec. 91.30(e). Exemptions.**

"(e) For purposes of this section a dog is presumed to count under Sec. 91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subjection (a), including, but not limited to:

(1) evidence of agriculture activity or business operations using a dog described by this section;

(2) entry registration forms or receipts issues by an entity sponsoring, conducting or organizing competitive events."

Comment:

The above rules provisions add "gloss" to the statutory exemption which substantially erodes underlying legislative intent and restricts the intended scope of application of the exemption. Prior to its adoption, HB 1451 was amended, at the behest of the breeders of the referenced exempt "special interest" dogs. From a political and legislative perspective, this broadly worded exemption was pivotal to attainment of the requisite legislative approval for adoption of HB 1451. Accordingly, agency deference to legislative intent dictates that any related rules promulgated should preserve--and not undermine--the broad terms and application of the statutory exemption.

Subsection (e) of proposed rules appears to impose a presumptive burden of proof on the breeder claiming the exemption to come forward and affirmatively establish to the Department that a dog is exempt. Imposition of such a presumption is at odds with statutory language and legislative intent.

The Rule fails to clarify the point in time and procedural mechanism through which such proof of exempt status must be made. For example, it is unclear whether the Rule purports to impose a pre-licensing obligation on the breeder of special purpose dogs to affirmatively seek exempt status or whether such obligation would not be triggered, if at all, until such time as the department investigates that breeding facility, pursuant to complaint.

In addition, the examples of acceptable evidence of exempt status set forth in Subsection (e)(1)-(2) improperly suggest that the Department will require proof of the in-fact "**use**" of the dog for purposes of establishing exempt status, rather than proof that the dog was "bred **with the intent** that it be used primarily" for the statutorily defined purposes, as set forth in the statute. (See Sec. 91.30(a), which provides that "This section applies only to a dog bred with ***the intent that she would be used*** primarily for [exempt purposes]." (Emphasis added.)) Under the Department's currently proposed rule, for example, there are instances in which an in-tact bitch who was "bred with the intent" that she would be "used" primarily for statutorily exempt purposes may not, in fact, have been exhibited in exempt events or "used" for any of the stated exemption purposes. Instead, the above bitch may have been "used" to breed other dogs for those purposes to enhance the owner's breeding program for exempt status special purpose dogs. Clearly, the breeder's use of that bitch for such breeding purpose, which cannot be documented with external proof of "use" or participation in exempt status events, would satisfy the statutory exemption. The department's proposed rules suggest otherwise.

Further, the apparent attempt by the Department in the proposed rules (Sec. 91.30(e)) to accord open-ended discretion to the Department (*e.g.*, "evidence acceptable to the department....") without providing notice of clear evidentiary standards and due process protections for the breeder in the event exempt status is denied (*e.g.*, through notice, hearing and right to appeal procedures) is at odds with the language and intent of the statutory provision, as well as the due process rights of breeders claiming exempt status.

Recommendation: The Rule should be amended to correct the above issues in a manner which broadly interprets the statutory exemption and protects the due process rights of breeders claiming statutory exempt status.

We recommend that the Department consider deletion of **Sec. 91.30(e) in its entirety if the above objectives cannot be clearly accommodated through an amended proposed rule which implements and enforces the exemption provision in a manner consistent with legislative intent. In such instance, we would recommend that any further interpretation of the statutory exemption should be reserved for the Courts, in a judicial context which accords full procedural due process for all interested parties.**

- **Section 91.30(f). Exemptions.**

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested."

Comment:

The language of Subsection (f) is unduly vague and again fails to provide for the right of the breeder claiming exempt status to

contest or appeal the department's decision. The proposed rule requirement that "all evidence" must "uniquely and conclusively identify and relate to" the specific dog or dogs in question should be revised to include examples of acceptable *prima facie* evidence for such identification purposes. That provision also should be amended to include procedural due process protections for the breeder, including notice, right to hearing, right of appeal, in the event the Department rejects the breeder's proof of exempt status.

- **Sec. 91.50(c). Inspections—Prelicense.**

"(c) Before the prelicense inspection may be conducted, applicant must pay to the department the required inspection fee and **the reasonable expenses of the department related to its licensing and inspection duties under this chapter." (Emphasis added.)**

Comment:

We object to the department's attempt to impose on breeders the obligation to pay open-ended, nonspecific amounts of its "expenses...related to...licensing and inspection duties...." in addition to the costly fees structure set forth in Section 91.80 of the proposed rules.

To be sure, the statute authorizes the commission by rule to "establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter." (Act, Section 802.051). It was pursuant to that authority, that the Commission (in consultation with the BAC) established the

proposed fee structure, with set amounts, elsewhere in the proposed rules (at Section 91.80). **However, nowhere does the statute authorize the Department to reserve the right to assess additional "expenses" in open-ended, unspecified amounts in a manner which fails to provide advance notice to the breeder-applicant of the in-fact anticipated licensing costs.**

We request that the proposed rules language of subsection (c) authorizing the Department to impose additional licensing and inspection "expenses," should be deleted from the proposed rule. It is our position that this provision exceeds the scope of the agency's statutory authority to set "fees."

- **Section 91.58(a). Responsibilities of the Department—Donations, Disbursements and Reporting.**

  "(a) The executive director shall develop procedures for the acceptance, conversion, and deposit of all donations offered by individuals, clubs, organizations, and all other sources."

Comment:

The statute states that the Department "may" but need not, solicit and accept gifts, grants, and other donations from any source for deposit into the account. (HB 1451, Sec. 802.059(d)). The statute elsewhere makes clear, however, that the cost of administration and enforcement of the statute is to be covered by revenues generated from "reasonable and necessary fees." (HB 1451, Sec. 802.052). In view of the

statutory "zero cost" mandate, and the potential for possible abuse of that legislative intent, or the possibility of undue influence of the Department's enforcement scheme by special interests groups, through membership-drive donations, which is at odds with statutory intent, **we recommend that the Department refrain from implementing this provision and that this section of the rules be deleted, pursuant to amendment.**

However, in the event the Department proceeds forward with this rules provision, any and all referenced additional "procedures" developed by the department (pursuant to Sec. 91.58(a)) **should be promulgated through formal Department rules, subject to the administrative rule-making and review process, in accordance with the Administrative Procedure Act, rather than via informal, internal Agency procedures.** Moreover, the proposed rule, and any related procedures, should make clear that any and all information identifying the named source and amount of any donations shall be subject to public disclosure.

- **Section 91.59 Responsibilities of the Department—**

  Reporting Violations; Eligibility of Applicant.

"(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

(b) The online reporting system shall provide an option designed to

protect from disclosure the identity of persons electing to provide information anonymously.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators."

Comment:

We object to the Department's proposal for adoption of an online reporting system, with reward provisions.

The proposed reporting system is **not statutorily required**. Moreover, it is at odds with the other complaint procedures adopted by the Department for the other licensed professions within its jurisdiction. No explanation or rational basis has been provided by the Department to justify the foreseeable damaging discriminatory impact of this system on dog and cat breeders (*vis a vis* other categories of licensed professions).

The Department's proposal for this non-mandatory hotline system, and its related procedures, should be stricken from the proposed rules. We ask that the proposed rules be amended to adopt and implement a less costly, even-handed complaint procedure for breeders in accordance with complaint processing protocol for other similarly situated licensed professions within its jurisdiction.

It is our belief that the realistic potential for abuse to breeders under the proposed system through exposure of breeders to malicious, unfounded complaints, as well as cost to the State, far outweighs any alleged public benefit which would be served through this system.

We further contend that the Department's adoption of the proposed on-line system complaint procedure, especially with offer of monetary rewards for complaints, would create undue administrative burden and additional expense for the Department, which could necessitate hiring of additional administrative personnel and inspectors (beyond the legislative staffing estimate).

If the Department elects to proceed forward with implementation of this breeder-specific, potentially discriminatory system, we request that stronger safeguards designed to protect breeder rights—especially to protect breeders from exposure to costly investigation of malicious, unfounded complaints, should be added to the proposed rule, including but not limited to those suggested by the AKC in its

written Comments to the Department noted at pp. 3-4 of that submission.

- **Sec. 91.60. Responsibilities of the Department—Payment of Rewards.**

Subsections (a), (b), (c) The proposed rule establishes a procedure and standards for payment of rewards not to exceed $1,000 to applicants who "furnish information pertaining to unlicensed activity...." (Sec. 91.60(a), (b), (c)).

Comment:

The proposed rule establishes a unique "reward payment" system which is nonmandatory under the Statute. Section 802.059(c) of the Act makes clear that the commission by rule "may" (but need not) "provide for a system to pay for information described by Subsection (b)(3)." In the event any such rules are adopted for this purpose, the statute mandates that they "must ensure that a public purpose is accomplished through use of the payment system." (Section 802.059(c)).

We object to the Department's adoption of the proposed reward system and procedure set forth in the proposed rules, as we believe the potential for abuse (both of breeders and the State)—in addition to excessive additional costs--of that system far outweigh any public benefits derived. Indeed, no statement of a valid "public purpose" justifying imposition of this

procedure, as required by the statute, is set forth in the proposed rule.

Section 91.60(d) of the Rules makes clear that "A decision by the executive director to pay or otherwise allocate reward payments is within [his] **sole discretion** and this chapter in no way provides an independent right to such payments...."

In accordance with the above discretion, we strongly urge the Executive Director amend the proposed rules to delete the "reward system" procedure.

- **Sec. 91.66(c). Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.**

"(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of animals. This subsection does not apply to the investigation of unlicensed activity."

Comment:

The phrase "except as necessary to access animals or other

property relevant to the care of animals" should be deleted and replaced with the following language: "...except pursuant to a warrant issued by an objective member of the judiciary."

As written, the unduly vague language of subsection (c), could be interpreted to permit overly broad, potentially unconstitutional, searches and seizures of a breeder's private residential property without due process, which could be susceptible to legal challenge by the breeder, or result in impermissible entry and seizure without adequate notice or due process protections.

We also recommend deletion of the last sentence of subsection (c) in its entirety. We concur with position of AKC that "investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary." (AKC Comments, p 4).

- **Sec. 91.80. Fees.**

The proposed rule establishes a three-tier fee structure for multiple fee amounts, including (a) prelicense inspections; (b)original application; (c) renewal; (d) periodic and out-of-cycle inspections and duplicate license. The amount of fees paid is determined by specified number of in-tact bitches.

Comment:

The statute authorizes the Commission to establish "reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter." (Sec. 802.051).

There is no limit imposed on the number of annual inspections for which the Department could assess two different categories of fees (pre-inspection and periodic/out-of-cycle inspection fees) on the breeder. This open-ended system could result, for example, in more than one pre-inspection being ordered, with fee repayment each time and more than one annual periodic or out-of-cycle inspection, for which fees must be repaid.

It is our position that the specific fees set by the Commission are unreasonably high, if not punitive. Although the Breeders' Advisory Committee may have reviewed that fee structure, it should be noted that the breeder perspective was not adequately represented by that Committee (*e.g.,* only two licensed commercial breeder members, with no voting rights, no significant breeder representation from show breeders of purebred dogs whose high-cost, low profit operations are most harmed by the fee structure, etc.). The breeder licensing/inspection fee amounts proposed by the Department are significantly higher, on the average, than those of other licensed professions regulated by the department.

If the Department found it necessary to impose this punitive fee structure to cover costs of statutory administration and

enforcement, fault should be placed on the administrative miscalculation of the in-fact estimated revenues from fee applications (*i.e.*, number of breeders subject to licensing who will apply for licenses). **The statute requires not only that the fee structure set cover operational costs, but also that it be "reasonable." We contend that the fee structure proposed falls short of the latter requirement. In fact, the proposed fees are sufficiently high that they will likely deter voluntary breeder compliance. At a minimum, the fee amounts surely will impose undue if not counterproductive economic burden on the micro or small businesses subject to licensure.**

- **Sec. 91.92. License Revocation and Suspension.**

  This section enumerates bases for mandatory license revocation and non-mandatory license revocation or suspension by the Department.

Comment:

The proposed Rule fails to provide for: (1) the right of administrative appeal by licensee applicants, in the event their licenses is revoked or suspended; and (2) other due process procedural safeguards for the breeder, such as the right to administrative review, appeal, administrative hearings.

Considerable discretion is afforded to the Department in Section

91.92(b), to adversely affect or impede operation of the businesses of a licensee-applicant's otherwise lawfully operated business. Denial or revocation of that right to conduct business, without basic due process, could, under some circumstances, be subject to legal challenge.

We recommend the this provision be amended include and notify the breeder of all due process rights and protections available to the breeder in the event the Department seeks to revoke or suspend his/her license.

- **Sec. 91.100--Standards of Care—Housing. (37Tex Reg 173-180)**

Comment:

The standards of care imposed on breeders by the proposed rules with respect to housing, veterinary care, general care standards are overly restrictive. The standards imposed are primarily federal standards imposed by the Animal Welfare Act—a statute which originally was designed to ensure humane, standardized treatment for laboratory animals and high volume commercial animal dealers—not to dictate animal care practices for non-commercialized breeders of dogs and cats—particularly show breeders of pedigreed dogs.

The Department clearly has statutory authority to "modify," via rule, the overly rigid federal standards imposed on breeders as necessary to protect the public interest or improve the health and well-being of animals. (HB 1451, Sec. 802.201(c)). It also has the statutory **obligation** to do so where, as here, the overly rigid commercial standards imposed by the rules adversely affect micro and small business breeders, with little or no public benefit, and could be revised to provide alternative standards which better accommodate the collective interests of both breeders and the animals under their care. (See TexGov'tCode (Small Business Impact Amendment), Sec. 2006.002, which **requires** the agency to prepare an "Economic Impact Statement" and "Regulatory Flexibility Analysis" in instances where, as here, the proposed rules "may" have adverse economic effect small businesses.)

To that end, we request that the Department defer adoption of proposed rules with respect to housing /standards of care to (1) more carefully evaluate the above adverse economic impact factors resulting from its proposal; and (2) prepare a "Regulatory Flexibility Analysis" devising alternative methods through which the legislative objective of ensuring humane care for animals can be better accomplished without undue harm to reputable breeders whose operations which bear no resemblance to illicit "puppy mills."

In that regard, we ask that the Department reevaluate and revise standards including, but not limited to: Sec. 91.102 (sheltered housing); Sec. 91.104 (primary enclosure); Sec. 91.112 (veterinary care); section 91.113 (sales and transfers);

Sec. 91.202 (transportation standards re primary enclosure); Sec. 91.10 (definition of "wire or wire mesh"). We further request, and expressly reserve, the right to address our position in more detail with respect to the above and other proposed standards at the public hearing conducted in this matter **and** via future comments submitted in connection with proposed amendments to the rules.

CONCLUSION

On the basis of the facts, statutory authority, and arguments set forth herein, the Respondents respectfully request that the Department defer adoption of the proposed Rules published on January 20, 2012, and amend its Rules proposal in accordance with our Comments.

We further request that, in considering our positions herein, the Department accord deference and weight both to the experienced perspective of the **33 professional breed clubs and related organizations** participating in this submission, as well as to the

substantial number of individual member participants , **totaling 19,549** (per memberships noted below), whose interests are represented by those organizations.

Respectfully submitted,

- **American Fox Terrier Club (518)**
- **American Shetland Sheepdog Association (843)**
- **Bluebonnet Pug Dog Club (33)**
- **Caddo Kennel Club of Texas (40)**
- **California Responsible Pet Owners (80)**
- **Cavalier King Charles Spaniel Club of North Texas (44)**
- **Cavalier King Charles Spaniel Club of Southern California (85)**
- **Cavalier King Charles Spaniel Club of Greater San Diego (90)**
- **Cavaliers of the West (460)**
- **Cavaliers of the Northeast (350)**
- **Cavaliers of the South (400)**
- **Chihuahua Club of North Texas (20)**
- **Claremore Kennel Club (24)**
- **Cocker Spaniel Club of Dallas (31)**
- **Cowtown Chinese Crested Club (21)**
- **Dallas-Fort Worth Toy Club (44)**

- Dallas-Forth Basenji Club (40)
- Dal-Tex Basset Hound Club (30)
- Faith City Kennel Club (36)
- Fort Worth Kennel Club (52)
- German Shepherd Dog Club of America (2,800)
- Great Dane Club of Greater Dallas (35)
- Greater Collin Kennel Club (56)
- Irish Setter Club of Fort Worth (10)
- Lone Star Fox Terrier Club (38)
- Longview Kennel Club (37)
- National Animal Interest Alliance (11,000)
- Papillion Club of Tulsa (47)
- Pekingese Club of Texas (25)
- Southern California Den Dogs Club (100)
- The Cavalier King Charles Spaniel Club, USA (2,100)
- Travis County Kennel Club (30)
- Tyler Texas Kennel Club (30).

Dated: February 19, 2012

STATEMENT OF DOG BREEDER DALE MARTENSON
IN OPPOSITION TO PROPOSED RULES

I, Dale Martenson, submit the following Statement in opposition to the proposed Rules of the Texas Department of Licensing and Regulation published in the *Texas Register* on January 20, 2012.

1. I have been a non-commercial breeder of AKC registered purebred dogs in the State of Texas since 1979. My primary emphasis as a breeder has been the breeding and exhibition of the Toy Group breed known as the Cavalier King Charles Spaniel. Over the years, I have bred and/or shown a significant number of Cavaliers who have attained championship titles in competitive conformation events.

2. My introduction to breeding began over thirty years ago as a small hobby venture. My emphasis was on expansion of the genetic pools and bloodlines of this breed with a view toward perfection of breed type, temperament, structure and, most importantly, improvement of breed health. My goal from the outset as a breeder was, and continues to be, production of high quality, healthy breed specimens for exhibition in conformation classes, primarily in the AKC venue. In the process, I also produce beautiful, carefully bred, healthy, well socialized puppies for sale to select, carefully screened loving homes. Many of my puppies have enriched the lives of the families who purchased them in a manner which has improved their emotional and physical health, as this UK breed historically was known as the quintessential "comfort dog." Some of my puppy sales also have contributed to the overall public health and welfare by producing dogs who have been trained as "therapy dogs" for assistance in hospitals and health care facilities—a service for which this breed is uniquely well suited.

3. In the process of breeding for the above show and hobby purposes over the years, my sales of high quality, carefully bred puppies gradually began to produce a profit and to become a partial source of economic livelihood for myself and family. We were fortunate in this regard, as the majority of show breeders of pure-bred dogs do not realize a profit (but in fact incur losses) with their operations, as consequence of the exceedingly high costs of

"EXHIBIT A"

producing and maintaining top show prospects and the related expenses of campaigning those dogs in shows to championship titles.

4. AKC Inspections. My dogs and kennel facilities are annually inspected by the AKC, pursuant to its ongoing kennel inspection program. AKC inspections consist of rigorous review of the environment and facilities in which the dogs are housed by an organization with years of substantial training and experience in this area. During their kennel visits, the inspectors first tour the overall facility to verify that the dogs and the condition of their environment are in good order. (AKC Inspections Fact Sheet, www.akc.org). The AKC inspection also includes review of the breeder's records, possible DNA testing of dogs, and advice to the breeder on how to improve the facilities or correct any minor deficiencies. At no time during any of the inspections of my facilities has AKC found any aspect of my operations to be out of compliance.

   I consistently have been awarded the "Breeder of Merit" certificate by the AKC—the highest of their three-level breeder awards. The "Breeder of Merit" distinction is conferred in instances in which additional standards of excellence, aside from threshold facility compliance, are achieved, including but not limited to breeder certification that applicable "health screens" are performed on breeding stock, achievement in earning conformation, performance or companion event titles on dogs bred, etc.

5. Veterinary Care. My dogs regularly receive quality medical care from licensed Veterinarians, inclusive of annual health testing of adult dogs by Board-certified veterinary Cardiologists and Ophthalmologists, at considerable monthly expense to my kennel. My dogs are fed premium, balanced food, with nutritional supplementation. They receive regular grooming and bathing with top show products, such as the All Systems line. Puppies under my care are well socialized, both through contact with other dogs and with humans. The dogs being bred or shown receive an exacting level of additional care—which is prerequisite for production of healthy puppies, as well as attainment of competitive conformation awards.

6. Expansion of Operations (Grooming, Boarding). Over the years, my operation has expanded appreciably, both with respect to breeding

operations, as well as addition of dog grooming and boarding services offered to the public. In the process of expansion of my operation from a home-to-kennel environment, I invested considerable money into upgrading my operational facilities, to enhance the quality of my breeding program, as well as the grooming and boarding businesses. My successful dog grooming and boarding businesses served the community by providing exceptional, professional services. In the process, revenues from those adjunct businesses provided an additional source of livelihood for myself and family, in addition to generating revenues for the State and local government and providing income for the workers who assisted at my facility.

7. Animal Welfare Contributions. While in Texas, I regularly contributed to the "animal welfare" efforts in my region by participating in community canine adoption and rescue fairs. I also performed volunteer work for the local shelter(s) in the interest of making a meaningful contribution to the welfare of disadvantaged canines and attempting to "give back" to the community which had so generously supported my businesses.

8. Statutory Coverage. Despite my non-commercial status as a mid-sized show breeder, on the date of enactment of the Dog and Cat Breeders' Act, it appeared that my dog breeding operation possibly fell within the statutory licensing requirement, as consequence of my annual number of puppy sales and/or number of intact bitches. As such, as of that date, it appeared that I possibly could have been subject to the breeder licensing requirement and related fees/sanctions structure scheduled to become effective on September 1, 2012.

9. Decision to Relocate Breeding Operations. My considerable legislative experience and background with HB 1451 prior to its adoption enabled me to intelligently assess the practical impact of this legislation on my breeding operation. Shortly after adoption of that statute, upon careful reflection, my family and I made a decision to relocate our breeding operation to another State.

   The factors which informed my decision to relocate included: (a) the significant cost of conforming my "breeder of merit" facility to the unreasonable statutory housing and care standards of the Rules (cost

proposed Rules and the additional untenable standards and breeder fees imposed therein, I have concluded that my relocation decision was well advised. My desire to continue to do what I love—breed and show dogs for the purpose of improving the breed and perfecting genetic pools—prevailed in my decision-making process, as I was unwilling to sell or spay my prize champion brood bitches, or to down-size the breeding program I had so carefully developed over a thirty year period.

12. Decisions of Other Breeders. As a long-term established dog breeder, I have contact with many dog breeders in the State of Texas. To date, I am aware of at least three other dog breeders who have already relocated their breeding operations and homes to another State as consequence of this legislation and proposed Rules. I am aware of numerous other breeders who have substantially down-sized their breeding operations to avoid statutory licensing coverage. To that end, sadly, some breeders have auctioned their pure-bred dogs in Missouri, spayed otherwise productive bitches and have even been forced to ask their Veterinarians to euthanize older bitches who could not easily be re-homed, but who presumptively would be regarded as "intact bitches used for breeding" by the State for licensing purposes, if retained. Breeders who had anticipated expanding their breeding programs to develop breed type and improve the genetic breed pool have abandoned those plans—especially if such growth would bring them within the statutory licensing threshold. **I know of no Texas show breeder of pure-bred dogs who intends to apply for a license. Instead, the collective approach of the many Texas breeders with whom I am familiar who elect to remain in Texas (especially show breeders of purebred dogs) is to reduce their number of breeding bitches and/or annual number of puppy sales below the statutory licensing threshold to avoid statutory coverage and, if necessary, to challenge this legislation and Rules. The inevitable result of those decisions will be decreased participation in pure-bred dog show events, loss of revenues to the State, adverse economic impact on state and local economies and harm to the pedigreed dog breeds whose health and welfare benefit from enhancement of genetic pools through careful breeding practices.**

13. Adverse Impact of Proposed Rules. Review of the proposed Rules implementing the breeder licensing statute confirms the validity of my relocation decision. Although the Statute accords the Commission the rule-based authority to "modify existing standards [including minimum federal standards] as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public" (Sec. 802.201 (c)), the standards-related provisions of the Rules made no such attempt to adjust the unreasonable kennel specifications or rigid veterinary care standards, where appropriate, to permit responsible show breeders such as myself to continue their operations. Instead, the Commission presumptively imposed the federal standards as their starting point and, in other instances, imposed additional unreasonable requirements.

A number of the proposed standards in the Rules do not support animal health and welfare, but potentially cut against the best interest of dogs under the care of reputable show breeders. **For example, the Rules requirements regarding rigid Veterinary care and record keeping likely will have the effect of decreasing available veterinary care for dogs of licensed breeders and of increasing breeder costs for same.** Several of the licensed Veterinarians with whom I discussed this matter indicated their reluctance to treat the dogs of licensed breeders or to "sign off" on the statutorily required medical exams for fear of potential legal liability or embroilment in State administrative proceedings in the event their breeder-client was cited for violations. To the best of my knowledge and experience, no Veterinarians with whom I spoke were willing to make "house calls" to licensed breeder kennels to perform the statutorily required exams. Most required individual (non-group) in-office appointments for each dog's health examinations—which requirement would be cost-infeasible for most breeders with breeding programs covered by the statute. Accordingly, it is my opinion as an experienced breeder that **enforcement of the Rules-based requirement of rigid veterinary care and record-keeping ultimately may inure to the detriment of the health and welfare of dogs of licensed breeders by minimizing the available options for responsible veterinary care.**

14. Economic Impact on State Revenues. My decision to relocate my established dog breeding operation and to close my boarding and grooming facility adversely affects the State and local economy through factors including, but not limited to: (a) loss of income tax revenue from profits generated by my businesses; (b) loss of employment to workers who assisted with kennel, grooming and boarding operations; (c) loss of State revenues generated by my vigorous participation in State AKC Clubs and dog show activities (per AKC statistics, the activities of pure-bred dog breeders and show exhibitors in Texas generate approximately $90.2 Million dollars annually for the State economy (See www.akc.org)).

I have read the above Statement consisting of seven (7) pages and affirm that the facts and statements therein are true and accurate to the best of my knowledge, information and belief.

Dale Martenson

Dale Martenson

2/9/12

Date

AMERICAN KENNEL CLUB®

American Kennel Club
Government Relations Department

Economic Impact of AKC Purebred Dog Ownership in Texas

The American Kennel Club (AKC) was established in 1884 to promote the study, breeding, exhibiting, and advancement of purebred dogs. We now represent more than 5,100 dog clubs nationally, including 305 clubs in the state of Texas.

The AKC sanctions thousands of dog events each year, which generate significant economic benefits to local communities in addition to the millions of dollars AKC dog owners in Texas spend annually on their dogs.

Here are the statistics for the State of Texas over the past three years:

2009: AKC licensed and sanctioned 872 events in the state of Texas, in which more than 155,800 dogs participated.

2010: AKC licensed and sanctioned 967 events in the state of Texas, in which more than 175,800 dogs participated.

2011: AKC licensed and sanctioned 957 events in the state of Texas, in which more than 177,300 dogs participated.

The AKC conducts ongoing research regarding the economic impact of AKC events in localities throughout the state, as well as of AKC registered dogs in the state. **Based on our findings, over $90.2 million is generated annually within the Texas economy from spending on purebred dogs in the state.** This includes spending on events, dog clubs, show exhibitors, breeding and basic dog care, just to name a few. As dog shows are a family sport, the large spectator gates generate additional revenues for cities and towns statewide.

8051 Arco Corporate Drive Raleigh, NC 27617-3390 Tel 919 816-3600 www.akc.org

"EXHIBIT B"

Erule. Comments - HB1451

From: Ashley Wesp <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 4:01 AM
Subject: HB1451
Attachments: TDLR_Letter_Texas_Federation[1].docx

Ms. Rinard,

Please see the attached letter from the Texas Federation of Humane Societies regarding HB1451.

Thank you,
Ashley Wesp

TFHS Board Member

"My treasures do not chink or glitter,
They gleam in the sun and neigh in the night"
~ Anonymous

February 17, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

Ms. Rinard:

I'm writing this letter on behalf of the Texas Federation of Humane Societies, a non-profit organization founded to provide leadership and education for those working in animal care and control and is the oldest organization of its kind in the state. We understand that you are accepting comments to the proposed Rules issued regarding HB1451, commonly known as the Puppy Mill Bill. We appreciate the opportunity to comment and would offer the following comments and suggested changes to those Rules.

First and foremost, we urge you to not allow 100% wire flooring. At a minimum, a solid flooring or resting board should be provided in each primary enclosure to allow each animal in that enclosure to stand, sit or lay in a comfortable position and turn around freely on a solid surface. Living on wire constantly is extremely cruel and inhumane. These dogs and cats will experience long term suffering from foot and leg injuries including chronic sores, infections and cysts between their toes and often having their foot or legs caught in the wire openings. Also, wire flooring creates drafts in extremely cold weather, making it difficult for an animal to maintain its body heat.

There was some mention that allowing 100% wire flooring was based on the cost to convert wire flooring to solid flooring. 50% solid floor can easily be attained at little expense by providing a resting board or rubber mat. In any event, the pain and suffering these animals experience their entire lives outweighs any cost that might be incurred by a breeder to come in compliance with humane standards.

The Rules also allow stacking of primary enclosures for dogs. This is not a good idea for several reasons. First, it encourages gross overcrowding and makes it difficult for caretakers or inspectors to see the dogs in the upper tier enclosures and check on their wellbeing. It also makes it difficult to remove dogs for the required one hour of daily exercise. There should be no stacking of cages in a reputable breeder's facility. If stacking is allowed, it should be limited to only one cage on top of another. Any stacking higher than that would affect lighting and air flow to reach these enclosures.

Also, for some reason, there are two standards for cage sizes. One for current breeding facilities and another for future. It seems that whatever is best for the animals, which are the standards for future breeders, should apply to all. We should not discriminate against animals living in current breeding facilities to those who will live in future breeding facilities. The animals have no idea when the facility was built or when the breeder registered. All they know is that they don't have enough room to have a decent existence. Apparently, this differential in cage sizes came about as a concession to existing breeders because of cost. If you persist in that approach, at least there should be a ***fixed future date for existing breeders to come into compliance.*** Surely, they can modify their cages over a two or three year period and come into compliance. **Otherwise, they will operate forever under substandard conditions and that should be unacceptable.**

In the portion of the Rules dealing with veterinary care, you should consider prohibiting a breeder from performing de-barking, de-clawing, ear cropping and tail docking procedures. These procedures should be done only by a skilled veterinarian that has access to prescription drug, anesthesia, and antibiotics needed for these procedures.

Lastly, many of the terms that are used in the Rules are not defined. We understand that you took these Rules from the Federal Regulations enacted by the USDA. If so, you should use the definitions they use in their Regulations to provide further clarity.

Please give our comments and suggestions your full attention. Thank you and I would appreciate your reply.

Sincerely,

The Texas Federation of Humane Societies Board of Directors

Erule. Comments - HB 1451 Revisions - Exemptions for Hunting Dogs

From: "Dan Hendrickson" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 4:25 PM
Subject: HB 1451 Revisions - Exemptions for Hunting Dogs
Attachments: TDLR HB 1451.doc

Dear Ms Rinard,

Attached is my letter regarding the exemptions of hunting dogs in HB 1451.

Please make sure that hunting dogs are in fact exempted from this bill, as we were told that they would be in the Senate Committee hearing.

Thanks,

Dan Hendrickson

Phantom Kennels
[redacted]

Melissa Rinard, Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Re: HB 1451

Dear Ms. Rinard,

It has come to my attention that the exemption for hunting dogs is being reworded to make it difficult to exempt them.

Regarding the following section:

SEC. 802.005 – EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL PURPOSE DOGS.
This section purports to exempt dogs bred and used for herding livestock, hunting, including tracking, chasing, pointing, flushing, or retrieving game, or competing in field trials, hunting tests, or similar organized performance events. However, the exemption has been narrowed with further stipulations in the Proposed Rules by requirement of proof including but not limited to:
(1) evidence of agriculture activity or business operations using a dog described by this section;
(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.
(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

Is proof of event competition required for every dog owned in order to qualify for the exemption?

Is this an annual requirement or is the possession of any field trial or hunting test title sufficient to prove the dog is working in the capacity for which it was bred?

The Proposed Rule now contradicts the very clear intent of the exemption which the legislature included in HB1451. Sec. 802.005 intended active hunting and herding dogs to be exempt from licensing without onerous burdens of proof from owners. By proposing additional stipulations in §91.30 TDLR has exceeded the authority granted to it by the legislature.

I raise and train English Pointer dogs, exclusively for hunting. Some of our dogs win field trials, but the majority of our dogs are used for hunting upland game birds such as quail and pheasant. These hunting dogs do not compete per se. Most will not ever go to a hunt test. They are used to support the huge hunting industry of Texas. Please do not put further burdens on that industry by doing something HB 1451 was not intended to do.

Thanks for your consideration,

Dan Hendrickson
Phantom Kennels
[redacted]

Erule. Comments - Licensed Dog and Cat Breeder Proposed Regulations: Comments

From: David Carlson <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 6:36 PM
Subject: Licensed Dog and Cat Breeder Proposed Regulations: Comments

Melissa Rinard, Legal Assistant

General Counsel's Office, Texas Department of Licensing and Regulation

P O Box 12157

Austin, TX 78711

RE: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard,

I am concerned with some of the proposed rules for dog breeders currently proposed by the LBAC and the Texas Dept of Licensing and Regulation. Please consider my concerns before moving ahead.

I have been active in raising, training, and breeding AKC English setters for over twenty five years. We compete in the Show Ring, Hunt Tests, Field Trials, and Obedience Trials. I am active in our National Specialty Club, the English Setter Club of America. This year I am chairman for our National Hunt Test .

My wife, Jan, a long time Board Member for our national club, and I usually breed only once or twice per year. We have a waiting list of potential homes for the puppies. We require an Owner Interview be submitted in order to aid in making sure of a good home. Puppies are placed in homes well-suited for them. We require a contract that, in the event of a change in circumstance at the new home, lets the puppy come back to us first, so we can help find a new suitable home. Our national club has a written Ethics Standard that all English Setter breeders are expected to follow. We also supply instructions to new owners as to the best practices for bringing a puppy into their home. We supply standard vaccine protocol instructions and a current health record for the puppy. We test all puppies for hearing, as that is a health and genetics concern of the national club. Our data is complied in a national database. We breed for good hips in our genetic program and have all our dogs OFA submitted. We encourage all owners to do the same when the dog is of age. We are available as a resource for all our puppy owners. We encourage them to do activities with their dogs and guide them and introduce them to the various activities the dogs are well suited for.

The proposed rules will not currently affect our program, because we do not have the number of breeding dogs listed. This should never be subjected to lowering numbers! Our dogs are also being used for competitive events, Again, if this provision were ever to change, I would be greatly concerned.

Section 91.21. License Required- Presumptions. This VAGUE language needs specification as to what will be reasonable evidence to the department.

Section 91.22. License Required - Dog or Cat Breeder. This is very VAGUE and gives the impression that we can no longer be listed in national breeder referral lists. Only if we subject ourselves to the TDLR. We are responsible breeders of record. My wife is an AKC Breeder of Merit, yet by this language we cannot tell anyone, under threat of violation. How about distinguishing between LICENSED dog breeders and ordinary dog breeders. There must be language for your license to carry weight, yet not outlaw other responsible dog breeders.

Section 91.28 Department Notifications. You are requiring emails for all. Really?

Section 91.30 Exemptions. This needs clarification before passage as to how the proof is to be furnished. How will this be handled?

Section 91.59. Reporting Violations. I fear there is no safeguard for maliciousness on the part of un-named complaints. Breeders need some measure of protection from this new Bureau. We are taxpayers also.

Section 91.66 Inspectors. I will be one of the 'unlicensed breeders' having activity and strongly still maintain my Fourth Amendment rights to unreasonable search and seizure. This Regulation CANNOT be in conflict with the Fourth Amendment to the US Constitution. Please improve the language.

I STRONGLY urge the TDLR to address the concerns I highlighted above before adopting these rules.

Sincerely,

David Carlson

[redacted]

Erule. Comments - Proposed Regulations

From: "McFadden, Suzie" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 6:07 PM
Subject: Proposed Regulations
Attachments: SKMBT_75012022018490.pdf

Please see attached

Melissa Rinard, Legal Assistant

General Counsel's Office, Texas Department of Licensing and Regulation

P.O. Box 12157

Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing to you to voice my concerns with some of the proposed rules for dog and cat breeders as written by the Licensed Breeders Advisory Committee as part of the Texas Department of Licensing And Regulation.

I object to the proposal for a reporting system with the offer of monetary rewards for complaints pertaining to unlicensed activity as I believe that it can lead to abuse and unfounded complaints. The complaint procedures for other professions regulated by TDLR are not handled in such a way. I think the potential for abuse for breeders exposed under the proposed system far outweighs any supposed public benefits. Please delete the reward system from the proposed rules.

Standardizing housing and animal care for the show breeder of pedigreed dogs will not benefit the public as I believe is the stated intent. The standards of care imposed upon breeders by the proposed rules are too restrictive. Many small scale show breeders- raise their puppies in a "home" environment- meaning within the breeder's residence. Their "primary enclosures" include rooms shared by the family members as they are included in the day to day routines and activities as well as some containment in crates which do not meet the criteria as proposed for the standards. The requirements as proposed cannot be met in a home environment and certainly would not enhance the quality of life for those animals. Most show breeders already provide high quality care of their animals as is imperative in order to compete in conformation and performance events. We spend thousands of dollars on premium food, genetic health tests and screenings, grooming and supplements in order to present the animal in the best condition possible for these events. An unhealthy, unsocialized animal just cannot compete successfully.

I am strongly against the statute regarding acceptance of gifts, grants and other donations from any source. This section of the rules should be deleted. As the statute clearly states that the costs of administration and enforcement are to be covered by the assessed fees, there is the potential for abuse or undue influence on enforcement by special interest groups. The animal breeders are a unique group in that there are a number of well funded organizations that are trying to stop any and all animal

breeding. This is a much different business than that of other professions licensed by TDLR in that no one is trying to eliminate hairdressers or electricians, etc. If this rule is NOT deleted, any and all information that will identify the amount and source of any donations should be subject to public record and disclosure.

Section 91.66 (c) I am concerned that this section is not clearly written and be interpreted to allow potentially unconstitutional searches and seizures without due process. One of my closest friends experienced just such a seizure several years ago when she emerged from her bathroom shower to find her home full of animal control officers who seized all of her dogs including several that she did not personally own, but was showing for others. The dogs were held by Animal Control for several weeks even though the City Veterinarian examined the lot and pronounced that all were in perfect health. All her vet records for the dogs were complete and up to date. The only charge against her was that all of the dogs were not registered with the city. The subsection needs to clearly state that "investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary".

I strongly urge TDLR to address the concerns stated above before adopting these rules.

Sincerely

Suzanne McFadden

[redacted]

Erule. Comments - Public Comments

From: Elizabeth Choate <[redacted]>
To: <Erule.comments@license.state.tx.us>
Date: 2/20/2012 2:50 PM
Subject: Public Comments
Attachments: Public comment on breeder rules 2-20-12.pdf

Ms. Rinard,

Attached are the public comments of the Texas Veterinary Medical Association related to the department's proposed dog and cat breeder rules. If you have any questions or problems opening the file please do not hesitate to contact me. A copy of these comments will follow by general mail.

Thank you,

Elizabeth Choate, JD
Director of Government Relations/ General Counsel
Texas Veterinary Medical Association
[redacted]

TEXAS VETERINARY MEDICAL ASSOCIATION
8104 Exchange Drive • Austin, Texas 78754
Phone: 512/452-4224 • Fax: 512/452-6633
Web site: www.tvma.org

Texas Department of Licensing and Regulation
Office of the General Counsel
Melissa Rinard, Legal Assistant
P.O. Box 12157
Austin, TX 78711
Erule.comments@license.state.tx.us

February 6, 2012

RE: TVMA's Public Comment on sections of Chapter 91 related to the Dog or Cat Breeders Program.

The Texas Veterinary Medical Association (TVMA) has thoroughly reviewed the proposed rules to implement HB 1451, Dog and Cat Breeders Act, and believes that the following comments are in order. Our members hope that the Texas Department of Licensing and Regulation will allow the Licensed Breeders Advisory Committee the time to carefully consider and discuss all proposed changes from the public and all stakeholders prior to adopting any final rules. TVMA believes that it is best to slowly and cautiously adopt rules in order to help ensure the protection of the health, safety and welfare of companion animals and the general public while protecting licensees from an unsuitable regulatory burden.

§91.10 Definitions

91.10 (8) Provides the definition of "*dog or cat breeder*" from HB 1451. However, when this rule is read in conjunction with §91.22(a) any individual who does not fit the definition of a "*dog or cat breeder*" is prohibited from representing themselves as such unless they hold a license under the chapter. TVMA does not agree that it was the intent of the legislature to prohibit the use of the term "*dog or cat breeder*" for small breeders who do not meet the threshold subjecting them to regulation under the enabling legislation. This is further evidenced by the fact that the legislature saw fit to exempt certain types of special purpose breeders from the licensing act in Section 802.005. Prohibiting the use of these terms places an unfair burden on many individuals such as American Kennel Club (AKC) "*breeders of merit*" or other distinctions that are common in the dog or cat showing arena. Clarification should be added into the rules specifying that this section only applies to individuals who are required to be licensed under the act.

In addition to the comments above TVMA believes that the list of definitions in §91.10 should include a definition of "*positive physical contact.*" The American Veterinary Medical Association's (AVMA) model regulations to assure appropriate care for dogs intended for

use as pets defines "*positive physical contact*" as petting, stroking or other touching, which is beneficial to the wellbeing of the dog.

In many places throughout the proposed rules the title "*attending veterinarian*" is used, however, 91.10(18) defines only the term "*veterinarian.*"

§91.40 Inspector Registration Requirements

Proposed rule 91.40 (a)(1) & (2) authorizes a fire department employee to become a registered inspector. This section should be clarified to include volunteer fire department personnel as authorized inspectors. The majority of the state of Texas is protected by either volunteer fire departments or a combination of volunteer and paid fire departments.

§ 91.50 Inspections—Prelicense

Proposed rule § 91.50(c) requires that before a pre-license inspection may be conducted an applicant must pay the required inspection fee and reasonable expenses related to the departments licensing and inspection duties. TVMA believes that all expenses should be clearly delineated in rule §91.80. The amount of any expected "reasonable expenses" should be clearly defined and licensees should be provided notice of what types of expenses are reasonable. Will certain areas of the state have higher or lower fees by virtue of their location? Business owners should not have to worry about an unknown and ambiguous charge.

§91.76 Responsibilities of Licensees—Annual Inventory

Proposed rule §91.76(a) requires breeders to submit an accounting of all animals held at a facility during the preceding calendar year. The proposed rule fails to account for a common and popular business arrangement between breeders, the co-ownership of animals. Another common arrangement between breeders is to obtain possession an animal for a short period of time in order to breed. The intent of HB 1451 is to improve the health, safety and welfare of animals in breeding facilities while protecting the public from substandard breeders. Often problems with substandard breeders arise as a result of long term neglect and not as a result of temporary custody situations. These common short term arrangements should be accounted for in the rules so that these animals are not counted towards the breeder's full number of animals. A breeder with a non-possessory ownership interest or temporary custody of an animal should not have that animal and its offspring counted for the purposes of subjecting the breeder to additional fees and levels of regulation.

§91.100 Standards of Care—Housing Generally

The end of the second sentence in §91.100(b) seems to mistakenly include the phrase "*and research needs.*" Because the enabling legislation in no way relates to or covers research institutions or research animals, perhaps this language was accidentally left intact from the USDA Animal Welfare Act language that it was taken from and should be removed.

Proposed rule §91.100(b) requires housing facilities to be physically separated from other businesses. TVMA does not believe that this regulation necessary and indeed may limit the ability of a breeder to meet the requirements of the statute in the environment of their choosing whether that be in their obedience, boarding facility or their homes. Because inspectors have the authority to access areas where animals or other property that is relevant to the care of animals is stored it seems that this requirement may be too micromanaging.

§91.101 Standards of Care—Indoor Housing Facilities

§91.101 (a) seems to be inconsistent with its counterpart §91.102 (a). This should be corrected by adding the following to the end of §91.101(a) before the period, "*established by the attending veterinarian and documented in the medical records for each animal based on Tufts Animal Care and Condition Scale.*"

Proposed rule §91.102 (e)(1)(A)(i) and (ii) effectively prohibit the use of 100 percent wire or mesh slatted material for the flooring surfaces of cages after Sept. 1, 2012. TVMA believes that the health, safety and welfare of cats and dogs are better protected when the animals are able to stand on at least partial solid flooring. TVMA agrees with the AVMA model bill which states that "*The primary enclosure shall provide at least partial solid flooring. Nonsolid flooring must be safe for the breed, size and age of the dog; be free from protruding sharp edges; and be designed so that the paw of the dog is unable to extend through or become caught in the flooring.*" However, TVMA believes that dates grandfathering the types of flooring to be used in §91.101 (e)(1)(A)(i) & (ii) should be changed to a more clearly defined time frame for compliance with an eventual cut off period to bring licensed breeders into compliance with current standards. It is likely that any final regulatory scheme for cat and dog breeders will not be in place for several months. After that, it will take some time for the Texas Department of Licensing and Regulation to reach out and inform breeders about the need to comply with licensing requirements. TVMA believes that the effective date in §91.102 (e)(1)(A)(ii) should provide breeders with more time to comply so that they are not required to cease business. In addition, flooring requirements should apply for indoor, outdoor and sheltered facilities if the animals are kept in enclosures.

§91.103 Standards of Care—Outdoor Housing Facilities

Rule §91.103(a)(2) provides that animals with an unknown acclimation status should not be kept in certain cold temperatures. However, the rule fails to mention what may be more likely in the state of Texas, a hot weather or high heat index scenario. For example, it may be contrary to the health safety and welfare of certain breeds of dogs (Malamutes, Huskeys or Brachycephalic animals such as pugs or bulldogs) to be kept outdoors in extremely high temperatures.

§91.112 Standards of Care – Veterinary Care

TVMA believes that the following language should be added to the end of §91.112(c), "*including internal and external parasite control.*" The addition of this requirement is essential because parasites can negatively impact the health, safety and welfare of companion animals, pass expenses related to their elimination to consumers who purchase animals and potentially spread zoonotic disease to humans and other animals.

If you have any questions about these comments please contact the TVMA office at 512/452-4224.

Sincerely,

Orlando Garza, DVM
TVMA President

Erule. Comments - Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

From: Robyn Futcher <[redacted]>
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>
Date: 2/20/2012 1:06 PM
Subject: Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations
Attachments: AKC_Comments_TDLR_Proposal.pdf

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I've attached before adopting these rules.

I am a lifelong animal advocate and dog fancier. I currently own four Cavalier King Charles Spaniels and an 11-year-old small mixed-breed dog. I've been actively involved in local, regional and national purebred dog clubs since 1997, and served a term as president of a large AKC all-breed club in New England before moving to Texas in 2008. I've been deeply involved in public education and pet-assisted therapy over the years, and I currently serve on the Board of a regional breed club and as a columnist for a national breed magazine. I actively show my Cavaliers statewide and nationally, and I am continuing my work conducting public outreach on responsible dog ownership on behalf of my local and national Cavalier clubs.

My dogs have been bred rarely (I've produced three litters in ten years), and in the hopes of producing something special for me to keep and show. My dogs are carefully and responsibly raised and owned. I'm taking one of them to the Cavalier national championship show in Wisconsin; she's a two-year-old AKC Champion that I produced and showed to her Championship myself here in Texas. Incidentally, AKC dog shows and related activities are a multi-million-dollar per annum moneymaker for the state of Texas, and Texas owners, hobby breeders and their dogs were a significant and successful presence at the most recent Westminster Kennel Club shows just last week.

Like so many good breeders around the country and here in Texas--and they do exist--I have always chosen to voluntarily comply with the myriad local and state laws that were already on the books, and which--if enforced--more than protect both the animals and the communities they live in.

Like many ethical hobby breeders, I also voluntarily health-test my dogs via board-certified specialists for a whole host of things, including--but not limited to--hip x rays, patella certifications, eye certifications, annual heart screenings, and blood tests for certain diseases like Episodic Falling Disorder, Dry Eye and Curly Coat Syndrome. The few puppies my dogs have produced have been sired by well-known and fully health-screened Champion dogs from New England, Dallas and--last year, the United Kingdom. The costs involved have been very significant and my vets here in Houston all know me on a first-name basis, as do my handful of puppy buyers, now friends who've stayed in close contact with me over the years. I think they'd all be quick to agree that not everyone in Texas is heartlessly producing puppies solely for profit in garages or outbuildings, and that good hobby breeders do not deserve to be lumped in with the bad via the myriad contextual loopholes in HB 1451.

I feel H.B. 1451 is inherently flawed. Diane Amble of the RPOA/TX had this to say: "HB 1451 was not written for Texas and is being steamrolled all across the country by the Humane Society of the United States, an

Animal Rights organization. In 2005 the HSUS failed to get PAWS (a federal bill) passed to license every dog breeder in the U.S., and vowed to take it to the states." It continues to concern me: even as a very small and ethical dog owner I could still fall prey to vague interpretations of many portions of this bill.

More to the point, the numerous ethical hobby breeders here in Texas like me shouldn't be affected by a bill supposedly written for commercial breeders which, thanks to the groups behind HB 1451, is clearly intended to cast a much wider net and impact ethical breeders of all stripes, despite claims to the contrary. As things stand now, my family can be subject to a warrantless search of our home and property based on a single retaliatory phone call, for which the tipster can actually be compensated! It's unconscionable.

There is continued national scrutiny and media attention being given to HB 1451, and with good reason. I don't believe anybody would disagree regarding the necessity for the humane treatment of animals, but HB 1451's aims and goals can't be ignored, especially in a state with a heritage of rural, agricultural, and personal freedoms as deep as Texas'.

I strongly urge TDLR to address the concerns I've attached before adopting these rules.

Respectfully,

Robyn Futcher
[redacted]

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AKC Government Relations Department has reviewed the Texas Department of Licensing and Regulation's regulatory proposal and offers the following comments. (NOTE: Each section of concern is quoted below, with AKC's comment and recommendation following in ***bold and italicized.***)

- Section 91.10. Definitions.

> "(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

AKC COMMENT: While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at all times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness would elaborate, "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."

- Section 91.21. License Required—Presumptions.

> "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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding."

AKC COMMENT: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptable to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.

- Section 91.22. License Required—Dog or Cat Breeder.

  "(a) A person may not act as, offer to act as, or represent 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."...

  AKC COMMENT: This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a <u>licensed</u> [underlined for emphasis] 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."

- Section 91.27. License or Registration—Notice of Proposed Denial, Opportunity to Comply.

  ..."(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application."

  AKC COMMENT: Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the department <u>shall</u> approve the application."

- Section 91.28. Department Notifications to Licensee or Registrant.

  "Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant."

  AKC COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the at the address shown on the application/file by certified mail, return receipt requested.

- Section 91.30. Exemptions.

> "...(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:
>
> (1) evidence of agriculture activity or business operations using a dog described by this section;
>
> (2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events."...

AKC COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? Individuals may keep dogs for those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events, but the statute and proposed regulations are unclear. The AKC requests that TDLR provide more specific guidance on this issue.

- Section 91.59. Responsibilities of the Department—Reporting Violations; Eligibility of Applicant.

> "(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.
>
> (b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.
>
> (c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.
>
> (d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.
>
> (e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators."

AKC COMMENT: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or habit of contact and a record of whether or not each compliant was substantiated by

department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission.

- Section 91.66. Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.

  ..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity."...

AKC COMMENT: The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

- Section 91.71. Responsibilities of Licensee—Advertising.

  "(a) A licensed breeder may not engage in false, misleading, or deceptive advertising."...

AKC COMMENT: Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. The AKC recommends deletion.

- Section 91.80. Fees.

  "(a) Application Fees.
  (1) Dog or Cat Breeder License (11-25 Intact Female Animals):
  (A) Prelicense Inspection Fee--$175 per facility.
  (B) Original Application--$475.
  (C) Renewal--$475.
  (D) Periodic and Out-of-Cycle Inspections--$175.
  (E) Duplicate License--$25.
  (2) Dog or Cat Breeder License (26-60 Intact Female Animals):
  (A) Prelicense Inspection Fee--$350 per facility.
  (B) Original Application--$950.
  (C) Renewal--$950.
  (D) Periodic and Out-of-Cycle Inspections--$350.
  (E) Duplicate License--$25.
  (3) Dog or Cat Breeder License (61 or more Intact Female Animals):
  (A) Prelicense Inspection Fee--$700 per facility.
  (B) Original Application--$1,900.
  (C) Renewal--$1,900.

(D) Periodic and Out-of-Cycle Inspections--$700.
(E) Duplicate License $25.
(b) Revised/Duplicate License/Certificate/Permit/Registration--$25."...

AKC COMMENT: Though pursuant to statute's direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are believed to be high; and may discourage compliance.

- Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent."...

AKC COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe. This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.

- Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(e) Surfaces.
(1) The following areas in sheltered housing facilities must be impervious to moisture:
(A) Indoor floor areas in contact with the animals; provided that:
(i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and

(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;"...

AKC COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, the AKC recommends as a better alternative the following: "(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of receptacles,"

- Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:
...
(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;"...

AKC COMMENT: The AKC believes that subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? To ensure ease of compliance, a better, more clear alternative reads, "Provide all dogs and cats with easy and convenient access to clean food and water, as required in §91.107 and §91.108 of these rules."

- Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:
...
(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor; and"...

AKC COMMENT: The AKC has concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.

- Section 91.104. Standards of Care—Primary Enclosure.

  "Primary enclosures for dogs and cats must meet the following minimum requirements:

  ...

  (3) Additional requirements for dogs.

  ...

  (B) Space--Facilities Licensed after September 1, 2012.

  ..."

AKC COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requirements standards should not vary between licensees, especially if they vary in consideration only of the interest of encouraging compliance with licensing requirements. The AKC recommends that one standard be uniformly applied among all licensees.

- Section 91.112. Standards of Care—Veterinary Care.

  ... "(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal."

AKC COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? The AKC believes that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. AKC recommends removal of this section.

- Section 91.113. Standards of Care—Sales and Transfers.

  "A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned."

AKC COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. Recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."

- Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats.

  "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

  ...

  (6) Transportation by air.

  ...

  (D) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities.

  (7) Transportation by surface vehicle or privately owned aircraft.

  ...

  (B) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met."

AKC COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlying statute. As such, AKC recommends deletion of these subparts.

- Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats.

  "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

  ...

  (9) A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a licensed issued by the federal regulatory agency."

AKC COMMENTS: This subsection is unclear and should be either edited or deleted.

From: "McOlgan, Letitia A." [redacted]
To: <erule.comments@license.state.tx.us>
CC: [redacted]
Date: 2/17/2012 4:07 PM
Subject: Adoption of Rules under the Dog or Cat Breeders Act, Texas Occupations Code Section 802.201
Attachments: Ltr to Melissa Rinard - General Counsel's Office-c.pdf

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February 17, 2012

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Re: Adoption of Rules under the Dog or Cat Breeders Act, Texas Occupations Code § 802.201

Dear Ms. Rinard:

I write on behalf of The Humane Society of the United States ("HSUS"), in reference to the recent Dog or Cat Breeders Act (the "Act"), enacted as Texas Occupations Code § 802.001-.251. At the January 4, 2012 Advisory Committee meeting, the HSUS's comments on the rules to be adopted to regulate the care and confinement of animals under § 802.201(b)(2)-(13) were not given full consideration due to the Commission's view that the Commission could not modify those standards. As discussed below, the Commission's statutory interpretation is incorrect.

Background

Section § 802.201 directs the Commission to adopt rules necessary to protect the health and well-being of the animals covered by the statute, including the ability to improve and elaborate upon the standards in (b)(2)-(13). The statute provides that:

> The commission *shall* 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.

TEX. OCC. CODE § 802.201(a) (emphasis added). In furtherance of the rulemaking process, § 802.065 mandates that "[t]he commission *shall* establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter." TEX. OCC. CODE § 802.065 (emphasis added). The Commission established an Advisory Committee as directed, and divided that Committee into three work groups. Each work group was delegated the responsibility to discuss and agree on proposed rules related to a designated category. One work group had the responsibility for agreeing on proposed rules for the minimum standards for the care and confinement of animals that the legislature directed be adopted under 802.201(b).

The procedure the Commission must follow when adopting such rules is found in the Texas Administrative Procedure Act, codified as Texas Government Code § 2001. Section 2001.029 mandates that the Commission take into consideration public comments.

During the Advisory Committee meeting of January 4, 2012, various members of the Advisory Committee and the public expressed views that the minimum standards to be adopted by the Commission should be more stringent than those listed in (b)(2)-(13). For example, Nicole Paquette of the Human Society of the United States offered comments regarding evidence that wire flooring and the stacking of cages are detrimental to the animals' health. Other members of the public and representatives of other public organizations also expressed views on the standards covered by (b)(2)-(13).

Full consideration and discussion of the comments made by the Advisory Committee and the public was precluded by the Commission Assistant General Counsel Charles Johnson's repeated insistence that the Commission cannot modify the standards listed in (b)(2)-(13) in any way because "that would in essence be legislation through rulemaking." [transcript p. 223]. The following exchange between Sherry Ferguson, the executive director of the Houston Humane Society and an Advisory Committee member and Charles Johnson is illustrative:

Sherry Ferguson:	Can we discuss the prohibitive stacking?
Charles Johnson:	We can but there's not a lot to do about it because that's in the statute. The statute allows.
Sherry Ferguson:	The statute says we can allow three but we can improve on the statute and that would be lowering it.

> Charles Johnson: We can improve on USDA [the federal regulations]. What's in the statute is done. The statute allows us to improve USDA standards, but the standards that are in the statute [(b)(2)-(13)] those are legislative.

[transcript p. 193]. Further discussion of how and why the Commission should adopt more stringent minimum standards than those listed in (b)(2)-(13) was raised by members of the Advisory Committee as well as members of the public. However, those discussions were consistently cut off by Johnson's misinterpretation of § 802.201. From the meeting of January 4, 2012, it is clear that the Commission is interpreting the statute to mean that the federal regulations in (b)(1) can be improved upon, but the standards listed in (b)(2)-(13) cannot. This interpretation is incorrect.

Discussion

The objective in construing a statute is to give effect to the legislature's intent. *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002). The entire purpose of the Act is to protect the health and well-being of the animals.[1] To that end, rather than setting and periodically updating minimum standards under this statute through the legislative process, the Texas Legislature delegated that job to the Commission. Indeed, the very first mandate of the statute is that "[t]he commission shall adopt rules establishing *minimum standards*" to protect the health and well-being of the animals. Restricting the Commission from considering or adopting rules related to the specific provisions of (b)(2)-(13) would frustrate the entire purpose of the Act, as well as the purpose of the Legislature's delegation to the Commission.

When construing a statute, the statute must also be read as a whole. The Texas Supreme Court has succinctly expressed that rule of construction by stating that legislative intent is determined from "the entire act and not just its isolated portions." Thus, we read the statute as a

[1] See the House Committee Report, the Engrossed House Bill, and the Senate Committee Report, which highlight the plight of animals in these facilities that, in the words of the legislature, "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." House Committee Report, C.S.H.B. 1451, Bill Analysis: Background and Purpose, (date not available), *available at http://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/HB01451H.pdf#navpanes=0*; Engrossed House Report, H.B. 1451, Bill Analysis: Author's / Sponsor's Statement of Intent, May 10, 2011, *available at http://www.capitol.state.tx.us/tlodocs/82r/analysis/pdf/HB01451E.pdf#navpanes=0*; Senate Committee Report, C.S.H.B. 1451, Bill Analysis: Author's / Sponsor's Statement of Intent, May 14, 2011, *available at http://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/HB01451S.pdf#navpanes=0.*

whole and interpret it to give effect to every part. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). Reading the statute as a whole, the standards set forth in (b)(2)-(13) are simply minimum standards, as stated in (a). These specific standards are a starting point for the Commission in fulfilling the mandate of subsection (a), and are not simultaneous minimum and maximum standards that cannot be altered. While the Commission may not enact rules that require less than the standards in (b)(2)-(13), there is nothing in the statute to prohibit the Commission from requiring more if deemed necessary to protect the health and well-being of the animals.

The text of the standards in (b)(2)-(13) themselves support this conclusion. Each is phrased in terms of a *minimum* standard, e.g., "at least one hour of daily exercise" in (b)(2), "at least one regular veterinary examination a year" (b)(8). More importantly, if the Commission does not elaborate on these standards as worded, they are currently so vague that they are inherently unenforceable: "adequate drainage" (b)(2)(A); "adequate protection against harsh weather" (b)(2)(B); "an adequate period between breeding cycles" (b)(3); "basic grooming" (b)(4); "routine and preventative care" (b)(9)-(10); "appropriate training" (b)(12). Each of these terms need to be elaborated upon by Commission rules so that breeders are aware of the requirements of the statute. If the Commission's view is correct, it cannot provide the requisite guidance and breeders will be left to their own judgments as to compliance, a result contrary to the entire purpose of the legislation.

Even if the Legislature had intended (b)(2)-(13) to be the original standards, the Commission is empowered to modify by the express grant of authority in subsection (c):

> The commission by rule may modify existing standards as necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public.

TEX. OCC. CODE § 802.201(c). This grant of authority to modify existing standards makes no mention of being limited by sections (b)(2)-(13). Johnson would read this limitation into the text of subsection (a) as well as subsection (c). If the Commission is actually limited from establishing or modifying the standards listed in (b)(2)-(13), then subsection (c) is meaningless. Simply put, subsection (c) would not mean what it clearly says.

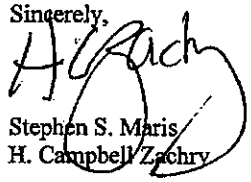
The natural reading of all three sections (a, b, c) together demonstrates that the Legislature intended the Commission to have the authority to promulgate the rules that it deems necessary to protect the health and well-being of the animals. Thus, the Commission's reading of the words "require that" in (b)(2)-(13) to mean that the Commission cannot improve upon

these standards not only goes against the purpose of the statute, but ignores the statute's use of "minimum standards" in subsection (a), the inherent need for elaboration of undefined terms in (b), and the general authority to improve all standards granted in subsection (c).

We recognize that the Commission is currently following the process of adopting rules outlined in the Texas Administrative Procedures Act, including public comment. However, the Commission's current interpretation of the statute has greatly diminished the purpose of the Advisory Committee and effectively prohibited the right of members of the public, including representatives of the Humane Society of the United States and other like-minded organizations, to comment on (and suggest improvements to) the standards listed in (b)(2)-(13). This is a right conferred on the HSUS and other interested members of the public by the Texas Administrative Procedures Act and the Dog or Cat Breeders Act. Interpreting the statute as the Commission apparently does makes it impossible for the Commission to fulfill the legislative mandate of subsection (a) to adopt minimum standards. It also forecloses the ability of the Commission to continuously modify those standards under the authority of subsection (c) as changes become necessary in order to protect the health and well-being of the animals or the public.

Accordingly, we respectfully request that you comply with legislative intent and text of the statute. We note that the Texas Administrative Procedure Act provides a cause of action which allows the court to settle matters of statutory construction in this context. *See* TEX. GOV'T. CODE § 2001.038. Our interest is simply to effect the statute as it has been enacted, and to further the statute's purpose of protecting the health and well-being of the animals. Thank you for your consideration in this matter, and please do not hesitate to contact me if there is any other information I can provide to you.

Sincerely,



Stephen S. Maris
H. Campbell Zachry

HCZ:tm
cc: Charles Johnson, Assistant General Counsel – via email: CharlesJ@license.state.tx.us

Erule. Comments

From: Nick Palmos [redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>
Date: 2/15/2012 10:45 PM

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us
RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas
Dear Ms. Rinard:
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The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).
100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.
Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.
Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.
Veterinary Procedures: Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.
Temperature: Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The

proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts. "It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.
Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.
Sincerely,

Nicholas Palmos

Melisasa Rinard, Legal Assistant
General Council's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the new proposed rules and regulations for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation, TDLR, I respectfully request that TDLR address the concerns I outline below before adopting these rules.

I am representing the Texas members of the Doberman Pinscher Club of America in this response. Most hobby breeders and dog show enthusiast make little to no money in our participation in the hobby. By the time you add up the stud fees, vet bills, food bills, show entries, handlers, gas bills, lodging and etc. most of us will never break even. We do it because we love our breed and enjoy working with the dogs. We enjoy educating our new puppy owners. We live to see the looks on the faces of the families and the kids when they come to pick out their puppy that call we get from the new owners who tell us that their puppy is the prettiest and smartest dog in the whole world.

The hobby breeders who own and show Dobermans do not have puppy mills, but in order to develop a genetic line of dogs they may have more than ten or eleven bitches. By the time they get their championship the dogs are already two to four years old. Most breeders will not average more than one litter per year and then before you know it they are too old for breeding, but they have lived with you their whole lives. In most cases they will stay with the breeder until the end of their years. This cycle increases the number of bitches that we have but at the same time we may only have two or three breed able bitches, Intact bitches are not always breed able in our eyes.

It would be a shame if these breeders are forced to give up the sport due to these new regulations. Many breeders will be forced to give up the hobby because the fees and etc. are just overwhelming. At a time when it is becoming harder and harder to make ends meet, any extra burden may be the straw that breaks the family budget.

Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Section 91.10.19
Last sentence should read: 'The strands of medal, alloy or other material must be encased with a rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor'.

Section 91.21
Allow a breeder to sign an document saying that a specific bitch will not be used for breeding. If the bitch is then used for breeding, the breeder could be fined.

Section 91.22.a
This section is vague. It implies that a breeder with less than 11 intact bitches can not call himself a breeder. It should read "A person may not act as, offer to act as, or represent that the person is a **licensed** 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.'

Section 91.28
Last sentence should be amended so that notification is sent to the street address on the application by certified mail and every effort should be exhausted to notify the applicant.

Section 91.30.e.2
Does this exemption apply to show dog kennels. If not, why? We face many of the same problems as the sporting dogs and Dobermans are classified as Working Dogs. I do not understand why these exemptions are given and we are not included.

Section 91.59
Stronger protection for breeders should be added. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of the licensed breeder can adequately quashed. A breeder who is not required to apply for a license can be accused and their lives are disrupted for no reason.

Section 91.66.c
The last sentence should be removed. The investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

Section 91.80
The application fees are excessive for most hobby and dog show breeders. The original application plus the two inspections that will probably be required for the first license will cost a minimum of $850. And this is just the beginning. These fees will either force many of the breeders who fall within the licensing requirements to either reduce the number of dogs they have, decide to be noncompliant or give up the sport.

Section 91.100.f
Drainage may be an expensive improvement that many breeders can not readily afford.

Section 91.100.g
Washrooms and sinks may be provided for the care of the animals and cleaning, but I am sure many breeders do not have washrooms and showers provided for animal caretakers. This would require an expensive improvement to the facility.

Section 91.102..e.ii
This section should be removed. Keep it simple.

Section 91.104.1.B.x
Refer to comments Section 91.10.

Section 91.104.3.A.i
This minimum space requirement seems excessive and it is not clear what the primary enclosure is. The dogs may have a crate, exercise pens, runs and the whole property to run at different times. What is considered the Primary Enclosure? The expense of providing space could be very expensive.

Breeders may have dogs living in the house with the family and the dog may be given freedom during the day or may be in a run part of the day. If the dog sleeps in a hard sided or medal crate, and if this is called the primary enclosure then it would not provide the required space. Is it the house, the run, the property, or the crate that is considered the Primary Enclosure or is it all of the above.

Section 91.104.3.B.ii
This section should be removed. The space required before September 2012 should be sufficient. The doubled amount of space is unreasonable.

A problem arises when a before and after date is used. Take a breeder who only has 8 or 9 intact bitches before the deadline so he is not required to apply for a license. In a year or two he has a good reason to keep more than 10 intact bitches. Now he is required to apply for a license. He was in business prior to the deadline. Should he be required to provide twice as much space?

Section 91.112.d
Should be removed. The dogs are already required to have an annual visit from the vet. This is not needed.

Please consider the concerns on the attached pages. I know that individual breeders will have additional concerns, but I have tried to highlight the concerns of the average Doberman Pinscher owner/breeder/show exhibit in Texas.

Sincerely,

Jane Menz
Texas DPCA Legislative Director
[redacted]

From: "Mary@maryruehle.com" <[redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
Date: 2/8/2012 11:09 AM
Attachments: Stop the Puppy Mills.docx

To Whom This Concerns:

This is my vote/email to strengthen the Puppy Mill Law.

You may reach me with the following info.

Mary Ruehle
[redacted]

Please confirm you have received my email.

Regards,
Mary Ruehle

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

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Your Name

Melissa Rinard
Legal Assistant, General Counsel's Office
TDLR
P.O. Box 12157
Austin, Texas 78711
Fax: 512 475 3032
Email erule.comments@license.state.tx.us

Re: Comments to TDLR regs re: Dog and Cat Breeder Licensing Regulations pursuant to 16 TAC Chapter 91

The Texas legislature passed 1451 to regulate the treatment of dogs and cats in breeding programs. Under the law many dog and cat breeders with 11 in tact females and who engage in the sale of animals will now be subject to USDA regs meant for large commercial breeding operations under TDLR and not the Agriculture Department. TDLR's proposed regulations actually go further than the USDA requirements, and leave quite a lot of subjective room for inspectors.

TDLR is in a position to ensure that dog and cat breeders can continue to conduct business responsibly in the State of Texas. To that end TDLR is faced with a difficult situation in that the USDA regs assume the licensee is a commercial breeder, breeding far in excess of what most owners with 11 in tact females breed, selling 20 plus a year. The difficulty is that most breeders who breed to enhance the lines and to improve health and temperament of their lines are now caught in this requirement to be licensed. The small breeder options are to stop breeding altogether or significantly change their operation that is a part of their daily home lives to look like a commercial breeding establishment. Let's not forget that some breeders are heavily involved in rescue efforts as well. If we continue to force their hand, they will bow out of rescue as well.

As the author, I am not a breeder. Therefore, I will leave most of the actual requirements for cleaning, housing, and transporting to the folks in the trenches with far more expertise than I. The commentary contained here focuses on the following:

- Request TDLR address the regulations that will lead to violation of the Constitution, including illegal searches, taking of property, invasion of privacy and failure to provide due process.
- Request TDLR add protection to the breeders re: inspectors complying with breeders' sanitary protocol
- Request TDLR add protection to breeders by providing a legitimate way for breeders to appeal decisions and address issues with inspectors behavior and decisions
- Request additional definitions and narrowing of scope of several provisions to make the breeder requirements more clear, and eliminate unintended consequences to breeders and other animal owners

91.10 Definitions

"5(A) Controlling person..... or member...."

I assume this member is a member of an LLC. Otherwise member is too broad. I suggest adding "LLC" prior to member.

"(9) Facility—The premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property and confinement areas used to conduct the breeding business."

This is too broad to claim exceptions later on. So if breeder's child sleeps with a pup, or breeder brings pups in home to socialize, these areas are subject to search. If a breeder normally has a kennel operation until the bitch is ready to deliver and brings the bitch in the home, then the home is subject to search. What if the breeder normally shows a dog in the home to a prospective purchaser so the purchaser can envision how the pup will do in a home? Perhaps business accounting records are kept on a laptop that is in the home when the inspector arrives. This would also make the home subject to an illegal search. Or the consequence will cause problems during the field inspection. What happens when the breeder refuses to allow the inspector in the house? What happens if it is the breeder's employee or child who is present during the inspection and allows the inspector in the house?

"(14) Possess—To have custody of or control over"

What about co-owned dogs? Two people can possess an animal. If a co-owner has 2 intact females of his own and doesn't sell 20 animals year, now this regulation applies to his facility. What if dog is boarded at breeder's kennel but owned by another dog owner? This latter situation can come into play if the breeder also owns a kennel for boarding. The boarding facility may not meet USDA guidelines, but has personal dogs or other's dogs that the breeder now possesses. Clearly this was not the intent of the legislature. The rules need to specifically address that kennel or daycare operations are excluded from the search.

"(15) Primary enclosure—Any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage or compartment."

This definition is problematic and broad. What is primary? If dogs are moved from a kennel into the home for socialization and back again, is the home or a room in the home now the primary enclosure? The primary enclosure is going to change as the pups age and may change when the bitch is in heat, with pups or has weaned the pups. Also primary enclosures can change when kennels are being sanitized. What if during cleaning the animals are moved to a much smaller area while their usual primary enclosure is being sanitized? If the inspector comes during that time there could be issues with the exercise areas.

"(17)(A) (B) Third-party inspector—Any of the following entities with which the department contracts under Texas Occupations Code, 802.061, including an employee of the entity: (A) a state agency, or (B) a local law enforcement agency or fire department."

This allows for TDLR to appoint an entire department or agency, not just a specific employee as an inspector. Furthermore, if TDLR seeks to appoint an employee only as an inspector, this provision

allows for any employee of a department or agency to be appointed. For example a dispatcher, administrative assistant, file clerk and the Chief of Police are all treated as having the same qualifications to be a third party inspector. Likewise any state agency as a whole can be appointed as an inspector, and any employee of any state agency. Texas State Agencies include TABC, Education, Agriculture, Banking, Water Authorities, and endless others and all their employees.

"(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

This will invalidate the use of most commercial crates and play pens that are readily available and reasonably priced. It's interesting that every rescuer and pound and shelter, many vets and most owners use materials which TDLR is saying are not valid. Again the issues exist when moving animals to be shown by purchasers, for cleaning or just to allow for exercise. It's one thing not to want a dog's pads to get hurt or cut on metal flooring, and completely another to say no metal. Why are breeders' animals subject to a substantially higher standard than everyone else's animals?

91.20 Applicability.

Shouldn't the exemption for herding, hunting and field dogs provided for in the original legislation go here?

"91.22 License Required—Dog Cat Breeder

(a) A person may not act as, offer to act as, or represent 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." According to this rule no one who breeds can claim to be a breeder unless licensed. So all of the exempt breeders are no longer breeders according to this provision?

(b) A license for a single facility may cover more than one building on the same premises,
(c) For purposes of this section, each noncontiguous premise or physical location is a separate facility and must obtain a license under this chapter."

I find it difficult to understand exactly when a breeder with more than one building needs more than one license here. Reading b, it sounds as if breeders with 2 acres with several buildings may only need one license. But reading c clouds the issue. If contiguous is sharing a boundary or touching, where is the line drawn? What if a breeder has multiple tracts of land that adjoin (or one is across the road from another) which can happen in rural communities? In fact what if it's all one tract of land but in two counties? Can TDLR eliminate "c", and just have "b"? Maybe expand

the definition of premises to include tract of land, adjoining tracts of land or lands within 500 feet?

"91.23(3) To be eligible for a Dog or Cat Breeders license, an applicant must.....(3) provide the name, and address of each controlling person."

According to the definitions section a Controlling Person could be a supervisor/manager of the breeder. So under the statute employers are required to provide employee's personal information. I would suggest eliminating the supervisor/manager's from this section. While employees may have to pass criminal background checks which require giving an address, those are not done through TDLR.

"91.23(4) To be eligible for a Dog or Cat Breeders license, an applicant must:(4) successfully pass a criminal background check..."

What does successfully pass mean? Can they have a misdemeanor theft, or a DUI, public intoxication, shop lifting, or a theft by check issue in their background or do any/all of those exempt the person from being a licensed breeder or managing a facility? What offenses are permissible and for what time frame? How onerous is this burden? What relevance does this have in the care of animals? The underlying statute just calls for the background to be run.

"91.24(a)(3)(4)(5) To renew a breeder license, an applicant must:...(3) provide the name and address of each controlling person; (4) successfully pass a criminal background check...(5) be in compliance with all Commission Orders directed to applicant or a controlling person."

See response to 91.23(3 and 4) above. And, "Commission Orders" is an undefined term. What does this mean? Is there a time frame for compliance?

"91.24(b)...During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter."

"Any functions" is too broad here. The regulations don't speak to what functions of a breeder are addressed. Should we assume it's just the act of breeding? Is it caring for the dogs, the pups, is it helping the dog deliver pups? If all of this is regulated, I assume it's all part of the function that requires a license under the chapter. Surely the breeder is to continue all functions other than the actual act of breeding two or more dogs, or is it just selling? And what happens to the breeder if there is an unfortunate incidental pairing? Under this section, would the breeder lose his license for one slip up? I suggest tightening this section or eliminating it. If TDLR chooses not to eliminate, I also request that a breeder does not lose a license for one negligent breeding. What if a litter is presold which is often the case? Can purchaser still take delivery during an unlicensed period?

"91.25(b)(2)and(4) The department may deny issuance of a license to, refuse to renew the license held by a person who (2) has had a similar license issued by a federal, state or local authority denied, revoked or suspended; ... (4) has failed to meet a standard adopted by rule under this chapter; or..."

This provides too much power to deny a license. Other state and local entities regulations may be more strict than in the State of Texas. The State of Texas should stand on their regulations. Texas should make their own determination. Failing to issue a license based on the failure to meet a single standard is denying a person from making a living based on a very slim margin, especially since the standards are quite subjective in places. Does anyone see this as a restraint of trade? What about due process? Perhaps a Constitutional lawyer should be consulted.

"91.28 Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant."

This came as quite a surprise to me. Email is not secure. Spam is a large problem. Emails often do not arrive and the recipient has no clue that he has not received a notice. All communication re: actions or decisions should be sent by certified mail to ensure the breeder has notice. Of course email can be used as an additional method of communicating for everyone's convenience.

"91.29 A license or registration issued by the department is valid only for the person named on the license or registration; applies only to the single facility, agency, department or person named on the license or registration; is nontransferable and is valid for 12 months from the date of issuance."

If the license is only valid for the breeder, then how are you holding non-owner employees accountable under this particular regulation?

"91.30(d)(e) Exemptions. This section applies only to a dog bred with the intent that it be used primarily for...(d) Dogs described by subsection (1) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by 91.10(8) (e) ...a dog is presumed to count under 91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including, but not limited to...."

Since when does a person have to prove a law doesn't apply to them? The legislature exempted certain breeds. Perhaps TDLR should list all the breeds that are exempt under this provision instead of subjecting breeders to prove their breed falls within the exemption. The breed list should not be exclusive, as breeds and uses change. Furthermore, the regs only exempt the dogs from counting as one of the 11 intact females. The legislation says they are exempt which means none of this section applies to the maintenance of the dogs. Finally what evidence is sufficient to show a herding dog herds and a hunting dog hunts? These are not show dogs. These are dogs working with their human in the field. There are no ribbons, contests, etc. I suggest moving the exemption to 91.20 "applicability" section so as to eliminate any confusion and ensure not to regulate more than the legislature intended.

91.40 Inspector Registration Requirements (a)(1)(2) "An applicant seeking an inspector registration must: (1) be a state agency, local law enforcement agency, fire department; or (2) be an employee of an agency or department identified in subsection (a)(1)."

This is too broad for the inspector base. This allows for TDLR to appoint an entire department or agency, not just a specific employee as an inspector. Furthermore, if TDLR seeks to appoint an employee only as an inspector, this provision allows for any employee of a department or agency to be appointed. For example a dispatcher, administrative assistant, file clerk and the Chief of Police are all treated as having the same qualifications to be a third party inspector. Likewise any state agency as a whole can be appointed as an inspector, and any employee of any state agency. Texas State Agencies include TABC, Education, Agriculture, Banking, Water Authorities, and endless others and all their employees.

91.40(b)(1) "An applicant seeking an inspector registration under subsection (a)(1) must: (1) submit the names of persons who will perform inspections on behalf of the registrant;"

While breeder supervisors must give personal addresses, the inspectors do not have to provide the same identifying information. Here is an example of the agency applies to be an inspector and then just list the employees the registration will cover. How are all these people going to qualify to be inspectors?

91.40(c)(3) "An applicant seeking an inspector registration...must...(3) successfully pass a criminal background check."

What criteria will pass? Does the record have to be spotless? Offenses exempt? Length of time from the offense? Give some criteria here.

91.41(a)(1)(2)(b(2) Inspector Registration Renewal Requirements

See prior three paragraphs for 91.40. All the same provisions/discussion apply.

91.50(c) Inspections—Prelicense. "Before the prelicense inspection may be concluded, applicant must pay to the department the required inspection fee and the reasonable expenses of the department related to its licensing and inspection duties under this chapter. "

What is the precedent to charge an inspection fee, a license fee and reasonable department related expenses? Is TDLR going to publish all expenses before a breeder requests to be licensed?

91.50(d) Inspections—Prelicense. "An applicant whose facility does not meet the requirements of this chapter as revealed by a prelicense inspection may, after correcting, deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department."

Shouldn't TDLR want the breeder to fix the problems and do the second inspection without an additional charge? Otherwise, does it give a perception that there is no incentive to pass a breeder on the first time around? If this inspection process is designed to keep animals safe and breeders in business wouldn't you want to encourage breeders to fix problems and stay in business? Isn't this particularly true in the first year a business is licensed as no one has any clue what to expect? Maybe you should waive this on a first time ever inspection?

91.51(2)(B) "The department may not require a prelicense inspection of a facility for an applicant who...(2) submits to the department (A) a copy of the license, and (B) on a form prescribed by the department, provide a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter."

In reality, how does someone holding a Class A dealers license know if they meet TDLR's expanded requirements? There's no history and no real way for a breeder to know this. This requirement should be deleted. You are either going to recognize the breeder's license as valid or not.

91.52(c)(d)(e)(f)(h)(i)(k) Inspections—Periodic. "(c) If necessary...the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder ...before arriving at the facility...."

No guidelines are issued as to when TDLR or the third party inspector is permitted to inspect without notice.

"(d) An inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals."

While this is part of the underlying statute, entering the home should not be permissible by any inspector. This is not only a violation of the Constitution, but it also is going to create problems in the field. If there is documented evidence in order for law enforcement to get a warrant due to inhumane treatment, then the police should pursue a claim. TDLR could make a regulation that inspectors report potential inhumane treatment to TDLR and TDLR contacts local authorities. Otherwise the statement that the inspector is not to enter the house is made irrelevant by the exception. If a breeder refuses to allow inspector to enter the house, then what happens? If the breeder is forced to allow an inspector into the house, the inspector will say he had an invitation, thus trying to usurp Constitutional rights. Finally, what if the breeder is not present at the time of inspection? No other person should be authorized to accompany an inspector inside the house (including a member of the breeder's family or an employee). At a minimum the rules should say that without the breeder/owner present and without the breeder/owner's permission, no inspector may enter the home. A clause should also be added that prevents inspector retaliation against breeder for not allowing inspector into the home.

"(e) The inspector may request that relevant documents or records be provided for inspection."

This is too broad. Give examples of relevant documents and examples that are not. What happens if inspector requests financials and breeder refuses? Certainly requesting vet records may be appropriate, but guidelines should be developed to eliminate problems in the field that will potentially violate individual privacy rights. The fact that a breeder must now be licensed does not eliminate underlying Constitutional rights.

"(f) The inspector shall submit an inspection report...and provide a copy of the report to the licensed breeder..."

Is it the inspector providing a copy or TDLR? If it is the inspector what is the consequence of failure to provide the breeder the report? Does the breeder get a report within 10 days too? What happens if the breeder doesn't receive a copy of the report?

"(h) The licensee, manager or representative must, upon request, make available to the inspector all records and other documents required by this chapter."

Again this is too broad. Give examples of documents that are required by this chapter.

"(i) On completion of the periodic inspection...the inspector shall leave proof of inspection...listing the rule sections not meeting the requirements...The proof of inspection...does not affect the validity of the completed detailed report."

If the inspector has to cite the sections violated at the time of the inspection, then this has to be the basis of the detailed report. This first inspection report is nearest at time to the inspection and should be the basis of the detailed report. Additional violations cited in the detailed report should be disallowed.

"(k) The department may assess administrative penalties and/or administrative sanctions for violations disclosed during inspections under this chapter."

I did not find this authorization in the underlying statute. Some could argue it gives the appearance that TDLR has an incentive to make a business fail. Finally, given that the breeder is already subject to inspection fees, reasonable expenses and license fees, this hardly seems appropriate. Is this instead of refusing to license or in addition to the refusal to license?

91.53(e)

Same comment as 91.52(h) above

91.53(f)

Same comment as 91.52(i) above

"91.53(h) Facilities on an out-of-cycle inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent out-of-cycle inspection schedule or returned to a periodic schedule of inspections."

This regulation seems a bit onerous. I would recommend after two additional inspections the breeder is moved to a regular periodic schedule. I'm not sure what the rationale for making a breeder go through four additional inspections is.

"91.54(c) The department may assess administrative penalties and/or administrative sanctions for violations or failure to timely complete corrective actions or timely provide written verification of the completion of corrections to the department."

I did not find that the underlying legislation provided this authority. The fees are quite extensive already for licensees. Is this in addition to failure to renew license or in lieu of?

"91.55(b) The department shall make the directory [of licensed breeders and third party inspectors] available to the public."

If the directory is available, then why only third party inspectors are listed? What about inspectors that are employees of TDLR? Why is it necessary to make the directory public information? I understand this is part of the underlying statute. Two years ago at Westminster some animal rights advocates made a scene on national television. What is the public policy necessity to provide easy accessibility to breeders to potentially make them targets? Is it only breeders or their employees as well? Is it going to contain contact information as well? With identity theft a way of life, many people try to keep all of their information as private as possible.

"91.56(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions." (b) The department shall make the information maintained in the database available to the public."

It is unclear what or how much authority exists for sanctions. However, assuming authority exists, since under these rules any violation can result in loss of license, failure to renew or other issues, it seems that the list of breeders subject to disciplinary actions or sanctions could be long. What is the level of detail provided to the public? Is there a review process a breeder can go through in order to avoid being placed on the list or in order to be removed from the list? And, can a reasonable time limit to review this information be placed on TDLR? I understand this is similar to the wording in the underlying legislation, but more detail is needed.

"91.57(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department. (c) The department shall make the information available to the public."

The underlying legislation did authorize this section, but more detail is needed. Certainly these complaints must not be anonymous. Is a breeder allowed a hearing or is there some investigation and appeal for to ensure the breeder is protected? What is the level of detail of the information that will be available to the public?

"91.58 Responsibilities of the Department—Donations, Disbursements and Reporting."

I suggest adding (i) The department will make available to the public a monthly accounting of all donations, grants and revenue received. The report will detail the donor and grantor's name address and amount of the donation or grant.

New section should be added giving the breeder a right to challenge inspector's findings and a right to appeal. A process to complain about inspectors should be developed. Inspectors should be evaluated by the department annually and the evaluation should be made public.

"91.59 Responsibilities of the Department—Reporting Violations, Eligibility of Applicant."

This section allows for the anonymous tip. It is difficult to imagine that someone could report breeder violations anonymously. Breeders livelihoods are at stake, and with very little room for error as these regulations are written—and no appeals process. How does a breeder defend against a faceless complainant?

"91.61 Responsibilities of the Department—Inspector Training. The department shall prepare and schedule training for applicants for inspector registration and notify registered inspectors of the availability of continuing education to ensure compliance with this chapter and rules adopted under this chapter."

Since it is unlikely that any inspector will have much knowledge of animal husbandry, these regulations or breeding, it is imperative that more detail is provided in the level of training and certification required to be an inspector. Also, the need for annual continuing education especially this early in the process is paramount. The rules are vague, the applications endless and the discretion vast. Much more details about qualifying and training inspectors should be provided here.

"91.66(a) An inspector or investigat[or] must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensedbreeder must be given a reasonable opportunity to be present during the inspection."

What is reasonable opportunity? If the breeder is unavailable will time be permitted for his attorney to stand in his place or another breeder of his choosing? Is it possible to reschedule until later in the day if he is away from the business or later in the week? Since these regulations now regulate folks with 20 pups for sale a year which could be only 2 litters, not all the breeders are going to keep office hours. It's possible they tend to their animals and leave and return a few hours later, especially if there are no litters at the time of the inspection.

I suggest adding a section allowing the breeder to record the inspection with video, audio and pictures. While this is certainly the right of any breeder, making it part of the rules will prevent inspectors from challenging breeder's activities.

"91.66(b) If an inspector determines it is not appropriate to provide advance notice to a licensed breeder or a representative of the licensed breeder before arriving in the facility, the inspection report must describe the reasons supporting the determination."

This allows an awful lot of discretion with an inspector. Under what circumstances might this arise? What if no one is at the facility? What if only a kennel worker is at the facility and the facility is not open to the public? Who will produce documents requested?

91.66(c) discusses entering private residence again.

While this is part of the underlying statute, entering the home should not be permissible by any inspector. This is not only a violation of the Constitution, but it also is going to create problems in the field. If there is documented evidence in order for law enforcement to get a warrant due to inhumane treatment, then the police should pursue a claim. TDLR could make a regulation that inspectors report

potential inhumane treatment to TDLR and TDLR contacts local authorities. Otherwise the statement that the inspector is not to enter the house is made irrelevant by the exception. If a breeder refuses to allow inspector to enter the house, then what happens? If the breeder is forced to allow an inspector into the house, the inspector will say he had an invitation, thus trying to usurp Constitutional rights. Finally, what if the breeder is not present at the time of inspection? No other person should be authorized to accompany an inspector inside the house (including a member of the breeder's family or an employee).

"91.66(d) An inspector may request that relevant documents or records be provided for inspection."

This is too broad. Give examples of relevant documents and examples that are not. What happens if inspector requests financials and breeder refuses? Certainly requesting vet records may be appropriate, but guidelines should be developed to eliminate problems in the field that will potentially violate individual privacy rights. The fact that a breeder must now be licensed does not eliminate underlying Constitutional rights.

"91.66(e) Inspectors must submit inspection reports to the department not later than the 10th day after the date of the inspection...and provide a copy of the report to the licensed breeder...."

Is it the inspector providing a copy or TDLR? If it is the inspector what is the consequence of failure to provide the breeder the report? Does the breeder get a report within 10 days too? What happens if the breeder doesn't receive the report?

"91.66(g)(2) if good cause exist[s] to deviate from the established procedures and protocols, or if no procedure or protocol exist[s] for the issues presented during the inspection or investigation, the inspection report must contain a[n] explanation of the issues presented and procedures followed."

This places an incredible amount of discretion to expand the rules and requirements in the hands of an inspector. Perhaps a better way to handle this is to have the inspector document what he sees with pictures and a report and consult with an expert with TDLR on how to handle in the future.

"91.71 Responsibilities of Licensee—Advertising. (a) A licensed breeder may not engage in false, misleading or deceptive advertising."

Where is the authority in the underlying legislation that creates this rule? Obviously no one wants a vendor to create false advertising, but there are other statutes that cover this. Is there anything to indicate that such advertising even is happening? How much advertising do most breeders have? Who is authorized to determine what is a false claim?

"91.73 Responsibilities of Licensee—Onsite Availability of Law and Rules. A licensed breeder must maintain at each of the breeder's facilities a printed and current copy of Texas Occupations Code, Chapter 802 and rules adopted by the department regulating licensed breeders."

In this electronic age, wouldn't a link to the website suffice? Are all the department rules going to be published to everyone? Do these include advisory statements in inspector meetings?

"91.76(a) Not later than February 1 of each year, a licensed breeder shall submit to the department, on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year."

TDLR needs to make some exceptions here. What about the breeder who also has a boarding facility, day care facility or a training facility? What about the breeders who assist in rescue. The rescue animals should not be part of this report. Finally what about the animals exempted from these regulations? The animals not associated with the breeding business should not be included in this report.

"91.77(a) A licensed breeder shall maintain, at the licensed facility where the animal is kept, a separate record for each animal in the breeder's facility documenting the animal's care."

See comments to 91.76(a) above.

"91.80(d) All fees are nonrefundable except as provided for by commission rules or statute."

What if the fees were not accurately calculated or someone accidentally paid an invoice twice? What if an appeals process is implemented and the decision is overruled?

"91.92(a) The department 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."

Other jurisdictions may define neglect or cruelty differently than this state. TDLR might consider removing other jurisdiction in current language and adding the language: "Licensee shall report a conviction for animal cruelty or neglect under any jurisdiction within 60 days of conviction to the department. The department will review the case within other jurisdictions to determine what action, including license revocation will be taken." Furthermore, the language should be based on a final determination of guilt, i.e. the breeder has exhausted all appeals before the license is revoked.

"91.92(b)(2) The department may revoke or suspend a license held by a person who: (2) has had a similar license issued by a federal, state or local authority denied, revoked or suspended;"

The other authorities, in particular local or other states, may have different regulations than Texas. Texas should make its own determinations.

"91.92(b)(4) The department may revoke or suspend a license held by a person who (4) has failed to meet a standard adopted by rule under this chapter;"

It is unimaginable that if a person does not meet a single rule the department has the authority to shut the breeder down. I suggest broadening this. Failure to correct violations within 60 days after notice or violations of rules after four inspections or other such language should be included. And TDLR needs to add a provision to appeal decisions.

"91.92(b)(5) The department may revoke or suspend a license held by a person who (5) has failed to comply with any corrective action required under an inspection report in the time provided by the report."

See comments to 91.92(b)(4).

"91.106(c)(3)(A)(4) Forced exercise methods or devices such as swimming, treadmills or carousel-type devices are unacceptable for meeting the exercise requirements of this section."

I do not understand why these methods do not satisfy the exercise requirements. Trainers and vets often recommend these exercises to maintain a healthy dog. What about exercising dogs when the weather is not conducive to regular outdoor activities?

TDLR should add a section to protect the animals at a breeder's facility from contamination. The inspector should be required to follow the breeder's sanitary protocol that may include parking on the street and placing covers over shoes, wearing a lab coat, scrubbing hands and arms, wearing gloves, etc.

TDLR should add a section to keep inspectors from being bitten. Even well socialized dogs of certain breeds will react to certain people. Inspectors must follow safety precautions at the breeder facilities. Since many facilities are not open to the public and the inspectors are coming unannounced, inspector should be required to call at least 10 minutes before entering the facility so that any animals that are on the property unrestrained may be placed in an enclosure or on a leash.

Comment for HB 1451

Chairman Frank Denton, TDLR and respected members of the board of TDLR,

As I am unable to attend the Thursday night PCBA meeting in Edom, TX I submit the following:

America's Pet Registry INC. based in Arkansas is a National Purebred Dog Breed Registry and our company has been doing business with Texas Breeders since 1991. We have a business relationship with thousands of home, hobby, show and commercial dog breeders in the state of Texas. We have long advocated for fair regulations for these breeders in Texas and many other states. We deal with conscientious ethical dog breeders who raise dogs in a humane professional manner. When the Texas legislature passed HB 1451 in 2011, as we looked at the language in the original bill the reference to USDA standards appeared to be a fair and reasonable guideline that would be obtainable by the majority of breeders in your State without extreme hardship. The USDA regulations have been in force since the early "60's and although not perfect, certainly provide for humane care of dogs. These USDA regulations are based on sound scientific information and not on emotional based premises for the care of animals.

As I have followed the proceedings and rule making process of implementation of HB 1451 I have become increasingly alarmed how these rules have been inflated beyond USDA standards and it appears that almost all of these changes are certainly not based on scientific facts what so ever. I did not want to believe that the original intent of HB 1451 was to shut down an industry in Texas but the direction the proposed rules have taken indicate that indeed that is what the reality has become. What started out as a proposed law to protect the welfare of animals seems now to not be about protection but more about elimination of the breeders themselves?

Over the last several months I have been personally contacted by over 60 commercial dog breeders from Texas inquiring about other state laws, particularly

Arkansas which does not have state Kennel laws. Several of those breeders have already moved their businesses to other states along with the jobs that employed Texas citizens. If the hidden agenda is to end the dog breeding industry in Texas, then the people behind HB 1451 and behind the scenes appear to be succeeding. I certainly hope I am wrong. Please rethink these rules and the extremely high licensing and inspection fees.

I appreciate your attendance at this PCBA meeting and hope that the input presented will be helpful in your decision making process.

Rob Hurd

National Field Representative

[redacted]

Comment for HB 1451

[redacted] Lauren Johnson, LVT

To whom it may concern,

I have been asked to comment on the practice of resting mature bitches between litters and the medical benefits of that practice. There are no scientific studies that support this practice of resting between pregnancies and heat cycles. In fact the exact opposite is true. Bitches that are not bred undergo an extreme inflammatory response due to high levels of progesterone. Unbred females have a high incidence of Cystic Endometrial Hyperplasia and consequent pyometra Pyometra is a serious infection of the uterus that can be fatal. In unbred females we see the aging of the uterus prematurely due to the intense inflammatory response. This will lead to endometritis which lessens the chance of pregnancy in subsequent breedings. In fact the use of anti-progesterone drugs are one way we keep the uterus "young".

Rick Kesler D.V.M

[redacted]

From: Stacey MacDonald <[redacted]>
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
Date: 2/8/2012 12:14 PM

[redacted]]

How You Can Help:

BY FEBRUARY 17th, please send the Texas Department of Licensing and Regulation your comments in one or more of the following ways:

Email to: Melissa Rinard<mailto:erule.comments@license.state.tx.us> with your concerns (using the text provided in this email).

Mail to: Melissa Rinard, Legal Assistant,
General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711
(using the text provided in this email)

Fax to: (512) 475-3032 (using the text provided in this email)

Share this email with your friends and family.

Four Priority Issues:

Wire Flooring: Provide a solid surface floor to all animals.

Cage Sizes: Provide animals in breeding facilities with humane housing.

Cage Stacking: Cages should not be stacked.

Surgical Procedures: Ensure that only a veterinarian performs surgeries on animals.

Be a Voice for Dogs and Cats
in Texas Breeding Mills
February 17 Deadline for Speaking Out to Help Animals

A few months ago, the SPCA of Texas unleashed our campaign to stop puppy mills<http://www.spca.org/page.redir?target=http%3a%2f%2fwww.spca.org%2fknowpuppymills&srcid=15140&srctid=1&erid=2579105&trid=43b54cf8-3942-419b-afe7-84b701271c34>. We'll be renewing our efforts in the coming months to urge people to know the truth behind the cute. Meanwhile, we celebrated the passage of a new state law that takes the first steps toward eliminating the cruelty and abuse that takes place at hundreds of Texas puppy mills.

Last legislative session, HB 1451, the Licensed Breeder bill, was passed. The new statute required that the Texas Department of Licensing and Regulation (TDLR)<http://www.spca.org/page.redir?target=http%3a%2f%2fwww.license.state.tx.us%2f&srcid=15140&srctid=1&erid=2579105&trid=43b54cf8-3942-419b-afe7-84b701271c34> frame out the rules and standards governing large breeding facilities that will then be enforced state-wide. TDLR has just released their Proposed Rules and Standards document<http://www.spca.org/page.redir?target=http%3a%2f%2fhttp%3a%2f%2fwww.license.state.tx.us%2fbre%2fbre.htm&srcid=15140&srctid=1&erid=2579105&trid=43b54cf8-3942-419b-afe7-84b701271c34>, but several of the standards are very weak and provide little if any comfort or protection to the animals in large breeding facilities.

We need your help to tell TDLR to strengthen the rules and standards they will use to protect animals held in puppy and kitten mills. When we work together for the animals, we can accomplish so much more to make their lives better.

We urge you to respectfully submit your comments by February 17th on the following issues to help provide decent living conditions for these animals. Please also urge your family and friends to write, because every comment counts.

All you need to do is copy the text from the yellow box below, email erule.comments@license.state.tx.us<mailto:erule.comments@license.state.tx.us> and paste the text along with any further comments you have into the body of the email.

Your comments must be received by February 17 and may also be mailed to Melissa Rinard, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, TX 78711; or faxed to (512) 475-3032. Be sure to include your name, email address, fax number or physical address as applicable with your comments. Also, be sure to request a reply.

Your comments will make a huge difference for those dogs and cats living their entire lives in small wire cages used day after day as breeding machines in Texas Commercial breeding facilities.

Thank you for your compassion and support,

The SPCA of Texas

Speak out to help animals and e-mail the text below to:
erule.comments@license.state.tx.us<mailto:erule.comments@license.state.tx.us>

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us<mailto:erule.comments@license.state.tx.us>

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures: Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

Temperature: Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts. "It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,

Stacey MacDonald

[redacted]

Please stop this!

SPCA of Texas [redacted]
Phone: [redacted] | Email: [redacted]
Privacy Policy [redacted]
Email Preferences
[redacted]

UT Southwestern Medical Center
The future of medicine, today.

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

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Please give attention to the following issues/topics! This is an opportunity to provide some really positive aspects to this bill....some that will give these little animals what they cannot ask for on their own. I urge you to make this a worthwhile endeavor; not one that is weak, with considerable 'gray area.' As an active participant in a neighborhood association Petwatch organization, we do what we can to give animals their best shot at life. I am asking you to give special attention to the following issues and provide something that is worthwhile for the animals of Texas.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

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enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

Thank you for allowing me to submit my comments and recommendations. **I would appreciate receiving your thoughts and intentions with respect thereto.**

Sincerely,

Joyce Ferguson

From: "Joan Cummings" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/8/2012 1:57 PM
Subject: Puppy Mills

To Whom It May Concern in the Legislature dealing with Puppy Mill regulations:

I know firsthand what Puppy Mills do to dogs not only physically but mentally. My husband and I went to a Pom/Schipperke website to adopt a Pomeranian after we lost our Pom, TJ. We were introduced to 'Sally' who we renamed Sadie. She was not quite 2 years old and had only been with the rescue person, Cheri Fults, 3 months. Cheri had socialized her enough to feed her a treat occasionally and she let us know it would possibly be a long time before she trusted us or any human being.

Sadie has been with us 2 years as of last December 26. It has taken us that long to gain her trust and teach her that we loved her and would not hurt her. She still is fearful of new people and is petrified of storms (I suspect she was left out in a wire cage in storms that is how terrified she is of them).

Instead of regulating these Puppy Mills, they should be dismantled, shut down forever, and whoever runs them or profits from them should be sent to prison, preferably to a cage similar to what they subjected these puppies, dogs, kittens, cats, or whatever life form to. Maybe once they are rehabilitated they could be sent out into the general population to help care for the very animals they abused for profit.

Every state in the Union should abolish this practice as well as mandating that every animal be spayed or neutered so that euthanizing the unwanted pets does not have to be done every day in every state in the union.

Of course, I don't know why I think the legislators should move quickly on this matter when they don't even have the foresight and empathy to make sure that our most precious asset, our children, are taken care of. CPS is a throwback to the stone age as far as how many people are part of the system that is supposed to take care of children and protect their rights. Our youngest daughter did an internship her senior year of college at a CPS Facility in Plano, TX and said she would not ever be involved in that organization. She saw firsthand what doesn't get done. The reason for that is that they are expected to have a college degree and then paid next to nothing to protect our most important asset and that is the future generation. Case in point: The two little boys whose father bludgeoned them with an axe and then lit a match to a house saturated with gasoline after a social worker let him have them and then could not gain entry behind them into the house. I do not blame her so much as I blame the entire system.

Who gets the large salaries in this country, social services, CPS case in point, The Humane Society, Elder Care, no: the big bucks go to the glory boys and their football. The money taken in from last Sunday's Super bowl could supply CPS, Elder Care, The Humane Society, shutting down of Puppy Mills, etc. with money to last them quite a while. There will be a price to pay for what our Society deems as necessary and what they consider a 'backburner' item.

I would be more than glad to testify before any Senate hearing about the inequities in this country. We are supposed to be the best country in the World and the richest, yet we don't have the common sense God gave a goose when it comes to our priorities. So for whatever good this email does, so be it.

Joan Cummings
Administrative Assistant
[redacted]

Fax: 972.720.8902

This electronic communication and any attachments are intended for use by the addressee(s) listed above and may contain privileged and confidential information which is exempt from disclosure under the applicable law. The interception, use, dissemination, and copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately by replying to this email and destroying all copies of the original communication.

From: "hoffmanstoys@earthlink.net" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 11:27 AM
Subject: Comments regarding regulations
Attachments: February 7 TDLR.doc

Dear Ms. Rinard,

I'm attaching my letter regarding the regulations of HB145.

Thank you in advance for recording my comments.

Sharon Hoffman
Toy Poodles in TX

February 7, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
P. O. Box 12157
Austin, TX 78711

TO WHOM IT MAY CONCERN:

I'm writing regarding HB1451 for Dog/Cat Breeders. I was against this bill from the beginning but it wasn't because of the licensing fee. My disagreement with this bill was because it started out as being against Puppy Mills. However, it soon became apparent that it was against Dog/Cat Breeders in general. The cost of the license is reasonable in my opinion even though I will have to retire or rehome about 8 of my females. It's the fear of not passing an inspection just because the inspector will find some miniscule thing to make me pay again for a pre-inspection. I know that this is the way things are done in most government ran programs. I do not have a kennel, my dogs are all inside with their own crates, fresh water, clean beds, food at all times. They go outside for 2-3 hours a day to play in separate yards with the males always separate. They are in a climate-controlled environment with proper lighting and ventilation. My crates/cages have small coated wire bottoms but even my $700 cages do not have wire on the sides or tops of them. That would make it have less visibility and ventilation in my opinion. This seems to be something that has been added as I don't think HB1451 was worded to include smaller wire on the sides or top. Just the floor was mentioned so I believe that should be taken out of the TDLR draft. Otherwise I would have to replace all my cages which will be virtually impossible for me to afford that expense. I would not be able to comply forcing me to quit or reduce to 10 intact females..

When HB1451 was written it was my understanding that it would be done as minimal USDA guidelines which I believe that my facility is in compliance. If there are additional things that are going to be implemented, then I will NOT be able to continue to do what I love as a breeder. I cannot afford to redo everything in my breeding program that is more than minimal USDA guidelines. I will have to quit or reduce down to only 10 intact females. This also opens the doors for other states to bring in their puppies to sell in our state and take the money back to OK, LA, AR. They will be able to sell their animals at lower prices than Texas breeders because of the fees involved with the licensing, upgrades, etc. I do this because of a medical condition that hinders me from being employed away from my home. This is my therapy allowing me to do things in my own time and not on an 8-5 job. It's something that I love to do. I don't breed my females every heat nor are they bred at a young age. They are never placed until they are at least 8-9 wks. of age for larger puppies and 12 wks. for the smaller sizes. I am AKC inspected yearly and want to know if that paperwork will be sufficient records. The expense of a yearly vet exam on a healthy adult is unacceptable to me because as an ethical breeder I know when my dogs need to be taken for medical treatment. However since that is written in the law I will have to find a way to do this if I decide to become licensed. Many other breeders that have more than 20 intact females are not planning on getting a license, they just plan on having under 20 puppies a year. What is fair about that? Shouldn't anyone that has 11 intact females be licensed? So if someone only has say 5 German Shepard intact females, they can have more than 20 puppies and not be licensed? This is very confusing. It is

also a way that puppy mills can just sell puppies w/o registering them with no paper trail and still slide under the radar of not being inspected. This bill then isn't doing what it was proposed to do…eliminate puppy mills.

Another thing I would like to know is why are we subjected to a pre-inspection when other occupations that are licensed are not subjected to pre-inspection fees. Also if we are not given any notice what happens if in my instance, I have a doctor's appt. or emergency c-section and the inspector just shows up. Am I going to have to pay yet again a pre-inspection fee? Even my AKC inspector calls the day before to let me know that he is in the area and makes sure I will be available. I'm trying very hard to get all of my business together so I can comply to be a licensed breeder. However the stress of not knowing what will happen, who I am going to have to re-home, etc. is playing a big role in my medical condition. Some days I'm so depressed worrying about it, I wonder if it's even worth waking up. This has my whole life turned upside down. I've been threatened by an individual telling me that I will have PETA at my home as she suspects I am a puppy mill. I had ONE puppy on my website. Is that a puppymill??? I was called filthy names, harassed by telephone and email because I refused to allow her to come to see a 2 wk. old puppy telling her that she was welcome to see it once it had a first vaccination. She was told that she could see the parents as well. She said her name was Mrs. Clark and she was an honorary member of PETA. She had nothing else to do in life but work to close down internet websites and I was her next target. I have all the emails and recorded her phone calls. This is what ethical breeders go thru just because they want to breed their animals.

So in closing I am asking for TDLR to consider what an impact this will have on breeders if the fees are too expensive, the upgrades are not feasible for us forcing many to either close down our operation (which is just what the animal rights ie. HSUS, ASPCA, PETA want) or move to another state. Please make this as reasonable as possible on the breeders that are trying to comply and keep the requirements at minimal USDA guidelines.

Respectfully submitted,

Sharon Hoffman
A Toy Poodle Breeder

From: Phil Guidry [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 3:27 PM
Subject: American Kennel Club comment on TDLR proposed licensed breeder regulations
Attachments: AKC comment letter TDLR.pdf

Please distribute the attached comments to TDLR staff and Licensed Breeders Advisory Committee members for their consideration.

Thank you,

PHIL M. GUIDRY

Phil M, Guidry, J.D.

Senior Policy Analyst

American Kennel Club

[redacted]

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

AMERICAN KENNEL CLUB®

Monday, February 6, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

RE: American Kennel Club Concerns with Proposed Licensed Breeder Regulations

Dear Ms. Rinard:

The American Kennel Club (AKC) writes to you on behalf of the members of our 305 affiliated dog clubs and thousands of responsible dog owners and breeders throughout Texas. We remain concerned with several portions of the regulations targeting licensed dog breeders that have been distributed for public comment by the Texas Department of Licensing and Regulation. The AKC appreciates the work of the Licensed Breeder Advisory Committee and the TDLR staff that worked together in drafting the proposed rules.

Founded in 1884, the American Kennel Club is a not-for-profit purebred dog registry and educational organization dedicated to promoting responsible dog ownership, advocating for dogs as family companions, advancing canine health and well-being, and working to protect the rights of all responsible dog owners. We are the nation's primary resource for expertise, education, and advocacy about purebred dogs and responsible dog ownership.

In 2011, the AKC licensed and sanctioned over 957 events in Texas, in which over 117,300 dogs participated. Spending on these events is an important part of Texas' economy and generates over $90.2 million annually.

As you may know, we opposed HB 1451 during the 2011 legislative session because of concerns that the measure would not ultimately improve the health and welfare of dogs while violating the rights of responsible breeders at great expense to Texas taxpayers. Additionally, we have already offered preliminary comment to TDLR and the Licensed Breeder Advisory Committee on issues we believed needed to be addressed in the rules.

Enclosed are written comments detailing our specific concerns regarding the most recent promulgation of the rules for licensed dog breeders in Texas. We respectfully ask that you review these comments and revise TDLR's regulations accordingly. Please do not hesitate to contact the AKC Government Relations Department at (919) 816-3720 or doglaw@akc.org if we can provide further assistance in ensuring that regulations protect the health and welfare of dogs, as well as the rights of responsible breeders in Texas.

Sincerely,

Sheila Goffe
Director, Government Relations

CC: Members, Licensed Breeder Advisory Committee.

Encl.

PMG

[redacted]

AMERICAN KENNEL CLUB COMMENT ON PROPOSED TEXAS DEPARTMENT OF LICENSING AND REGULATION RULES FOR LICENSED DOG BREEDERS

AKC Government Relations Department has reviewed the Texas Department of Licensing and Regulation's regulatory proposal and offers the following comments. (NOTE: Each section of concern is quoted below, with AKC's comment and recommendation following in ***bold and italicized***.)

- Section 91.10. Definitions.

> "(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

AKC COMMENT: While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at all times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness would elaborate, "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."

- Section 91.21. License Required—Presumptions.

> "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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding."

AKC COMMENT: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptable to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.

- Section 91.22. License Required—Dog or Cat Breeder.

  "(a) A person may not act as, offer to act as, or represent 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."...

  AKC COMMENT: This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a <u>licensed</u> [underlined for emphasis] 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."

- Section 91.27. License or Registration—Notice of Proposed Denial, Opportunity to Comply.

  ..."(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application."

  AKC COMMENT: Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the department <u>shall</u> approve the application."

- Section 91.28. Department Notifications to Licensee or Registrant.

  "Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant."

  AKC COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the at the address shown on the application/file by certified mail, return receipt requested.

[redacted]

- Section 91.30. Exemptions.

> "...(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:
>
> (1) evidence of agriculture activity or business operations using a dog described by this section;
>
> (2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events."...

AKC COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? Individuals may keep dogs for those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events, but the statute and proposed regulations are unclear. The AKC requests that TDLR provide more specific guidance on this issue.

- Section 91.59. Responsibilities of the Department—Reporting Violations; Eligibility of Applicant.

> "(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.
>
> (b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.
>
> (c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.
>
> (d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.
>
> (e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators."

AKC COMMENT: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or

habit of contact and a record of whether or not each compliant was substantiated by department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission.

- Section 91.66. Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.

  ..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity."...

AKC COMMENT: The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

- Section 91.71. Responsibilities of Licensee—Advertising.

  "(a) A licensed breeder may not engage in false, misleading, or deceptive advertising."...

AKC COMMENT: Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. The AKC recommends deletion.

- Section 91.80. Fees.

  "(a) Application Fees.
  (1) Dog or Cat Breeder License (11-25 Intact Female Animals):
  (A) Prelicense Inspection Fee--$175 per facility.
  (B) Original Application--$475.
  (C) Renewal--$475.
  (D) Periodic and Out-of-Cycle Inspections--$175.
  (E) Duplicate License--$25.
  (2) Dog or Cat Breeder License (26-60 Intact Female Animals):
  (A) Prelicense Inspection Fee--$350 per facility.
  (B) Original Application--$950.
  (C) Renewal--$950.
  (D) Periodic and Out-of-Cycle Inspections--$350.
  (E) Duplicate License--$25.
  (3) Dog or Cat Breeder License (61 or more Intact Female Animals):
  (A) Prelicense Inspection Fee--$700 per facility.

(B) Original Application--$1,900.
(C) Renewal--$1,900.
(D) Periodic and Out-of-Cycle Inspections--$700.
(E) Duplicate License $25.
(b) Revised/Duplicate License/Certificate/Permit/Registration--$25."...

AKC COMMENT: Though pursuant to statute's direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are believed to be high; and may discourage compliance.

- Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent."...

AKC COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe. This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.

- Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(e) Surfaces.
(1) The following areas in sheltered housing facilities must be impervious to moisture:
(A) Indoor floor areas in contact with the animals; provided that:

[redacted]

(i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and
(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;" ...

AKC COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, the AKC recommends as a better alternative the following: "(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of receptacles,"

- Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:
...
(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;"...

AKC COMMENT: The AKC believes that subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? To ensure ease of compliance, a better, more clear alternative reads, "Provide all dogs and cats with easy and convenient access to clean food and water, as required in §91.107 and §91.108 of these rules."

- Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:
...
(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor; and"...

[redacted]

AKC COMMENT: The AKC has concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.

- Section 91.104. Standards of Care—Primary Enclosure.

  "Primary enclosures for dogs and cats must meet the following minimum requirements:

  ...

  (3) Additional requirements for dogs.

  ...

  (B) Space--Faciliti es Licensed after September 1, 2012.

  ..."

AKC COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requireme nts standards should not vary between licensees, especially if they vary in considerat ion only of the interest of encouraging compliance with licensing requirements. The AKC recommends that one standard be uniformly applied among all licensees.

- Section 91.112. Standards of Care—Veterina ry Care.

  ... "(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal."

AKC COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? The AKC believes that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. AKC recommends removal of this section.

- Section 91.113. Standards of Care—Sales and Transfers.

  "A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned."

AKC COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnec essary. Recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."

[redacted]

- Section 91.202. Transportation Standards—Primar y Enclosure Used to Transport Live Dogs and Cats.

  "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

  ...

  (6) Transportation by air.

  ...

  (D) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities.

  (7) Transportation by surface vehicle or privately owned aircraft.

  ...

  (B) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met."

AKC COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlyin g statute. As such, AKC recommends deletion of these subparts.

- Section 91.202. Transportation Standards—Primar y Enclosure Used to Transport Live Dogs and Cats.

  "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

  ...

  (9) A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a licensed issued by the federal regulatory agency."

AKC COMMENTS: This subsection is unclear and should be either edited or deleted.

[redacted]

From: [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 9:35 PM
Subject: Comment on the Proposed Rules
Attachments: Pinecrest Dog Licensing Objection Letter 02.07.12.docx

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711
Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations
Dear Ms. Rinard:
The attached letter in a Word file contains some thoughts that we believe would be helpful in formulating the proposed regulations under HB 1451.
Thank you for your consideration.

Ted Eubank
[redacted]

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

My wife and I have owned and bred Cavalier King Charles Spaniels for 21 years. We have state of the art facilities and care for our dogs like they are our children. We breed two to four litters per year. Our objective is to find quality dogs to show and, if their health tests support the decision, they may be bred with the hope of improving the breed. The cost of our dog's living quarters would exceed the average home cost in the state of Texas.

Puppies are whelped in our sitting room next to our bedroom. The size of this room would not meet the requirement set in the proposed rules. Puppies are kept near our bedside until they are old enough to begin eating puppy food and to venture into their puppy yard.

We test all breeding stock for hearts, eyes, hips and more recently MRI scans to determine they have the best chance to reproduce healthy puppies. The costs to do the tests mentioned herein total about $1,700.00. The eye and heart tests are repeated each year. We place puppies with families looking for good and loving companions. We are "hobby" breeders, but the regulations proposed in HB 1451 could place us in the commercial breeder category.

Spayed and neutered dogs cannot be shown in most show venues, so we do not spay or neuter the dogs that stay at our home until they have completed their show careers and perhaps had babies. The legislation to which your licensing applies limits the numbers of intact females on premises to 11 and can be prohibitive to show careers and reproduction.

I am President of the Cavalier King Charles Spaniel Club of North Texas, Vice President of the Dallas Forth Worth Toy Dog Club and Show Chair for the Cavaliers of the Midwest. Dog shows bring jobs and money into our state and our communities. This legislation will begin to constrict the numbers of dogs being shown. The numbers of shows will then be reduced thereby reducing the economic benefit our communities get from dog breeders and exhibitors. Licensing the small breeders will in time eliminate the hobby breeder and ultimately restrict the ability of families to enjoy the companionship that dogs bring to our lives.

The proposed fees in 91.80 even to the smallest licensee will further create losses that will drive conscientious hobby breeders from their passion.

Warrantless search proposed in 91.66 violate the rights granted to each of us under the US Constitution.

I strongly urge TDLR to address the concerns highlighted above before adopting these rules.

Sincerely,

Ted Eubank

[redacted]

From: B Shaw[redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 9:52 PM
Subject: Concerns for Licensing Dog and Cat Breeders

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Dear Ms. Rinard,

My name is Barbara Shaw. I am a responsible pet owner and breeder of Cocker Spaniels for more than 30 years. This longevitiy provides rewarding, interesting and often perplexing discoveries about dogs, genetics, and most of all the human/animal bond embedded in our DNA...for both Dog and Human. For the past two sessions of the Texas Legislature, I have written letters about the barrage of legislation aimed at criminalizing animal ownership. The average pet owner will never know they are not complying with the Texas laws until a stranger appears at their door to strip them of their pets.

Please find my replies to specific sections of the proposed licensing and regulation of all breeders of dogs and cats. There are many items that give me pause to worry about the future of our State and invasion into our daily lives. Here we stand now at a precipice looking into an abyss of governmental regulation(s) that will forever change the simplest joys of pet ownership. This is the slippery first step.

Many others will parse the wording in the proposal. I have written my opinions on these few items. My words are in *italics.*

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§91.61.Responsibilities of the Department--Inspector Training.
The department shall prepare and schedule training for applicants for inspector registration and notify registered inspectors of the availability of continuing education to ensure compliance with this chapter and rules adopted under this chapter.

§91.66
(g) Inspections must be conducted in accordance with:
(1) the training procedures and protocols approved by the department; or
(2) if good cause exist to deviate from the established procedures and protocols or if no procedure or protocol exist for the issues presented during the inspection or investigation, the inspection report must contain a explanation of the issues presented and procedures followed.

*Per the above, the applicant is trained to "inspect" but is not required to be trained in animal husbandry, animal handling, breeding experience, or any apprenticeship related to dogs and/or cats. The "inspector" can be anyone approved for employment by others who are equally uneducated in these areas. The above does not outline what the training procedures are or will be. Regardless of the definitions of those not eligible to be "inspectors", the "door" is opened for malice and harrassment towards animal owners by "inspectors" with alternate agendas. Will the applicants be required to ackonwledge any and all affiliations with Anti-animal ownership organizations, specifically: People For the Ethical Treatment of Animals (PETA), the Humane Society of the United Staes (HSUS), Animal Liberation Front (ALF) and/or any affiliations with these and other such entitiies? *

---

§91.80.
(D) Periodic and Out-of-Cycle Inspections--$175.

*This fee and the others display the true nature of this legislative action against the populace at large in Texas and not those individuals who are truly negligent in the care of their animals. Current laws exist to

correct the negligent owners. Additional legislation will not improve the behavior of those who do wrong. The need is to implement the existing statutes and not umbrella the people of Texas at large.*

---

§91.104.Standards of Care--Primary Enclosure
(C) Compatibility
Bitches in heat may not be housed in the same primary enclosure with sexually mature males, except for breeding

Experienced owners understand the need for separation. However, this does not require removing bitches from the same buildings to prevent breedings. What statistics were used to prove such a gross number of accidental breedings occur on a regular basis necessitating the separate enclosure clause? Where did this information originate?

(D) Prohibited means of primary enclosure
Temporary tethering of dogs is prohibited for use as primary enclosure unless prior approval by the attending veterinarian and documented by the attending veterinarian in the medical related to each dog to which the exemption applies.

*The legislature is asking owners, elderly/pensioned owners to spend limited income for permission from a veterinarian to tether their pets for exercise, relief,etc. What is the basis for this? Does the Texas Legislature now have a financial pact with the Texas VMA? *

---

§91.113.Standards of Care--Sales and Transfers.
A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned.

*Some "toy" breeds are not 2 pounds at eight weeks of age and are weaned. This leads back to who is the educated personnel guiding this legislative action? *
*
*
_____
*
*
*Please understand no responsible pet owner wishes injury to their animals. If implemented, this process will lead to abandonment of animals, fewer annual exams as "required" leading to reduced rabies immunizations leading to an increase in the rabies disease. This will happen. The Representative from Houston who began this legislation in 2011against the people of Texas at large did not realize the true outcome of the request. There many outside influences seen in this legislative outline and all, if not most, are to the detriment of the responsible owner. *
*
*
*If the Texas Legislature is looking for a Golden Ring in this economy...the Legislature should continue to look. The fees will not be paying for this legislation, salaries, education or continuing education. The responsible people of Texas are taking care of their animals. The irresponsible
people can be handled with existing city statutes. The State of Texas should not have to deal with city issues and paint the entire state population with the same brush of irresponsibility. *
*
*
This entire proposal should be removed and not pursued.
*
*
Thank you for taking the time to read my minimal replies. There is so much more to be said.
*

*

Barbara Shaw
Responsible Pet Owner since 1971
Life Member of Greater Collin Kennel Club
Greater Collin Kennel Club Delegate to the American Kennel Club
Life Member of the American Spaniel Club
[redacted]

This is a private communication not intended for distribution without the expressed permission of the author.

--

Barbara Shaw
[redacted]

This is a private communication not intended for distribution without the expressed permission of the author.

From: "Patricia Kimbell" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 11:35 PM
Subject: licensed breeders regulations

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

Most all of my dogs in the past 25 years have been rescues. They are like my children and it hurts me so to see the terrible inhumane conditions breeders force upon their helpless animals. Please do all you can to help these poor animals who cannot speak for themselves. They are at our mercy. Please show some mercy. The folllowing paragraphs really show the absolutely necessary changes that should be made to strengthen and realize the goals of HB 1451.

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).Allowing lay persons to perform any of these services is total lunacy!

100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility. Many, far too many, dogs are crippled for life by spending their lives standing on wire cage floors. Nothing short of forced torture to the caged animals.

Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures: Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

Temperature: Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts. "It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,

Patricia D Kimbell

[redacted]

From: Lisa Martin [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/7/2012 11:58 PM
Subject: SPCA concern
Attachments: Melissa Rinard.docx

Please see attached document.

Melissa Rinard, Legal Assistant

General Counsel's Office

Texas Department of Licensing and Regulation

Email: erule.comments@license.state.tx.us

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures: Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

Temperature: Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts. "It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,

Lisa Underwood

From: "Beckey Hargett" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/8/2012 8:22 AM
Subject: Puppy Mills
Attachments: Melissa Rinard.docx

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Hello Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. However, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

Veterinary Procedures: Only veterinarians should perform surgical procedures like tail docking, ear cropping, declawing and debarking. Both veterinarians on the

Advisory Committee strongly recommend this and the entire Advisory Committee agreed. These should be included in §91.112.

Temperature: Lastly, the I question why the term "using best efforts" was inserted in §91.101 and §91.102 and I also would like to see you remove "for four consecutive hours" in regulating temperature requirements. The proposed rules were taken from the USDA Regulations, and there is no reference in the USDA Regulations to "using best efforts. "It's not there for a purpose; it would not be possible to enforce this requirement if the term "using best efforts" is included. No one will be able to determine what "best efforts" are and whether the breeder was using best efforts. It would require a trial and that would be a disincentive for any inspector to write up that violation. Also, the four hour rule will lead to unenforceability of these two sections. No inspector can wait at a facility for four hours to determine whether or not it is or is not in compliance with the rules.

I would love to see all Puppy Mills shut down. NOTHING about them has any redeeming value. I know of a mill I tried to get shut down, but because this person was outside of the city limits, the SPCA couldn't enforce anything. The Sheriff's department & local animal control did what they could , as the law allowed, but that person is still operating this "mill'. This person is not psychologically stable, which makes it so horrible for these dogs. I know about this situation first hand because she "hired" me to take care of them when she was away judging a dog show. She is an AKC judge.

The floors to these cages were nothing but mud. There were sores on the dogs.

They were definitely "cage crazy". Locked up 24/7 with no exercise or human attention. It was unbelievable how ill treated these dogs were. She had 40+ dogs. This is an outrage. I think the amount of dogs a person is allowed to have on their premises should be limited to no more than 10,, and they should prove the dogs are well cared for. A few of these dogs were AKC winners. This property is in Collin County. Thank you.

Rebecca Hargett

[redacted]

From: "Kathie Steele" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/8/2012 8:59 AM
Subject: Puppy and Cat Breeding Mills
Attachments: Melissa Rinard.pdf

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@l.license.state.tx.us

RE: Comments and Recommendations to the Proposed Rules Governing Licensed Breeders in Texas

Dear Ms. Rinard:

I strongly supported the passage of HB 1451 and believe that its passage will significantly help the animals in large scale breeding facilities. Howeve r, the Texas Department of Licensing and Regulation's (TDLR) proposed rules and standards has me very concerned that the goals of HB 1451 will not be realized unless the weak and possibly unenforceable provisions contained in the proposed Rules are strengthened.

The major problem areas are as follows: allowing the use of 100% wire flooring (§91.102 and §91.104); allowing stacking of primary enclosures of dogs (§91.104); grandfathering existing breeder's cage sizes for dogs (§91.104); requiring only a "best efforts" standard for temperature requirements in §91.101 and §91.102; and allowing lay persons to perform veterinary procedures like tail docking, ear cropping debarking and claw removal (§91.112).

100% wire flooring (§91.102 and §91.104): The single most health and injury issue seen in dogs and cats from substandard breeding facilities is their having to spend their entire life on wire flooring, 24/7. Having an animal spend its entire life on a wire floor is by definition "cruel confinement." The proposed rules absolutely must be changed to prohibit 100% wire flooring. Also, there should not be any grandfathering of existing facilities. 100% wire flooring is far too cruel and inhumane to be allowed to continue in any licensed breeder facility.

Cage Stacking: There should be no stacking of primary enclosures for dogs as allowed in §91.104.This practice is unhealthy, unsanitary and can lead to a lack of proper inspection and care for the animals in the higher tier cages. As a last alternative, you should limit only one primary enclosure on top of the other. This is certainly not ideal, but it is much better than going above one cage on top of the other.

Cage Sizes: I agree with the increased cage sizes for dogs in §91.104, but disagree with allowing current licensed breeders to be exempt from those requirements. This is not in keeping with the intent of HB 1451, which had as its primary purpose to protect and provide animals in breeding facilities with humane housing and care. All breeding facilities should be treated equally, and existing facilities should be required to meet the higher standards currently proposed for future licensed facilities. When animals are kept in tight quarters, they have a tendency to become stressed and antisocial. These animals are very difficult and often impossible to adopt out. If you, for whatever reason, grandfather existing facilities, you should include an outside date for them to come into compliance.

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Thank you for allowing me to submit my comments and recommendations. I would appreciate receiving your thoughts and intentions with respect thereto.

Sincerely,

Kathie Steele

Melissa Rinard

From: "Kalynn Weiss" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/6/2012 2:12 PM
Attachments: TDLR Letter.docx

Melissa,
Please see attached letter which is also below:

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Puppy Mill Rules

Ms. Rinard:

Thank you for the opportunity to comment on the proposed Rules regarding humane treatment of dogs and cats in commercial breeding facilities. I wish to comment on four areas. They are as follows:

§91.102 and 91.104. I recommend that no more than 50% of the floor in dog and cat enclosures be allowed to be wire or wire mesh and strongly oppose any grandfathering of that requirement.

Cage Sizes. I recommend that the cage sizes for dogs and cats in all breeding facilities be those set forth in §91.104(3)(B). There should be no grandfathering of those cage sizes.

Cage Stacking. I do not believe there should be any stacking of dog cages as provided in §94.104(E). If you insist on allowing stacking, it should only be one tier above the ground level.

Surgical Procedures. In §91.112(B), you should expand the requirement veterinary to include tail docking, ear cropping, debarking and claw removal.

Thank you for your consideration.

Best regards,
Kalynn Weiss
[redacted]

6 February 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Puppy Mill Rules

Ms. Rinard:

Thank you for the opportunity to comment on the proposed Rules regarding humane treatment of dogs and cats in commercial breeding facilities. I wish to comment on four areas. They are as follows:

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Surgical Procedures. In §91.112(B), you should expand the requirement veterinary to include tail docking, ear cropping, debarking and claw removal.

Thank you for your consideration.

Best regards,
Kalynn Weiss

Melissa Rinard - Please see attached

From: "Amy Wiede" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/6/2012 2:29 PM
Subject: Please see attached
Attachments: TDLR Letter.doc

February 6, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Puppy Mill Rules

Ms. Rinard:

Thank you for the opportunity to comment on the proposed Rules regarding humane treatment of dogs and cats in commercial breeding facilities. I wish to comment on four areas. They are as follows:

§91.102 and 91.104. I recommend that no more than 50% of the floor in dog and cat enclosures be allowed to be wire or wire mesh and strongly oppose any grandfathering of that requirement.

Cage Sizes. I recommend that the cage sizes for dogs and cats in all breeding facilities be those set forth in §91.104(3)(B). There should be no grandfathering of those cage sizes.

Cage Stacking. I do not believe there should be any stacking of dog cages as provided in §94.104(E). If you insist on allowing stacking, it should only be one tier above the ground level.

Surgical Procedures. In §91.112(B), you should expand the requirement veterinary to include tail docking, ear cropping, debarking and claw removal.

Thank you for your consideration,

Amy Wiede

Melissa Rinard - TDLR Letter Vincelee Stevens.docx

From: "Carole Sanders" <[redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/6/2012 2:07 PM
Subject: TDLR Letter Vincelee Stevens.docx
Attachments: TDLR Letter Vincelee Stevens.docx

SAMPLE LETTER

February 6, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing and Regulation
Email: erule.comments@license.state.tx.us

RE: Puppy Mill Rules

Ms. Rinard:

Thank you for the opportunity to comment on the proposed Rules regarding humane treatment of dogs and cats in commercial breeding facilities. I wish to comment on four areas. They are as follows:

§91.102 and 91.104. I recommend that no more than 50% of the floor in dog and cat enclosures be allowed to be wire or wire mesh and strongly oppose any grandfathering of that requirement.

Cage Sizes. I recommend that the cage sizes for dogs and cats in all breeding facilities be those set forth in §91.104(3)(B). There should be no grandfathering of those cage sizes.

Cage Stacking. I do not believe there should be any stacking of dog cages as provided in §94.104(E). If you insist on allowing stacking, it should only be one tier above the ground level.

Surgical Procedures. In §91.112(B), you should expand the requirement veterinary to include tail docking, ear cropping, debarking and claw removal.

Thank you for your consideration.

Sincerely,

Carole Sanders
Presdent & Founder
ANIMAL ANGELS

[redacted]

From: Sheryl Hays [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/6/2012 1:19 PM
Subject: Comments on proposed Rules for Licensed Breeder Bill

To: Tx Dept of Licensing and Regulation

As a concerned citizen and pet owner, I am respectfully submitting the following comments about the proposed rules and standards for HB 1451, the Licensed Breeder Bill. I feel that many of the proposals are inadequate and even harmful and I know that we can do better. I applied to be on the committee working on these rules but unfortunately was not chosen.

There are 4 main priority issues that must be addressed in order to truly live up to the goals of the bill and those of us who fought for its passage:

1. WIRE FLOORING

TDLR's proposed rules dealing with flooring in licensed breeder facilities {Section 91.102 (e)(A)} require that at least 50% of the floor be solid flooring with the remainder being allowed to be wire or wire mesh. However, these proposed rules do not apply to existing breeder facilities. These existing breeder facilities are allowed to have 100% wire or wire mesh flooring. This "grandfathering" of current breeding facilities is terribly flawed and will result in thousands of animals living their entire lives on wire flooring with no relief. We must get this "grandfathering" provision out of the proposed rules and require all breeders, both current and future, to have at least 50% solid flooring where the animal can stand, sit, lie down and turnabout freely on a solid surfce, to seek relief from the wire flooring.

* 100% wire flooring in primary enclosures is inherently cruel confinement. By licensing (grandfathering) this practice, the TDLR is "gutting" the intent and purpose of the statute which is to improve the health and wellbeing of the animals who spend their entire lives in these cages. Also, by licensing (endorsing) the practice the TDLR is making the state animal cruelty statute (cruel confinement) more difficult or impossible to enforce. This is a giant step backward, not forward.

* Dogs forced to live on wire flooring for long periods of time suffer from foot and leg injuries, including chronic, painful sores, infections and cysts between the toes, toenails that curl into the paw pads from lack of pressure on the nail, and toenails being ripped out when they get caught on the wire.

* Wire flooring increases drafts in extremely cold weather, making it difficult for dogs to maintain their body heat.

* Wire flooring in most cases is less sanitary than solid flooring. Feces do not readily fall though wire mesh, so the dog(s) grind it though the wire with their feet which creates terribly unsanitary conditions. Both the dogs and the wire flooring become caked in feces and debris, making cleaning very difficult if not impossible.

* One can provide 50% solid flooring easily and at little expense by providing a resting board, rubber mat, or bedding. This does NOT require restructure of the enclosure for breeders.

2. CAGE SIZES

TDLR's proposed rules dealing with cage sizes {Section 91.104 (3)(A) and (B)} require that primary enclosures be twice the size currently required by the USDA regulations for USDA licensed breeders. Again, however, the TDLR proposed rules exempt current breeder facilities from these requirements and allow them to continue using the smaller cage sizes required by the USDA regulations. The reason given is that it would be cost prohibitive to require current breeder facilities to double their cage sizes. Although this has some merit, there must be a specific timeframe for current breeder facilities to come into compliance with the larger size caging requirements. We recommend that they be given three years to come into compliance - to wit: until September 1, 2015. Also, we recommend that any new cages built at these facilities must come into compliance with the larger cage size requirements at the time they are installed.

* The Licensed Breeder bill was passed to protect the well being of animals forced to live their entire lives in small cages. To "grandfather" existing breeders from increased cage sizes equates to 1) ignoring the will of the legislature and 2) allowing licensed breeders to continue the "status quo" of tiny barren wire living quarters.

3. CAGE STACKING

TDLR's proposed rules {Section 91.104(E)} allow the stacking of dog cages up to three tiers. We recommend that there be no stacking or if any stacking is allowed that it must not exceed one cage on top of another.

* Stacked cages encourage gross overcrowding of animals and are often so high or low - caretakers or inspectors can't easily see the dogs to check on their wellbeing.

* Stacked cages with wire flooring allow urine, feces and wastewater from higher cages to rain down on dogs below

* Stacking makes it more difficult for adequate lighting and air flow to reach all parts of the enclosures - allowing many dogs and cats to live in total darkness and neglect.

4. SURGICAL PROCEDURES

TDLR's proposed rules {Section 91.112(b)} require that only a veterinarian be allowed to euthanize an animal or perform a surgical birth procedure on an animal. This section should cover additional procedures that only a veterinarian shall perform,such as tail docking, ear cropping, debarking, and claw removal. Currently, it is common for these procedures to be performed by breeders (non-veterinarians).

* These procedures are veterinary procedures because they are surgical in nature, and should include prescription drugs and/or anesthesia for pain - neither of which can legally be obtained and used by a lay person.

* A strong argument can be made for animal cruelty, should a breeder/lay person dock tails, cut ears, remove claws, or cut vocal cords without prescription pain drugs or antibiotics.

Thank you for your consideration of these very valid points.

Sheryl Hays
[redacted]

From: "Leah Filzow-Perez" <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/5/2012 8:02 AM
Subject: Reference to Breeder bill 1451

Dear Sirs,

I am writing on behalf of support of immediate changes to strengthen Breeder Bill 1451 and carry through changes that can and will make a difference in the way Texas currently "sells-out" our beloved pets to industries yet again for the sake of money and without regard to the safety or what little comfort animals may have living in cages! Below are some recommendations that at a minimum can and should be implemented. Let's fix this bill once and for all so we don't have to keep coming back again and again as this is the right thing to do to any living creature.

1. WIRE FLOORING

TDLR's proposed rules dealing with flooring in licensed breeder facilities {Section 91.102 (e)(A)} require that at least 50% of the floor be solid flooring with the remainder being allowed to be wire or wire mesh. However, these proposed rules do not apply to existing breeder facilities. These existing breeder facilities are allowed to have 100% wire or wire mesh flooring. This "grandfathering" of current breeding facilities is terribly flawed and will result in thousands of animals living their entire lives on wire flooring with no relief. We must get this "grandfathering" provision out of the proposed rules and require all breeders, both current and future, to have at least 50% solid flooring where the animal can stand, sit, lie down and turnabout freely on a solid surface, to seek relief from the wire flooring. Recommended solution to problem:

. 100% wire flooring in primary enclosures is inherently cruel confinement. By licensing (grandfathering) this practice, the TDLR is "gutting" the intent and purpose of the statute which is to improve the health and wellbeing of the animals who spend their entire lives in these cages. Also, by licensing (endorsing) the practice the TDLR is making the state animal cruelty statute (cruel confinement) more difficult or impossible to enforce. This is a giant step backward, not forward.

. Dogs forced to live on wire flooring for long periods of time suffer from foot and leg injuries, including chronic, painful sores, infections and cysts between the toes, toenails that curl into the paw pads from lack of pressure on the nail, and toenails being ripped out when they get caught on the wire.

. Wire flooring increases drafts in extremely cold weather, making it difficult for dogs to maintain their body heat.

. Wire flooring in most cases is less sanitary than solid flooring. Feces do not readily fall though wire mesh, so the dog(s) grind it though the wire with their feet which creates terribly unsanitary conditions. Both the dogs and the wire flooring become caked in feces and debris, making cleaning very difficult if not impossible.

. One can provide 50% solid flooring easily and at little expense by providing a resting board, rubber mat, or bedding. This does NOT require restructure of the enclosure for breeders.

2. CAGE SIZES

TDLR's proposed rules dealing with cage sizes {Section 91.104 (3)(A) and (B)} require that primary enclosures be twice the size currently required by the USDA regulations for USDA licensed breeders. Again, however, the TDLR

proposed rules exempt current breeder facilities from these requirements and allow them to continue using the smaller cage sizes required by the USDA regulations. The reason given is that it would be cost prohibitive to require current breeder facilities to double their cage sizes. Although this has some merit, there must be a specific timeframe for current breeder facilities to come into compliance with the larger size caging requirements. We recommend that they be given three years to come into compliance - to wit: until September 1, 2015. Also, we recommend that any new cages built at these facilities must come into compliance with the larger cage size requirements at the time they are installed. Recommended solution to problem:

. The Licensed Breeder bill was passed to protect the well being of animals forced to live their entire lives in small cages. To "grandfather" existing breeders from increased cage sizes equates to 1) ignoring the will of the legislature and 2) allowing licensed breeders to continue the "status quo" of tiny barren wire living quarters.

3. CAGE STACKING

TDLR's proposed rules {Section 91.104(E)} allow the stacking of dog cages up to three tiers. We recommend that there be no stacking or if any stacking is allowed that it must not exceed one cage on top of another.

Recommended solution to problem:

. Stacked cages encourage gross overcrowding of animals and are often so high or low - caretakers or inspectors can't easily see the dogs to check on their wellbeing.

. Stacked cages with wire flooring allow urine, feces and wastewater from higher cages to rain down on dogs below

. Stacking makes it more difficult for adequate lighting and air flow to reach all parts of the enclosures - allowing many dogs and cats to live in total darkness and neglect.

4. SURGICAL PROCEDURES

TDLR's proposed rules {Section 91.112(b)} require that only a veterinarian be allowed to euthanize an animal or perform a surgical birth procedure on an animal. This section should cover additional procedures that only a veterinarian shall perform, such as tail docking, ear cropping, debarking, and claw removal. Currently, it is common for these procedures to be performed by breeders (non-veterinarians).

Recommended solution to problem:

. These procedures are veterinary procedures because they are surgical in nature, and should include prescription drugs and/or anesthesia for pain - neither of which can legally be obtained and used by a lay person.

. A strong argument can be made for animal cruelty, should a breeder/lay person dock tails, cut ears, remove claws, or cut vocal cords without prescription pain drugs or antibiotics.

Please consider changing these (4) issues immediately. Animals deserve to be treated humanely. I appreciate your help.

Regards,

Leah Filzow-Perez

[redacted]

[redacted]et

From: Jim Smith <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/5/2012 3:06 PM
Subject: Dog and cat breeding law

James Smith

3035 CR 255

Georgetown, TX 78633

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

erule.comments@license.state.tx.us.

Mr. Kuntz, or whomever this concerns:

After reading the document, *Chapter 91. DOG OR CAT BREEDERS PROGRAM,* I find I have several concerns.

1. Concerning the cost to implement the program, $565,242, this seems to be greatly understated for a program which will oversee all 254 Texas Counties, which will require several staff members, housing, transportation, office expenses such as phone, etc. A single veterinary office with a medium sized practice will have more expenses than this.

The proposed ordinance states that local counties won't have to bear any of the expenses of funding the inspection process, so does this mean that the additional costs will be passed on to the breeders, or to the State?

2. The rules state that an animal is considered to be an adult at 6 months of age. 6 months is far too young to breed an animal, and most cat breeders will wait until the animal is between a year and a year and a half. In most cases, a breeder will not evaluate to breed or not to breed until the animal is older. If 6 months is the age to determine whether or not an animal is one of the 11 that decides whether or not a program falls under this regulation, in most cases you will have juvenile animals counted which are NOT being bred, but which might possibly be bred at some time in the future. If a breeder's records show that an animal is NOT being bred, does that exempt it from the 11?

3. A breeder may have animals that are not bred during a calendar year, or possibly never be bred...but still counted as one of the 11. The proposed ordinance doesn't state exactly what determines a breeding animal. In many programs, especially programs breeding Bengal cats or Savannah cats, cats may be sterile, and it might take several attempted breedings before this is determined.

4. Section 801.101 states that a person can't advertise that he is a

cat breeder unless he holds a license under this charter. However, there are many cat breeders who have a cattery licensed by TICA or CFA that have fewer than 11 intact females. Will these people not be permitted to advertise as cat breeders? Will the fact that they run advertisements or have a website automatically trigger an inspection? And, if so, who pays for the inspection?

5. The ordinance addresses a breeder that may have two separate locations. However, it does not address what happens if two separate breeders, with separate registrations and ownership share the same address. If the cats are segregated in the facility, are they considered separate facilities?

6. The fees for being licensed as a Dog or Cat breeder seem to be much higher than are established for other trades that are licensed.

7. If a breeder, upon reviewing the code and inspecting his own program determines that he does not fall under this law...does he have any requirement to report or request a ruling?

8. If a breeding facility is reported by some Animal Rights activist posing as a customer, and who submits a report to the agency, what will the actions of the agency be? Will the person making the report be required to identify himself if there is an investigation? If there is an investigation and inspection, who pays for it, especially if it is found to be unnecessary?

Most cat breeders do so in an attempt to improve their breed, and don't really hope to make more money than to cover their expenses. This law, and the minimum amounts required for initial inspection and application would cost more than the vet care of around 6 animals a year. I find this to be unsettling.

Jim Smith

–
Tejas Cattery [redacted]
Afrikhan Cattery [redacted]

Melissa Rinard - HB 91

From: "Betty Smith" [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/6/2012 7:23 PM
Subject: HB 91
Attachments: letter concerning HB 91.docx

[redacted]

February 6, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Dear Ms. Rinard:

I am writing regarding **Chapter 91. DOG OR CAT BREEDERS PROGRAM. My husband and I operate a dog kennel, Huckleberry Hollow Kennel, that we started for our special needs adopted son when he was in high school in order that he could graduate under the work program. He is no longer living at home, but because of our love for animals, we have kept the facility going.**

First of all let me say that we applaud some regulatory agents regarding the raising and selling of these animals. We have seen too many roadside puppy sales that have just made our hearts sick.

However, in reading over your requirements, I'm afraid that there are some requirements that are going to totally put us out of business. As a matter of record, we have been paying sales tax on our sales at the advice of our accountant (although I'm not sure many other breeders do so), and this will be some significant revenue that the state will no longer be getting.

These are the things that we won't be able to afford:

(and these are direct quotes from the document of law that we received)

"§91.102.Standards of Care--Sheltered Housing Facilities.
(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present."

Most of our dogs are in outside sheltered kennels and occasionally the temperature will rise about 85 in the summer and below 50 in the winter. They are all provided with houses, covering in the winter months, and fans and plenty of fresh water for bathing and drinking in the summer. But we will not be able to afford to air condition and heat our outside kennels. If we have to do this, we will have to dissolve immediately our 16-year-old business that we pay quarterly sales tax on.

Our son-in law is our vet and makes periodic visit to our establishment for vaccinations and other health care needs of all our pups.

Secondly, the fees assessed will be more than we can pay and will put us out of business, although we pay that much already in sales tax. I have copied those requirements as well:

§91.80.Fees.
(a) Application Fees.
(1) Dog or Cat Breeder License (11-25 Intact Female Animals):
(A) Prelicense Inspection Fee--$175 per facility.
(B) Original Application--$475.
(C) Renewal--$475.
(D) Periodic and Out-of-Cycle Inspections--$175.
(E) Duplicate License--$25.
(2) Dog or Cat Breeder License (26-60 Intact Female Animals):
(A) Prelicense Inspection Fee--$350 per facility.
(B) Original Application--$950.
(C) Renewal--$950.
(D) Periodic and Out-of-Cycle Inspections--$350.
(E) Duplicate License--$25.
(3) Dog or Cat Breeder License (61 or more Intact Female Animals):
(A) Prelicense Inspection Fee--$700 per facility.
(B) Original Application--$1,900.
(C) Renewal--$1,900.
(D) Periodic and Out-of-Cycle Inspections--$700.
(E) Duplicate License $25.
(b) Revised/Duplicate License/Certificate/Permit/Registration--$25.
(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
(d) All fees are nonrefundable except as provided for by commission rules or statute.

I would suggest more reasonable fees, something that might be easily affordable by tax-paying businesses.

Please consider this when instituting this law as it would put us out of business.

Sincerely,

Bob & Betty Smith

Huckleberry Hollow Kennel

I am using the Free version of SPAMfighter.
SPAMfighter has removed 6108 of my spam emails to date.

Do you have a slow PC? Try free scan!

Erule. Comments - Oppose HB 1451

From: <[redacted]t>
To: <erule.comments@license.state.tx.us>
Date: 2/19/2012 5:48 PM
Subject: Oppose HB 1451

As an owner and exhibitor of Show Dogs I was and still am ADAMANTLY opposed to HB 1451.

That being said I would like to state that with the passage of HB 1451 I would be very adamantly opposed to any added restrictions to the existing law.

I have reviewed the Texas Department of Licensing and Regulation's regulatory proposal and offers the followin comments. (NOTE: Each section of concern is quoted below, with my comments and recommendations following in *bold and italicized.*)

Sincerely,

Lesa Strickland
Arp, Texas

Section 91.10. Definitions.

"(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free airflow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

COMMENT: While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at all times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness would elaborate, "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."

§91.10.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult animal--An animal six months of age or older.

COMMENT: An animal is not an adult at 6 months of age. Although conception could occur on the first heat cycle, generally sometime around 6 months of age a dog is not mature until 18 months of age. I recommend changing this to "Adult animal—An animal 18 months of age."

Section 91.21. License Required—Presumptions.

"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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding."

COMMENT: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptabl to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.

Section 91.22. License Required—Dog or Cat Breeder.

"(a) A person may not act as, offer to act as, or represent 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."...

COMMENT: This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to b licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."

Section 91.27. License or Registration—Notice of Proposed Denial, Opportunity to Comply.

..."(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application."

COMMENT: Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the department shall approve

the application."

Section 91.28. Department Notifications to Licensee or Registrant.

"Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant."

COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the at the address shown on the application/file by certified mail, return receipt requested.

Section 91.30. Exemptions.

"...(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

(1) evidence of agriculture activity or business operations using a dog described

by this section;

(2) entry registration forms or receipts issued by an entity sponsoring,

conducting or organizing competitive events."...

COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events?

Individuals may keep dogs for

those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events, but the statute and proposed regulations are unclear. I requests that TDLR provide more specific guidance on this issue.

Section 91.59. Responsibilities of the Department—Reporting Violations; Eligibility of Applicant.

"(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

(b) The online reporting system shall provide an option designed to protect from

disclosure the identity of persons electing to provide information anonymously.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators."

COMMENT: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file

the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or habit of contact and a record of whether or not each compliant was substantiated by

department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission.

Section 91.66. Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.

..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care o the animals. This subsection does not apply to the investigation of unlicensed activity."...

COMMENT: The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

Section 91.71. Responsibilities of Licensee—Advertising.

"(a) A licensed breeder may not engage in false, misleading, or deceptive advertising."...

COMMENT: Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. I recommend deletion.

Section 91.80. Fees.

"(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Intact Female Animals):

(A) Prelicense Inspection Fee--$175 per facility.

(B) Original Application--$475.

(C) Renewal--$475.

(D) Periodic and Out-of-Cycle Inspections--$175.

(E) Duplicate License--$25.

(2) Dog or Cat Breeder License (26-60 Intact Female Animals):

(A) Prelicense Inspection Fee--$350 per facility.

(B) Original Application--$950.

(C) Renewal--$950.

(D) Periodic and Out-of-Cycle Inspections--$350.

(E) Duplicate License--$25.

(3) Dog or Cat Breeder License (61 or more Intact Female Animals):

(A) Prelicense Inspection Fee--$700 per facility.

(B) Original Application--$1,900.

(C) Renewal--$1,900.

(D) Periodic and Out-of-Cycle Inspections--$700.

(E) Duplicate License $25.

(b) Revised/Duplicate License/Certificate/Permit/Registration--$25."... ***COMMENT: Though pursuant to statute's direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are incredibly high; and will discourage compliance and the fees are designed to discourage people from becoming or continuing to be Breeders. I recommend deletion.***

Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and t

provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures

are below 50° F (10° C). Using best efforts, the ambient temperature must not fall

below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent."...

COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe. This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.

Section 91.102. Standards of Care—Sheltered Housing Facilities.

"(e) Surfaces.

(1) The following areas in sheltered housing facilities must be impervious to

moisture:

(A) Indoor floor areas in contact with the animals; provided that:

(i) floor surfaces in facilities licensed on or before September 1,

2012, may consist of flooring that is 100 percent wire or wire

mesh or slatted material; and

(ii) floor surfaces in facilities licensed after September 1, 2012,

must consist of flooring that is 100 percent solid flooring or not

less than 50 percent solid flooring, exclusive of receptacles;"...

COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, I recommend as a better alternative the following: "(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of receptacles,"

Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:

(1) General requirements.

...

(B) Primary enclosures must be constructed and maintained so that they:

...

(viii) Provide all the dogs and cats with easy and convenient

access to clean food and water;"...

COMMENT: I believe that subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? To ensure ease of compliance, a better, more clear alternative reads, "Provide al dogs and cats with

easy and convenient access to clean food and water, as required in §91.107 and §91.108 of these rules."

Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:

(1) General requirements.

...

(B) Primary enclosures must be constructed and maintained so that they:

...

(x) Have floors that are constructed in a manner that protects the

dogs' and cats' feet and legs from injury, and that, if of mesh or

slatted construction, do not allow the dogs' and cats' feet to pass

through any openings in the floor; and"...

COMMENT: I have concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.

Section 91.104. Standards of Care—Primary Enclosure.

"Primary enclosures for dogs and cats must meet the following minimum requirements:

...

(3) Additional requirements for dogs.

...

(B) Space--Facilities Licensed after September 1, 2012.

..."

COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requirements standards should not vary between licensees, especially if they vary in consideration only of the interest of encouraging compliance with licensing requirements. I recommend that one standard be uniformly applied among all licensees.

Section 91.112. Standards of Care—Veterinary Care.

... "(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal."

COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? I believe that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. I recommend removal of this section.

Section 91.113. Standards of Care—Sales and Transfers.

"A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned."

COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. Recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."

Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats. "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

...

(6) Transportation by air.

...

(D) Weaned live puppies or kittens less than 8 weeks of age and of comparable

size, or puppies or kittens that are less than 8 weeks of age that are littermates

and are accompanied by their dam, may be transported in the same primary

enclosure when shipped to research facilities, including Federal research

facilities.

(7) Transportation by surface vehicle or privately owned aircraft.

...

(B) Weaned live puppies or kittens less than 8 weeks of age and of comparable

size, or puppies or kittens that are less than 8 weeks of age that are littermates

and are accompanied by their dam, may be transported in the same primary

enclosure when shipped to research facilities, including Federal research

facilities, and only if all other requirements in this section are met."

COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlying statute. As such, I recommend deletion of these subparts.

Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats.

"Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

...

(9) A licensed breeder transporting animals regulated under this chapter using

commercial transportation a shipper holding a licensed issued by the federal regulatory agency."

COMMENTS: This subsection is unclear and should be either edited or deleted

Lesa Strickland
Lone Star Bulldog Club Rescue
Division IV Coordinator
Bulldog Club of America Rescue Network

Erule. Comments - HB 1451

From: ML williford <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 12:50 AM
Subject: HB 1451

As an owner and exhibitor of Show Dogs I was and still am ADAMANTLY opposed to HB 1451.
That being said I would like to state that with the passage of HB 1451 I would be very adamantly opposed to any added restrictions to the existing law.
I have reviewed the Texas Department of Licensing and Regulation's regulatory proposal and offers the following comments. (NOTE: Each section of concern is quoted below, with my comments and recommendations following in *bold and italicized.*)
Sincerely,
Mark Williford
Deer Park, Tx

Section 91.10. Definitions.
"(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free airflow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."
COMMENT: While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at al times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licensees to maintain cleanliness would elaborate, "The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."
§91.10.Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
(1) Adult animal--An animal six months of age or older.
COMMENT: An animal is not an adult at 6 months of age. Although conception could occur on the first heat cycle, generally sometime around 6 months of age a dog is not mature until 18 months of age. I recommend changing this to "Adult animal—An animal 18 months of age."
Section 91.21. License Required—Presumptions.
"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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding."
COMMENT: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptabl to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.
Section 91.22. License Required—Dog or Cat Breeder.
"(a) A person may not act as, offer to act as, or represent 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."...
COMMENT: This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."
Section 91.27. License or Registration—Notice of Proposed Denial, Opportunity to Comply.
..."(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the departmer may approve the application."
COMMENT: Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the

department shall approve
the application."

Section 91.28. Department Notifications to Licensee or Registrant.

"Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant."

COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the at the address shown on the application/file by certified mail, return receipt requested.

Section 91.30. Exemptions.

"...(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

(1) evidence of agriculture activity or business operations using a dog described by this section;

(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events."...

COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? Individuals may keep dogs for
those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, per subpart (2 above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events, but the statute and proposed regulations are unclear. I requests that TDLR provide more specific guidance on this issue.

Section 91.59. Responsibilities of the Department—Reporting Violations; Eligibility of Applicant.

"(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspector or investigators."

COMMENT: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file
the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or habit of contact and a record of whether or not each compliant was substantiated by
department inspectors or investigators. Additionally, the rules should allow the Department to quash any complain based on a record of habitual malicious complaint submission.

Section 91.66. Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty.

..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity."...

COMMENT: The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

Section 91.71. Responsibilities of Licensee—Advertising.

"(a) A licensed breeder may not engage in false, misleading, or deceptive advertising."...

COMMENT: Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. I recommend <u>deletion</u>.

Section 91.80. Fees.

"(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Intact Female Animals):

(A) Prelicense Inspection Fee--$175 per facility.

(B) Original Application--$475.
(C) Renewal--$475.
(D) Periodic and Out-of-Cycle Inspections--$175.
(E) Duplicate License--$25.
(2) Dog or Cat Breeder License (26-60 Intact Female Animals):
(A) Prelicense Inspection Fee--$350 per facility.
(B) Original Application--$950.
(C) Renewal--$950.
(D) Periodic and Out-of-Cycle Inspections--$350.
(E) Duplicate License--$25.
(3) Dog or Cat Breeder License (61 or more Intact Female Animals):
(A) Prelicense Inspection Fee--$700 per facility.
(B) Original Application--$1,900.
(C) Renewal--$1,900.
Page 5 of 8
(D) Periodic and Out-of-Cycle Inspections--$700.
(E) Duplicate License $25.
(b) Revised/Duplicate License/Certificate/Permit/Registration--$25."... ***COMMENT: Though pursuant to statute's direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are incredibly high; and will discourage compliance and the fees are designed to discourage people from becoming or continuing to be Breeders. I recommend*** **deletion.**

Section 91.102. Standards of Care—Sheltered Housing Facilities.
"(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures
are below 50° F (10° C). Using best efforts, the ambient temperature must not fall
below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent."...
COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.

Section 91.102. Standards of Care—Sheltered Housing Facilities.
"(e) Surfaces.
(1) The following areas in sheltered housing facilities must be impervious to
moisture:
(A) Indoor floor areas in contact with the animals; provided that:
(i) floor surfaces in facilities licensed on or before September 1,
2012, may consist of flooring that is 100 percent wire or wire
mesh or slatted material; and
(ii) floor surfaces in facilities licensed after September 1, 2012,
must consist of flooring that is 100 percent solid flooring or not
less than 50 percent solid flooring, exclusive of receptacles;"...
***COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, I recommend as a better alternative the following: "(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of
receptacles,"***

Section 91.104. Standards of Care—Primary Enclosure.
"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:

...
(viii) Provide all the dogs and cats with easy and convenient
access to clean food and water;"...
COMMENT: I believe that subpart (viii) is vague. For example, does this imply that continuous access to food must be provided in a primary enclosure? To ensure ease of compliance, a better, more clear alternative reads, "Provide all dogs and cats with
easy and convenient access to clean food and water, as required in §91.107 and §91.108 of these rules."
Section 91.104. Standards of Care—Primary Enclosure.
"Primary enclosures for dogs and cats must meet the following minimum requirements:
(1) General requirements.
...
(B) Primary enclosures must be constructed and maintained so that they:
...
(x) Have floors that are constructed in a manner that protects the
dogs' and cats' feet and legs from injury, and that, if of mesh or
slatted construction, do not allow the dogs' and cats' feet to pass
through any openings in the floor; and"...
COMMENT: I have concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.

Section 91.104. Standards of Care—Primary Enclosure.
"Primary enclosures for dogs and cats must meet the following minimum requirements:
...
(3) Additional requirements for dogs.
...
(B) Space--Facilities Licensed after September 1, 2012.
..."
COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requirements standards should not vary between licensees, especially if they vary in consideration only of the interest of encouraging compliance with licensing requirements. I recommend that one standard be uniformly applied among all licensees.
Section 91.112. Standards of Care—Veterinary Care.
... "(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommendec by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal."
COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? I believe that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. I recommend removal of this section.
Section 91.113. Standards of Care—Sales and Transfers.
"A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds o twelve weeks of age and has been weaned."
COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. Recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."
Page 8 of 8
Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats. "Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:
...
(6) Transportation by air.
...
(D) Weaned live puppies or kittens less than 8 weeks of age and of comparable
size, or puppies or kittens that are less than 8 weeks of age that are littermates
and are accompanied by their dam, may be transported in the same primary
enclosure when shipped to research facilities, including Federal research
facilities.
(7) Transportation by surface vehicle or privately owned aircraft.
...
(B) Weaned live puppies or kittens less than 8 weeks of age and of comparable
size, or puppies or kittens that are less than 8 weeks of age that are littermates

and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met."

COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlying statute. As such, I recommend deletion of these subparts.

Section 91.202. Transportation Standards—Primary Enclosure Used to Transport Live Dogs and Cats.

"Licensees must not transport or deliver for transport in commerce a dog or cat unless the following requirements are met:

...

(9) A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a licensed issued by the federal regulatory agency."

COMMENTS: This subsection is unclear and should be either edited or deleted

FARM AND RANCH FREEDOM ALLIANCE

P.O. Box 809
Cameron, Texas 76520

www.farmandranchfreedom.org

February 21, 2012

Melissa Rinard
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
Via email: erule.comments@license.state.tx.us.

Dear Ms. Rinard:

The Farm and Ranch Freedom Alliance (FARFA) submits these comments on the proposed new Chapter 91 of the Texas Administrative Code, regarding regulation of dog and cat breeders.

FARFA advocates for farmers, ranchers, and homesteaders through public education and lobbying to assure their independence in the production and marketing of their food, and to prevent the imposition of unnecessary regulatory burdens that are not in the public interest. Our membership includes people who breed and use dogs for agricultural purposes, such as herding and livestock protection.

FARFA urges the TDLR to **delete the proposed language for sections 91.30(e) and 91.30(f).** While the majority of the proposed section 91.30 tracks the language in HB 1451, these two sections are both novel and unwarranted.

HB 1451 did not specify the burden of proof for the exemption for special purpose dogs. In the absence of specific statutory language, the normal presumption would be that the government must prove that the individual is subject to the regulations by a preponderance of the evidence. The proposed regulation instead places the burden of proof on the dog owner, without justifying or even explaining this reversal of the normal presumptions.

In addition, the level of proof required of the dog owner is unwarranted. The provision that the evidence must "uniquely and conclusively identify" the dogs makes the burden inconsistent with general principles of civil law.

HB 1451 provides no basis for the agency to place these burdens on people who own dogs for agricultural uses (or for hunting or competing purposes), and we urge the agency to adopt regulations consistent with the legislative language.

Sincerely,
Judith McGeary, Esq.
Executive Director

From: "Daisymead Murphy" [redacted]
To: <[redacted]>, "ecfanciers" <[redacted]>
Date: 2/2/2012 11:58 PM
Subject: Fwd: Texas Update: Licensed Breeder Regulations Cause Concern; Comment Now through Feb. 20

Regarding the proposed regulations for licensed dog breeders

At a time when taxpayers are having difficulty paying their mortgages, the State of Texas is implementing a new program which adds a minimum of $565,000 to the budget.
This amount will be covered by licensing fees, inspection fees, and fines....which are meant to cover the cost of the program...and if not enough fees and fines are collected, the taxpayers will pay.
Did the citizens of Texas request these changes to the law? Where did this come from? What NEED was there for the changes?
There are 40 pages of rules, regulations, definitions, fees, etc.....to include pre-license inspection fee of $175, original application fee of $475, and out of cycle inspection fees of another $175.....so if you have 11 females age 6 months and older, that are intact, you can expect to pay at least $650 per year for your license. And, these numbers can change by a simple vote in the legislature, so that 11 females can easily become 10, or 9, or 8, and the fees can become $700, $750, $800, etc. Do you see how easily this can happen?
Why does the government have to be in our business for 40 pages of rules, regulations, definitions, fees?
And all this is already regulated by the USDA, and/or the Texas Department of Agriculture....the laws are already there, but unenforced.
Why doesn't our ECSCA make a political statement in support of dog breeding and dog breeders?

JMHO...Barbara Murphy

----- Original Message [redacted]
From: Mark Johnson [redacted]
To: Cockers ECFanciers [redacted]; Cockers Versatile list<[redacted]; solid_ecs_breeders_na<[redacted]>
Sent: Thursday, February 02, 2012 10:06 PM
Subject: [Solid_ECS_breeders_NA] Fwd: Texas Update: Licensed Breeder Regulations Cause Concern; Comment Now through Feb. 20 [1 Attachment]

[Attachment(s)<about:blank#TopText> from Mark Johnson included below]

Texas owners and breeders, please read this notice from AKC legislation department.

---------- Forwarded message [redacted]
From: Dog_Law [redacted]>>
Date: Thu, Feb 2, 2012 at 2:42 PM
Subject: Revision: Texas Update: Licensed Breeder Regulations Cause Concern; Comment Now through Feb. 20
To: [redacted]>

<http://www.akc.org/governmentrelations/index.cfm>

[Thursday, February 2, 2012]

In January, the Texas Department of Licensing and Regulation (TDLR) published a draft of the proposed regulations for licensed dog breeders. (Click here to view the proposed rules<http://www.tdlr.state.tx.us/bre/Chapter%2091%20Proposed%20Rules.pdf>.) The American Kennel Club appreciates the work of the Licensed Breeder Advisory Committee and the TDLR staff that worked together in drafting the proposed rules.

AKC Government Relations Department has reviewed the proposal, and has concerns with many aspects of the proposal. Click here to view AKC comments<http://www.akc.org/governmentrelations/documents/pdf/AKC_Comments_TDLR_Proposal.pdf>.

WHAT YOU CAN DO:

It remains vitally important that all responsible breeders and owners in Texas, including those who will not be subject to the regulations, submit specific comments on this proposal. Comments regarding this proposal will be accepted until February 20, 2012. Please submit comments to:

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation

P.O. Box 12157
Austin, TX 78711
Fax: (512) 475-3032<tel:%28512%29%20475-3032>
E-mail: erule.comments@license.state.tx.us<mailto:erule.comments@license.state.tx.us>

When drafting comments, please include a reference for the section number you are commenting on. Detailed, specific comments are the most likely to be utilized by the staff and advisory board. As always, please communicate using polite and respectful language. A sample letter is attached for you to customize and submit.

For more information, please contact the AKC Government Relations Department at [redacted] or (919) 816-3720<tel:%28919%29%20816-3720>. Our Texas federation, the Responsible Pet Owners Alliance, can be reached at [redacted] or (210) 822-6763<tel:%28210%29%20822-6763>.

If you would rather not receive future communications from The American Kennel Club, let us know by clicking here.<http://app3.vocusgr.com/OptOut.aspx?200x335x0x3x0x24000x6&Email=mba%40akc.org>
The American Kennel Club, 8051 Arco Corporate Dr. Suite 100, Raleigh, NC 27617 United States

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Mark Johnson

AKC Breeder of Merit
chestnutenglishcockers.com<http://chestnutenglishcockers.com/> - Home of
BIS BISS CH CHESTNUTS SELLING THE DRAMA, CD GN RAE NA NAJ NJP

Capitol Canine Training Club - www.capitolcanine.com<http://www.capitolcanine.com/> - member since 1989

IFDCO - DEFENDING DOG OWNERSHIP
Illinois Federation of Dog Clubs and Owners - www.ifdco.org<http://www.ifdco.org/> - member/delegate since 2009

English Cocker Spaniel Club of America - www.ecsca.org<http://www.ecsca.org/> - member since 2000

Attachment(s) from Mark Johnson

<>
1 of 1 File(s)

TDLR_Senate_Sample_Letter(1).docx<http://xa.yimg.com/kq/groups/19631039/361860645/name/TDLR_Senate_Sample_Letter%281%29.docx>
Reply to sender<mailto:chestnutec@gmail.com?subject=Re%3A%20Fwd%3A%20Texas%20Update%3A%20Licensed%20Breeder%20Regulations%20Cause%20Concern%3B%20Comment%20Now%20through%20Feb%2E%2020> | Reply to group<mailto:Solid_ECS_breeders_NA@yahoogroups.com?subject=Re%3A%20Fwd%3A%20Texas%20Update%3A%20Licensed%20Breeder%20Regulations%20Cause%20Concern%3B%20Comment%20Now%20through%20Feb%2E%2020> | Reply via web post<http://groups.yahoo.com/group/Solid_ECS_breeders_NA/post;_ylc=X3oDMTJwZGZzOWJoBF9TAzk3MzU5NzE0BGdycElkAzE5NjMxMDM5BGdycHNwSWQDMTcwNTE1MjM2MgRtc2dJZAM5NDMEc2VjA2Z0cgRzbGsDcnBseQRzdGltZQMxMzI4MjQyMDAx?act=reply&messageNum=943> | Start a New Topic<http://groups.yahoo.com/group/Solid_ECS_breeders_NA/post;_ylc=X3oDMTJmaWFpcjh0BF9TAzk3MzU5NzE0BGdycElkAzE5NjMxMDM5BGdycHNwSWQDMTcwNTE1MjM2MgRzZWMDZnRyBHNsawNudHBjBHN0aW1lAzEzMjgyNDIwMDE->
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Ogletree Deakins

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Attorneys at Law
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Alicia Sienne Voltmer
Direct Dial: (214) 414-0067
[redacted]

Board Certified – Labor and Employment Law
Texas Board of Legal Specialization

February 2, 2012

VIA E-MAIL

Mr. William Kuntz, Executive Director
william.kuntz@license.state.tx.us
DEPARTMENT OF LICENSING AND REGULATION

Mr. Frank Denton, Chairman
frank.denton@license.state.tx.us
TEXAS COMMISSION OF LICENSING AND REGULATION

Re: Rulemaking Authority under Texas Occupations Code, Chapter 802

Gentlemen:

Our firm has been asked by the Texas Humane Legislation Network to research and opine as to the authority of the Texas Commission of Licensing and Regulation (the "Commission") to modify the standards specifically listed in Section 802.201(b) of the Texas Occupations Code. In accordance with that request, we respectfully submit the following for your consideration.

The Legislation

In the 2011 Texas Legislative session, the Legislature passed House Bill 1451, codified as Chapter 802 of the Texas Occupations Code, and commonly referred to as the "Dog and Cat Breeders Act." The legislation provides new licensing requirements and regulations of large scale dog and cat breeders. Among other requirements, the legislation mandates the Commission to adopt rules establishing the minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a licensed breeder to ensure the overall health, safety, and well-being of the animals in the breeder's possession. Tex. Occ. Code Sec. 802.201(a). Pursuant to Section 802.201(c) of the Texas Occupations Code, the Commission has the statutory authority to modify the express standards listed in Section 802.201(b) if the proposed modifications serve to protect or improve the health and wellbeing of the animal in the breeder's possession.

Texas Court's Interpretation of Agency's Rulemaking Authority

Under Texas law, "[a]n agency can only adopt rules that are authorized by and consistent with its statutory authority." *Gulf Coast Coalition of Cities v. Public Utility Comm'n,* 161 S.W.3d 706, 711 (Tex. App. — Austin 2005, no pet.) (citing *Railroad Comm'n of Tex. v. Lone Star Gas Co.,* 844 S.W.2d 679, 685 (Tex. 1992)). "The determining factor in whether a particular administrative agency has exceeded its rulemaking authority is whether the rules are 'in harmony' with the general objectives of the legislation involved." *Id.* The issue of "[w]hether the rules are 'in harmony' with the general objectives of the legislation involved is a question of law determined through statutory construction." *Id.* (citing *Al Boenker Ins. Agency, Inc. v. Texas FAIR Plan Assoc.,* 2004 WL 1686598, at *4-5 (Tex. App. — Austin 2004, pet. denied)). Courts strive to "determine and give effect to the legislature's intent." *Gulf Coast Coalition of Cities,* 161 S.W.3d at 712. "If the statute's meaning is unambiguous, [courts] look to the plain meaning of the statute." *Id.* (citing *State v. Gonzalez,* 82 S.W.3d 322, 327 (Tex. 2002)).

Analysis

The Texas Legislature vested the Commission with the power and authority to promulgate rules to establish the minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a licensed breeder to ensure the overall health, safety, and wellbeing of the animals in the breeder's possession. Tex. Occ. Code Sec. 802.201(a). The Legislature provided 13 specific requirements governing the standard of care. Tex. Occ. Code Sec. 802.201(b). Tex. Occ. Code. Sec. 802.201(c) enables the Commission to modify existing standards as necessary to protect or improve the health and well-being of animals, or to protect the health and safety of the public. While the Legislature does not expressly instruct the Commission as to the limitations for such modifications, the statute does expressly provide that the modifications should serve to protect or improve the health and well-being of animals, or to protect the health and safety of the public. As such, any proposed rules must be 'in harmony' with the general objectives of the legislation. *See Gulf Coast Coalition of Cities,* 161 S.W.3d at 711.

The general objectives of Chapter 802 are to ensure the overall health, safety, and well-being of each animal in a licensed breeding facility. To meet those objectives, the Legislature gave the Commission a permissive grant of power to adopt rules establishing a *minimum* standard of care. Tex. Occ. Code Sec. 802.201(a). In Section 802.201(b), the Legislature outlined 13 requirements governing the content of the minimum standard of care. The term "minimum" is defined as "the lowest degree reached." *Webster's New World Dictionary Pocket Dictionary* 204 (4th ed.); *see also In re Matter of the Expunction of S.S.A.,* 319 S.W.3d 796, 798 (Tex. App. 2010, no pet.) (reasoning that courts "rely on the plain meaning of the text, unless a different meaning is supplied by legislative definition or is apparent from context, or unless such a construction leads to absurd results"); Tex Gov't Code Sec. § 311.011 (Vernon 2005) ("[w]ords and phrases shall be read in context and construed according to the rules of grammar

and common usage"). The term "minimum," taken in context with the language of the entire section, arguably means that the Commission has the authority to modify the standard of care so long as the rules do not provide *less* protection than the requirements adopted in Section 802.201(b). Absent any language to the contrary, the plain language of the statute indicates that the Legislature conferred upon the Commission the ability to modify the 13 requirements as listed in Section 802.201(b).

It is reasonable to conclude the Legislature did not intend to limit the Commission's ability to modify the standard of care to those requirements listed in Section 802.201(b). It is well-established that when the legislature intends to impose limits in a statute, it knows how to do so. *John H. Carney & Ass'n v. Texas Property and Cas. Ins. Guar. Ass'n,* No. 10-0385, 2011 WL 3796176, * 8 (Tex. App. — Austin August 26, 2011, pet. filed). In this situation, the absence of any such limitation is indicative of the Legislature's intent to allow the Commission to modify the requirements specified in Section 802.201(b). As the general objectives of Chapter 802 of the Texas Occupations Code are to ensure the overall health, safety, and well-being of animals, it is reasonable to conclude that the Legislature intended to allow the Commission to promulgate the minimum standard of care by utilizing the 13 express requirements as a minimum threshold. Consequently, the Commission has the statutory authority to modify the standards listed in Section 802.201(b) as long as they protect or improve the health and wellbeing of the animals in the breeder's facility.

Please feel free to contact me if you have any questions regarding this matter.

Respectfully submitted,

Alicia Sienne Voltmer

ASV/bjd

cc: Melissa Rinard *(via email @ erule.comments@license.state.tx.us)*
Robert L. Trimble *([redacted]*

From: JO LYNNE STARK[redacted]
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us...
Date: 2/17/2012 11:09 AM
Subject: Fw: Letter to TDLR re 1451 certification
Attachments: Letter to TDLR re 1451 certification.pdf

Ms. Rinard,

Plese find my comments made on the TDLR Draft Rules of 1451.

Jo Lynne Stark
LSWDA President & Charter Member
www.lswda.org/

[redacted] – [redacted]

February 17, 2012

Melissa Rinard, Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin Texas 78711

Dear Ms. Rinard,

I am writing you to make comment that the TDLR's requested regarding the Draft Rules for implementing the Dog or Cat Breeder Program after HB1451 was enacted into law. I and my organization are interested parties.

The exemption included in HB145 1 for dogs bred with the intent to be used primarily for hunting, tracking, or retrieving game has been narrowed by stipulations in the Draft Rules. The Rules now state a dog is presumed to count toward licensing requirements unless evidence such as entry registration forms or event receipts are submitted to TDLR to prove these hunting dogs qualify for exemption from kennel licensing. Eroding this exemption is unacceptable.

This Rule doesn't take into consideration the many working dogs in the state of Texas that do a day to day job on a ranch for the rancher himself or the cowboys that use them. A ranch is a 24/7/365 day operation that cannot take time out of their busy schedules to bring each one of their working dogs into town and have them certified to appease your requirements for their exemption or existence.

Guardian dogs, how do you propose to "trial" them? These dogs spend their entire lives living with livestock, protecting them against predators. The owners of these dogs will never ask them to load up and come to town for a "mock trial" because it will not be a fair assessment of the job they inherently perform.

Those that help eradicate feral or wild hogs from our Texas habitat will not be able to perform a trial to certify their dogs due to the fact that a portion of it is illegal in this state to perform. How do you expect to accomplish that? With all of the Animal Rights Activists knocking on the doors of those that use dogs to hunt hogs because these people think it's cruel, regardless of the fact that these people and their dogs are helping to bring the feral hog population under control as the dogs are the only known predator for the hogs. This in turn helps with our white deer populations, our ground nesting bird populations, and our natural habitation. Feral hogs are not indigenous to our state – they are a destructive non-inhabitant that was introduced into our state ecosystem.

Clarification is needed desperately on how you intend on certifying ALL types of working and hunting dogs. I and my concerned members want to know as this entire deal looks like the beginning of the end for ALL working and hunting dog owners.

Sincerely,

Jo Lynne Stark
President, Lone Star Working Dog Association

From: sherry wallis [redacted]
To: <erule.comments@license.state.tx.us>
Date: 2/18/2012 7:36 PM

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Dear Ms. Rinard:

Thank you for inviting public comment on the the proposed regulations regarding Dog and Cat Breeders in the State. As a long-time exhibitor, trainer, breeder, rescuer and lover of dogs, I have some concerns about the language of the proposed regulations and have made my comments below. Some of them have been addressed by the American Kennel Club's Government Relations Department. For ease of review, I've included their comments with my own, but have noted them with AKC in front and they are in bold italics. My comments are in blue

* *

Chapter 91. DOG OR CAT BREEDERS PROGRAM

* *

§91.10.Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult animal--An animal six months of age or older.

.....

(16) Puppy--A dog less than six months old.

Most local governments use the 6 months figure for an "adult" dog with regard to occupancy in a household. Since this regulation has to do with breeding, however, it's not appropriate to differentiate the age this way. Dogs
are considered puppies until they are a year old. This provision can create real difficulties for people breeding dogs for specific purposes rather than just for sale to a pet market. Show breeders, for instance, especially in large breeds which mature slowly, may want to keep a young dog past six months to decide whether it is going to meet their standards for quality before breeding it. The same thing happens in facilities raising dogs for work like herding, guardian work, or security activities. Defining
a puppy as any dog under a year of age and an adult as a dog that is a year or older would make much more sense for the purposes of these regulations.

(5) Controlling person--An *individual* who:

(A) is a partner, manager, director, officer, or *member of a dog or cat breeder*;

...

(C) possesses a direct or indirect control of 25 percent or more of a dog

or cat *breeder*.

* *

(8) Dog or cat breeder--*A person* who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.

.....

§91.22.License Required--Dog or Cat Breeder.

(c) For purposes of this section, each noncontiguous premise or physical location is a separate facility and must obtain a license under this chapter.

If your definition of a breeder is A PERSON, then how can any of the definitions in A and C make any sense? You cannot be a member of a person nor can you control 25% of one. If X is married to Y and they have two separate kennels at different locations, are they considered one person or two? How can anyone be a director or officer of a person? Do you need some sort of wording here appropriate to business arrangements like partnerships or DBA's? No matter how I read this, it just doesn't make sense.

And back to the married couple. If Mr. Jones has a kennel at one location and is listed as the sole proprietor and does not meet the 11 dog/20 puppy requirement for licensing and Mrs. Jones has a kennel at another location and is listed as the sole proprietor and also doesn't meet the requirements for licensing, then does the regulation require that their total be added because they are married? What if two people live together at the same location but are not married and have the same ownership conditions? What happens if a daughter owns a kennel at another location but lives with a parent?

(11) Intact female animal--A female animal that has not been spayed and is capable of reproduction.

Shouldn't this be an ADULT female?

(17) Third-party inspector--Any of the following entities with which the department contracts under Texas Occupations Code, §802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

(18) Veterinarian--A veterinarian in good standing and licensed to practice veterinary medicine in this state.

(19) Wire or Wire Mesh--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's

paws are unable to extend through, or become caught in, the floor.

*AKC Note: ** While easily facilitating cleaning, wire flooring may not be capable of protecting an animal's paws at all times. A better, more reasonable alternative that balances the interest of protecting the animal while making it easy for licenses to maintain cleanliness would elaborate, "The strands of metal, allow or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to feet."*

* *

§91.22.License Required–Dog or Cat Breeder.

(a) A person may not act as, offer to act as, or represent 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.

* *

AKC COMMENT: This section is vague. This rule (per statute) can be interpreted to prohibit individuals not required to be licensed under the act from calling themselves "dog breeders", even though they otherwise would. Further clarification is necessary. A better alternative would read, "A person may not act as, offer to act as, or represent that the person is a licensed [underlined for emphasis] 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."

* *

*91.10 and 91.22—General comments on problems with these two sections. First is the definition of the term dog or cat breeder. This is defined as someone who owns 11 intact females and sells 20 or more puppies or kittens. Unfortunately, you've taken a word in common and ancient parlance and co-opted it into your definition. This begs the question of what to call a person who owns less than 11 intact females and/or sells less than 20 offspring. According to the dictionary and every common usage in every animal husbandry mode, this person is also referred to as a breeder. Maybe a better choice would be to refer to Commercial Breeders vs. Breeders and then you would have Licensed Commercial breeders. Those who met the conditions for being considered a Commercial Breeder would then have to have a license and those who did not; would not. This would remove a lot of ambiguity. *

* *

*The problem is compounded in 91.22 (a). What are people who breed dogs and cats but who don't meet the threshold for licensing supposed to call themselves? What happens to these people if they do call themselves breeders? Wouldn't putting "licensed" in front of dog or cat breeder solve this dilemma? *

* *

*The definition as it is written could also present a difficulty for shelters and rescues. If 11 is some kind of magic number beyond which the State must step in to address welfare concerns of dogs and cats, then this number of 11 should be equally applied to rescue operations and shelters, since it is not the breedability of the intact female, rather the number/density of intact female animals to which these regulations are speaking. *

* *

*Shelters and rescues may well sell or exchange more than 20 dogs in a year, even though they don't breed them. However, some pure-breed rescues operated by a person who also may breed their personal dogs might fall under this provision, especially if that person has had to accommodate a number of dogs as has been the case in the past. Assuming that rescues and shelters are automatically in compliance with these regulations can be erroneous. Many rescue organizations and shelters are hard-pressed enough to find funding for their current operations, let alone comply with ALL of the proposed regulations. They may find that they fall under the regulations of HB1451, and even worse, find that they are not in compliance. The most likely outcome would be that they cease operations, putting additional burdens on public facilities. *

* *

§91.21.License Required--Presumptions.

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 department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is * not* used for breeding.

How does anyone prove a negative? There is documented research which states that spaying/neutering of animals before 1 year of age, and in the case of some larger breeds before 2 years of age, can result in calamitous health issues occurring later in life People shouldn't be forced by the State to alter their dogs in any fashion if they do not chose to do so. The animals are their property and they should be able to keep them intact if they so desire, since having a dog that can reproduce doesn't mean at all that it will.

* *

* AKC comment: Absent proof of spay or age of animal, what other forms of proof will be deemed reasonably acceptable to the department? A better alternative would allow breeders to attest under the threat of disciplinary actions under the act as to whether an individual dog will not be used for breeding.*

§91.23.License Requirements--Dog or Cat Breeder.

To be eligible for a Dog or Cat Breeders license, an applicant must:

.....

(4) successfully pass a criminal background check for each applicant and controlling person;

§91.24.License Requirements--Dog or Cat Breeders License Renewal

...

(4) successfully pass a criminal background check for each applicant or controlling person;

How does one pass the criminal background check? Is there a general requirement that felons cannot be licensed? Otherwise, what would constitute not passing? What's the point in all of those highly-publicized

programs where prisoners are responsible for the care and training of rescued dogs if they'll be turned down for a license as a breeder? Or is it only if they are breeding and selling?

If a dog is spayed/neutered, then it doesn't matter who has its care; but if a dog is intact, then the breeder/caretaker must pass a criminal background check. What is the intent here? Is it the well-being of the animal, or is it just another cost for a breeder to bear in addition to the ridiculously high licensing & inspection fees that are being proposed?

§91.25.License Approval and Issuance.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

AKC COMMENT: Per statute section 802.104, the department is mandated to issue a license once requirements of the statute and rules are met, application is made on the form prescribed by the department, and the required fee is paid. This rule should also reflect the mandatory nature of the statute; and therefore should read, "...the department shall approve the application."

§91.28.Department Notifications to Licensee or Registrant.

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

AKC COMMENT: Out of convenience for all licensees or applicants, this rule should provide that all licensees or registrants that do not provide a valid email address shall be provided written notice at the at the address shown on the application/file by certified mail, return receipt requested.

§91.30.*Exemptions.*

(a) This section applies only to a dog bred with the intent that it be used primarily for:

(1) herding livestock, as defined by §1.003, Agriculture Code, or other agricultural uses;

(2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or

(3) competing in field trials, hunting tests, or similar organized performance events.

(b) *This chapter does not apply to a person to the extent the person breeds dogs described by subsection (a) for personal use.* A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by subsection (a).

(c) Notwithstanding subsection (b), a person described by subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by §91.10(8).

(e) For purposes of this section a dog is presumed to count under §91.10 (8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

(1) evidence of agriculture activity or business operations using a dog described by this section;

(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.

AKC COMMENT: This section is vague and does not indicate how many individuals will be required to prove their dogs are exempt. For example, how does an individual prove a dog is kept for hunting, tracking, chasing, pointing, flushing, or retrieving game, if those activities are not performed pursuant to organized competitive events? Individuals may keep dogs for those activities yet have no substantiation that their dogs are kept for those purposes. Additionally, per subpart (2) above, does the competitive events exemption apply to show dog kennels? Such dogs are kept for competitive events, but the statute and proposed regulations are unclear. The AKC requests that TDLR provide more specific guidance on this issue.

What organized performance events qualify a dog under this section? Does it extend to dogs competing in shows, earthdog trials, lure-coursing? What about people who do not compete with their dogs but use them recreationally for hunting? How do they prove that a particular dog was used to retrieve ducks, for instance? Did the legislature really intend for the scope of this exemption to be narrowed by adding such narrow stipulations of proof?

Is proof of event competition required for every dog owned in order to qualify for the exemption? Is this an annual requirement or is the possession of any field trial or hunting test title sufficient to prove the dog is working in the capacity for which it was bred?

§91.30*.Exemptions*

...

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

Who is going to pay for an investigation in the described circumstances to prove entitlement to the exemption? This will result in court cases challenging investigation fees whenever they are imposed on folks who are not required to hold a license.

§91.52.Inspections--Periodic.

(h) Facilities on an out-of-cycle inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent out-of-cycle inspection schedule or returned to a periodic schedule of inspections. The department will notify the licensee, in writing, if there is a change in the facility's out-of-cycle schedule or if

the facility is returned to a periodic inspection schedule.

§91.53.Out-of-Cycle Inspections. A Tier I violation of the rules related to records required by this chapter would require an out-of-cycle inspection resulting in an additional $175 fee for the breeder. A record-keeping error could be as simple as a missing health record for one of the dogs/cats. The correction is noted on the inspector's report and of copy the necessary corrected item could easily be sent to TDLR electronically. This would eliminate cost of a repeat inspection and save time/money for TDLR inspectors.

§91.54.Corrective Actions Following Periodic or Out-of-Cycle Inspections.

...

(c) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to timely complete corrective actions or timely provide written verification of the completion of corrections to the department.

§91.55.Responsibilities of the Department--Directory.

(a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

(b) The department shall make the directory available to the public.

§91.56.Responsibilities of the Department--Disciplinary Database.

(a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action or sanctions.

(b) The department shall make the information maintained in the database available to the public.

Many people involved in breeding dogs use their homes, especially to whelp litters. These requirements will put their homes on public records. The regulations should clarify what information is absolutely necessary for inclusion in this public database so as not to create opportunities for harassment. A provision for removal from the database needs to be written and there should be some administrative procedure specified so errors in the database can be corrected. Otherwise information will be challenged in court.**

**

§91.58.Responsibilities of the Department--Donations, Disbursements and Reporting.

(a) The executive director shall develop procedures for the acceptance, conversion, and deposit of all donations offered by individuals, clubs, organizations, and all other sources.

(b) Conversion of donations of real or personal property into United States currency shall be accomplished by the executive director or designee.

(c) Donations received shall be deposited in a dedicated training and enforcement account in the general revenue fund to the credit of general revenue subject to exemption from the application of §403.095, Government Code.

(d) The executive director shall approve in writing all disbursements from the training and information account.

(e) A disbursement under this section may include but is not limited to promotional costs to enhance the fund.

(f) All donations may be used for these purposes unless otherwise specifically prohibited by the donor.

(g) All disbursements from the accounts will be by check signed by the director.

(h) The commission will be furnished a quarterly report detailing all deposits into and expenditures from the fund.

* *

This entire section is confusing and is an open invitation to abuse by the director and staff. It should adhere to the fiscal and financial requirements of the State Comptroller's office. Surely, the receipt and disbursement of funds will require much more fiscal responsibility and reporting than has been set forth in this section. Are we going to see ads on television (and what will pay for that) like the ones for the lottery, where the Commission/Director advertises the bounties paid to informants? Not only does it invite abuse from within, it also encourages malicious harassment of all dog breeders by extremist members of organizations.

§91.59.Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.

(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.

AKC COMMENT: Stronger protections for breeders should be added here. Nothing in the proposed rule ensures that malicious complaints meant only to disturb the normal operations of a licensed breeder can be adequately quashed. The rules should provide that in cases when an anonymous submission code is requested, the Department should still have on file the personal identification information of the complainant that is not to be made publicly available. A record of each complainant should be maintained by the Department, detailing all complaints submitted by the complainant to the Department; and display any pattern or habit of contact and a record of whether or not each compliant was substantiated by department inspectors or investigators. Additionally, the rules should allow the Department to quash any complaint based on a record of habitual malicious complaint submission.

§91.60.Responsibilities of the Department--Payment of Rewards.

(a) The amount of reward granted to eligible applicants may not exceed $1,000 and shall be determined on a case by case basis by the executive director.

(b) In the event two or more eligible applicants furnish information pertaining to unlicensed activity, the reward may be divided among the eligible applicants in an amount determined by the executive director.

(c) A reward under this section must be authorized by the executive director in writing stating the public purpose served by the payment.

(d) A decision by the executive director to pay or otherwise allocate reward payments is within the sole discretion of the executive director and this chapter in no way provides an independent right to such payments, if any.

(e) If the commission issues a final order finding unlicensed activity by a person named in the complaint submitted under this section, the department shall issue payment to the person or persons providing the information as soon thereafter as is practical.

Within these regulations and at the same time that tips are accepted, a warning should be given that false reporting is a under the Texas Penal Code. This might deflect malicious harassment.**

* *

§91.65.Advisory Committee.

(a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in §829.001, Health and Safety Code.(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department.

(f) Except for the members described by subsection (b)(1), a person may not be a member of the advisory committee 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, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

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

(j) Chapter 2110, 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.

This section does not provide for a balanced Advisory Committee. Items (2) and (3) are not similarly restricted as is Item (1) to prevent overrepresentation. This could result in an Advisory Committee that is skewed in the interest of animal welfare organizations and/or veterinarians by allowing the Advisory Committee members described in Item (4) to be comprised of members who represent the public AND animal welfare organizations and/or veterinarians*.*

§91.66.Responsibilities of Inspectors–Inspections, Investigations, and Reports of Animal Cruelty.

....

(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. *This subsection does not apply to the investigation of unlicensed activity*.

AKC COMMENT: The last sentence of subpart (c) should be removed. In such cases, the rules should provide that investigation of unlicensed activity that seeks to enter or access any portion of a private residence must be conducted pursuant to a warrant issued by an objective member of the judiciary.

To protect the Investigators, their investigation, and the rights and interests of Texas Citizens, if anyone has to enter a private residence in the scope of an investigation, they should be required to have a warrant. Item C. implies that there are no restrictions on investigations performed to investigate unlicensed activity, but a state regulation cannot rescind Constitutional rights. As stated, the regulation invites a bevy of costly lawsuits, especially since such investigations could easily be precipitated

by a bogus informant.

§91.71.Responsibilities of Licensee--Advertising.

(a) A licensed breeder may not engage in false, misleading, or deceptive advertising.

(b) Each advertisement must conspicuously include the facility license number in font clearly distinguishable from the background.

(c) For purposes of this section, a website and any offer to sell is considered advertising.

AKC COMMENT: Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, therefore rendering the subpart in question unnecessary. The AKC recommends deletion.

§91.80.Fees.

(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Intact Female Animals):

(A) Prelicense Inspection Fee--$175 per facility.

(B) Original Application--$475.

(C) Renewal--$475.

(D) Periodic and Out-of-Cycle Inspections--$175.

(E) Duplicate License--$25.

(2) Dog or Cat Breeder License (26-60 Intact Female Animals):

(A) Prelicense Inspection Fee--$350 per facility.

(B) Original Application--$950.

(C) Renewal--$950.

(D) Periodic and Out-of-Cycle Inspections--$350.

(E) Duplicate License--$25.

(3) Dog or Cat Breeder License (61 or more Intact Female Animals):

(A) Prelicense Inspection Fee--$700 per facility.

(B) Original Application--$1,900.

(C) Renewal--$1,900.

(D) Periodic and Out-of-Cycle Inspections--$700.

(E) Duplicate License $25.

(b) Revised/Duplicate License/Certificate/Permit/Registration--$25.

(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

AKC COMMENT: Though pursuant to statute's direction that they are set in amounts sufficient to cover the costs of administering and enforcing the statute, these fees are believed to be high; and may discourage compliance.

These fees are just too high, especially since the largest, most commercially successful breeders—those already USDA licensed—are getting a bye here.

§91.90.Administrative Sanctions and Penalties.

A person that violates Texas Occupations Code, Chapter 802, a rule, or an order of the executive director or commission will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 802 and applicable agency rules.

Monetary values of assessments for penalties and sanctions have not been defined in these two sections. This will result in court cases challenging the assessments.

§91.102.Standards of Care--Sheltered Housing Facilities.

(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained for each animal based on Tufts Animal Care and Condition Scale or equivalent.

AKC COMMENT: The Tufts Animal Care and Condition (TACC) Scale is difficult to understand, and allows other variables to be considered to mitigate certain environmental circumstances while deeming other circumstances more severe. This may lead to a patchwork of conditions and enforcement actions. It may be easier for licensees to comply with the rule without reference to the TACC Scale; or, in the alternative, include the TACC Scale and additional explanation regarding the TACC Scale in the rule.

....

(e) Surfaces.

(1) The following areas in sheltered housing facilities must be impervious to moisture: (A) Indoor floor areas in contact with the animals; provided that:

(i) floor surfaces in facilities licensed on or before September 1, 2012, may consist of flooring that is 100 percent wire or wire mesh or slatted material; and

AKC COMMENT: Subpart (ii) is oddly-worded and can lead to a lack of compliance. If differential requirements based on the time of licensure remain, the AKC recommends as a better alternative the following: "(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is not less than 50 percent solid flooring, exclusive of receptacles,"

(ii) floor surfaces in facilities licensed after September 1, 2012, must consist of flooring that is 100 percent solid flooring or not less than 50 percent solid flooring, exclusive of receptacles;

(B) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun, or are made of a hard material such as wire, wood, metal, or concrete; and

(C) All walls, boxes, houses, dens, and other surfaces in contact with the animals.

b(2) Outside floor areas in contact with the animals and exposed to the direct sun may consist of compacted earth, absorbent bedding, sand, gravel, or grass.

§91.103.Standards of Care--Outdoor Housing Facilities.

(a) Restrictions.

(1) The following categories of dogs or cats must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian and documented by the attending veterinarian in the medical records related to each dog or cat to which the exemption applies:

(A) Dogs or cats that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

(B) Breeds of dogs or cats that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates); and

(C) Sick, infirm, aged or young dogs or cats.

(2) When their acclimation status is unknown, dogs and cats must not be kept in outdoor facilities when the temperature is less than 50° F (10° C).

(b) Shelter from the elements. Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, and lie without its body being in contact with at least one side of the shelter walls in a normal manner, and to turn about freely. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the

sun. Shelters in outdoor facilities for dogs or cats must contain a roof, four sides, and a floor, and

must:

(1) provide the dogs and cats with adequate protection and shelter from the cold and heat;

(2) provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;

(3) be provided with a wind break and rain break at the entrance; and

(4) contain clean, dry, bedding material if the ambient temperature is below 50° F (10° C). Additional clean, dry bedding is required when the temperature is 35° F (1.7° C) or lower.

(c) Construction. Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities–including houses, dens, etc.–that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

§91.104.Standards of Care–Primary Enclosure. Primary enclosures for dogs and cats must meet the following minimum requirements:

(1) General requirements.

(A) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair and shall not be placed on top of another primary enclosure unless an impervious barrier designed to prevent the transfer of fluid or animal waste separates the two primary enclosures.

(B) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats;

(ii) Protect the dogs and cats from injury;

(iii) Contain the dogs and cats securely;

(iv) Keep other animals from entering the enclosure;

(v) Enable the dogs and cats to remain dry and clean;

(vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to all the dogs and cats;

(vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;(viii) Provide all the dogs and cats with easy and convenient access to clean food and water;

(ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with §91.109(b), or be replaceable when worn or soiled;

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any

openings in the floor; and

AKC COMMENT: The AKC has concerns with this section, especially when read in combination with the definition contained in §91.10(19). The suggested change in that definition would best alleviate those concerns.

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie without its body being in contact with at least one side of the shelter walls in a comfortable, normal position, and to walk in a normal manner.

....

(3) Additional requirements for dogs.

(A) Space--Facilities Licensed on or before September 1, 2012.

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated 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 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor

space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the attending veterinarian and documented in the medical records related to each dog.

(iii) The interior height of a primary enclosure must be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(B) Space--Facilities Licensed after September 1, 2012.

(i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated 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 6 inches; then divide the product by 144 then multiply that result by 2. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) x 2 = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

(ii) Each bitch with nursing puppies must be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian. If the additional amount of floor space for each nursing puppy is less than 5 percent of the minimum requirement for the bitch, such housing must be approved by the attending veterinarian documented by the attending veterinarian in the medical records related to each dog.(iii) The interior height of a primary enclosure must be at least

12 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

AKC COMMENT: This new subsection doubles the primary enclosure space requirement for facilities licensed after 9/1/12. This is of great concern. Space requirements standards should not vary between licensees, especially if they vary in consideration only of the interest of encouraging compliance with licensing requirements. The AKC recommends that one standard be uniformly applied among all licensees.

(...

§91.110.Standards of Care--Onsite Personnel.

(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter. ....

Due to the low thresholds of the law, hiring even one employee could be cost prohibitive. If the goal is to meet required care set forth in the Dog and Cat Breeder Program, can employees be utilized only on an "as needed" or "on call" basis without penalty to the breeder.

§91.112.Standards of Care--Veterinary Care.

(a...

(b) Euthanasia and surgical procedures. Only a veterinarian shall be allowed to euthanize an animal or perform a surgical procedure such as caesarian birth.

(c) Routine and preventative care. A licensed breeder shall develop and maintain at each of the breeder's facilities a written health care management protocol approved by a veterinarian that addresses routine and preventative healthcare for each animal in the facility.

(1) The breeder shall ensure that the protocol is followed and that routine and preventive healthcare is provided to each animal in the facility and that each animal received appropriate care and treatment for any injury, disease, or illness that may affect the animal's health or wellbeing.

.....

(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

AKC COMMENT: This section is superfluous and vague. Does adequate rest mean that an individual breeding female needs to not experience strenuous exercise or work between heat cycles, or needs to skip a breeding cycle? The AKC believes that the required veterinary exam and resulting program of care for an animal should be sufficient to ensure that breeding dogs are provided proper care. AKC recommends removal of this section.

A better way to word section (b)(11)is to prohibit a person from euthanizing an adult animal or performing a *surgical birth* of an animal unless the person is a veterinarian;

Federal regulations Title 9 CFR, Part 3, Subpart D Attending Veterinarian and Adequate Veterinary Care (a) (1) require that dealers have formal arrangements made with a veterinarian that include a written program of care and regularly scheduled visits to the premises. Neither HB1451 enacted into law or federal regulations require an annual "hands on" examination of every animal on premise as required in *§91.112.Standards of Care-Veterinary Care.* A hands on examination of animals who visually, in the veterinarian's opinion, appear to be vigorous, active, in appropriate weight, free of hot spots or skin irritations, should not require a hands on examination. This requirement exceeds the law at great cost to the kennel/cattery owner.

§91.113.Standards of Care--Sales and Transfers.

A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned.

AKC COMMENT: The controlling statute already prohibits the sale of animals less than eight weeks of age. Further limitation based on arbitrary thresholds is unnecessary. Recommend that the rule read, "A licensed breeder shall not sell, trade, or give away an animal before the animal is eight weeks of age."

....

...

(6) Transportation by air.(A) No more than one live dog or cat, 6 months of age or older, may be transported in the same primary enclosure when shipped via air carrier.

(B) No more than one live puppy, 8 weeks to 6 months of age, and weighing over 20 lbs (9 kg), may be transported in a primary enclosure when shipped via air carrier.

(C) No more than two live puppies or kittens, 8 weeks to 6 months of age, that are of comparable size, and weighing 20 lbs (9 kg) or less each, may be transported in the same primary enclosure when shipped via air carrier.

(D) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be transported in the same primary enclosure when shipped to research facilities, including Federal research facilities.

(7) Transportation by surface vehicle or privately owned aircraft.

(A) No more than four live dogs or cats, 8 weeks of age or older, that are of comparable size, may be transported in the same primary enclosure when shipped by surface vehicle (including ground and water transportation) or privately owned aircraft, and only if all other requirements of this section are met. (B) Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens that are less than 8 weeks of age that are littermates and are accompanied by their dam, may be

transported in the same primary enclosure when shipped to research facilities, including Federal research facilities, and only if all other requirements in this section are met.

AKC COMMENT: The subparts cited above—(6)(D) and (7)(B)—focuses on issues when shipping to research facilities; however, these are regulatory terms of art used in the federal Animal Welfare Act/Animal and Plant Health Inspection Service regulations that do not pertain to any entity regulated by the State of Texas pursuant to the underlying statute. As such, AKC recommends deletion of these subparts.

(8) Accompanying documents and records. Shipping documents that must accompany shipments of dogs and cats may be held by the operator of the primary conveyance, for surface transportation only, or must be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for administration of drugs, medication, and other special care must be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach

securely. Food and water instructions must be attached must be securely attached to the outside of the primary enclosure in a manner that makes it easily noticed and legible. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

(9) A licensed breeder transporting animals regulated under this chapter using commercial transportation a shipper holding a licensed issued by the federal regulatory agency.

AKC COMMENTS: This subsection is unclear and should be either edited or deleted.

The intent of the legislature in passing HB 1451 was to regulate breeders, not control how they perform animal husbandry practices. Some of the descriptions in these regulations are not only vague but are contradictory and confusing. Some go above and beyond Federal regulations, requiring people who are not subject to federal regulation to adhere to a higher standard than those who are not.

We're having enough money problems as is. Under existing local laws, several well publicized seizures have occurred using animal cruelty statutes, and these have resulted in long and expensive law suits against the governmental entity. One of them has occurred in Texas, and it's been a total disaster for the local officials. The breeder involved, although vindicated by the court has lost almost all his animals.

Many dog and cat breeders have been building their bloodlines on a foundation established many years ago. One overzealous investigator or malicious tipster can put an end to work that spans many generations of careful breeding practices. The State has an interest not only in protecting the welfare of animals but also in protecting the rights of its citizens.

For some information on my qualifications to speak to these issues, I'd

like to say that I showed my first dog, a German Shepherd Dog, in obedience competition in 1970. Since then, I've trained many dogs through advanced obedience titles and have bred and shown German Shepherds, Alaskan Malamutes, Papillons, and Akitas. I'm a member of the Houston Kennel Club and chair of Public Information for the Reliant Series of Dog Shows held in July as well as being president of the Lone Star Akita Club of Houston. I am the delegate to the AKC from the Akita Club of America.

Over the years, I've written extensively for dog publications on the origins and development of various types of dogs, including working and herding ones. A book I coauthored with another Texas, Barbara Brooks, "The Alaskan Malamute, Yesterday and Today" is still reviewed as the best book on the breed ever written, and articles I've written about Akita Temperament have been reprinted in at least ten countries as well as extensively in the US.

At least thirty Akitas I've bred or co-bred have finished championships in the US with AKC, and several have earned those honors in other countries, including Mexico and Canada. Currently the top-winning Akita in the US is one we bred and own.

Thank you for your patience in reviewing these suggestions. If you have any questions, I'll be happy to try to answer them for you.

Sherry E. Wallis

[redacted]

President—Lone Star Akita Club of Houston

AKC Delegate from the Akita Club of America

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Sherry E Wallis
Akita Club of America Delegate
reply to: [redacted]
Houston, Tx.

Erule. Comments - Comments :Licensed Dog and Cat Breeder Proposed Regulations

From: Jeff Shaver <[redacted]>
To: "erule.comments@license.state.tx.us" <erule.comments@license.state.tx.us>
Date: 2/20/2012 4:42 PM
Subject: Comments :Licensed Dog and Cat Breeder Proposed Regulations

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box12157
Austin, TX 78711

Re: Licensed Dog and Cat Breeder Proposed Regulations...Objections and Comments

Dear Ms. Rinard:

I am writing to express concern with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR).I have been showing and training dogs for 28 years. I am an AKC Tracking judge and I am active in my breeds AKC Parent Club. I work extensively with rescue and also as a volunteer with 4H children. I am also a practicing attorney with my own firm and three Texas offices . I have some concerns with this law, and how the wording and language can well affect good dog owners, hobbyists and breeders in the state of the Texas. Here are some of my concerns:

- Section 91.10.Definitions. "(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic orrubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

No animal should be raised on wire or wire mesh. Flooring for dogs and cats needs to be firm flooring, most likely concrete WITH protection such as matting and raised beds for comfort and cleanliness.

- Section 91.22.License Required—Dog or Cat Breeder. "(a) A person may not act as, offer to act as, or represent 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 personowns or operates in this state."...

This is vague.This wording is actually CONTRARY to the law that was passed and the clear legislative intent of the bill . There will be dog or cat breeders, with less than the mandated 11 breedable females. I would adjust the above to read "A person may not act as, offer to act as, or represent that the person is a "licensed" dog or cat breeder"

- Section 91.59.Responsibilities of the Department—Reporting Violations; Eligibility of Applicant. "(a) Thedepartment shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter. (b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously. (c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter. (d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions. (e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators."

You are expecting the public to have knowledge of this bill and all components and act in good faith. A 'reward' takes this away. Any neighbor with a 'grudge' or with ill will could call in people . Offering a reward makes an incentive in these poor economic times for some people to look for ways to make money. I have never seen such an addition to try to get the public involved in finding 'offenders'. There is not even such a law for reporting cruelty to animals. This portion needs to be entirely removed, or your state workers will be spending all their time pursuing dead end inspections of innocent people.

• Section 91.66.Responsibilities of Inspectors—Inspectors, Investigators, and Reports of Animal Cruelty. ..."(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity."...

This last sentence needs to be removed. No one should be able to enter anyone's business or domain without a search warrant. Legally you CANNOT do this .This is a violation of our constitutional rights. You are trying to waive this for licensing dogs and cats? Is this done for livestock? What makes this population special?

• Section 91.71.Responsibilities of Licensee—Advertising. "(a) A licensed breeder may not engage in false, misleading, or deceptive advertising."...

Is this subpart necessary? Texas' false advertising statute (Bus. & Com. §17.46) covers such actions, thereforerendering the subpart in question unnecessary.

• Section 91.80.Fees. "(a) Application Fees. (1) Dog or Cat Breeder License (11-25 Intact Female Animals): (A) PrelicenseInspection Fee--$175 per facility. (B) Original Application--$475. (C) Renewal--$475. (D) Periodic and Out-of-Cycle Inspections--$175. (E) Duplicate License--$25. (2) Dog or Cat Breeder License (26-60 Intact Female Animals): (A) Prelicense Inspection Fee--$350 per facility. (B) Original Application--$950. (C) Renewal--$950. (D) Periodic and Out-of-Cycle Inspections--$350. (E) Duplicate License--$25. (3) Dog or Cat Breeder License (61 or more Intact Female Animals): (A) Prelicense Inspection Fee--$700 per facility. (B) Original Application--$1,900. (C) Renewal--$1,900

(D) Periodic and Out-of-Cycle Inspections--$700.

(E) Duplicate License $25. (b) Revised/Duplicate License/Certificate/Permit/Registration--$25."...

These fees seem outrageously high. Most dog or cat breeders have this business either as a hobby or side business. The price for puppies and kittens is quite low. These fees seem extremely excessive and I would predict would drive breeders underground. I think the whole outcome expected would backfire on the state AND would cause (instead of prevent) cruel treatment of such animals. Is licensing such as this required for cattle, horses, sheep, chickens, etc?? I think the outcome would be horrendous on the animals.

- Section 91.102. Standards of Care—Sheltered Housing Facilities. "(a) Heating, cooling, and temperature. The sheltered part of sheltered housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. Using best efforts, the ambient temperature in the sheltered part of the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs or cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained foreach animal based on Tufts Animal Care and Condition Scale or equivalent."...

Does not present Texas Law on cruelty already cover this? If not, it should and this should be removed. Why so much duplication or rewriting laws that are already in existence? These laws should apply to ALL cats and dogskept as pets. And there is no way to consistently enforce such laws, given weather changes and conditions. Any law that is written needs to be enforceable, sensible, not duplicating other laws, nor unintentionally costing the state more money in the long run. Asking for temperatures over a time period to be consistent..? One would need to stay there all night, or be there during very hot or cold temperatures.

- Section 91.113. Standards of Care—Sales and Transfers. "A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age and two pounds or twelve weeks of age and has been weaned."

This is too vague to enforce. I would simply state puppies or kittens cannot be sold, traded,given away until 8 weeks of age.

In my opinion,this bill duplicates many other laws and frankly, a good animal cruelty/abuse law would be better served to enforce good care of all animals. Licensing of dog and cat breeders is singling out one small part of all animal care (livestock, exotics) when all animal populations could be better served by good, enforceable animal cruelty laws. Incorporating new laws for dog and cat breeders and expecting to be able to pay for these laws by licensing fees in unrealistic, as least as written out in this Bill. It is badly written and a poor law. **My question is, where did this come from?** It does not sound like something that a Texas law maker would suggest, and frankly, it sounds more like it came from outside of Texas. Even our own Governor vetoed a bill that prohibited sales of puppies on the roadside (which is extremely cruel in poor weather, gives no screening or education of potential owners or age of the puppies) by saying Texans had the right to be 'entrepreneurs". Yes, he did not veto this bill, which is more of a barrier to 'entrepreneurism'.

I predict thisbill will cost the state of Texas money , may well result in lawsuits, NOT prevent animal cruelty and in fact, cause animal suffering from breeders going underground, not visiting vets for fear of being 'turned in' and create animal illness.

I ask that you look over my comments carefully and that the state of Texas reconsidering the feasibility of enforcing such a bill. There are effective and sensible ways to prevent animal abuse and in my opinion, instead of using good tax dollars to make more laws, let Texas use the manpower and money instead to enforce current animal abuse laws already in place and help educate the public, which helps ALL animals in Texas.

Sincerely,

Jeff Shaver

[redacted]

Erule. Comments - Comments on Licensed Dog and Cat Breeder Proposed Regulations

From: Lew Olson <[redacted]>
To: <erule.comments@license.state.tx.us>
Date: 2/20/2012 3:32 PM
Subject: Comments on Licensed Dog and Cat Breeder Proposed Regulations
Attachments: Letter on Texas dog and cat law.doc

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box12157
Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms.Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

I have been showing and training dogs for over 33 years. I am an AKC conformation judge and I am active in my breeds AKC Parent Club. I work extensively with rescue and also as a volunteer with 4H children and inner city children on dog care and training. Education makes a big difference in welfare, care for dogs and enjoying their companionship.

For every rescue dog I place, or puppy that I might raise for sale, extensive work is done with the new owners on training, feeding, grooming and vet care to make sure both owner and the dog are good citizens and that the dogs are part of the family. Extensive screening is done before each placement.

While this new law won't affect my work with rescue or my personal dogs, I have some deep concerns with this law, and how the wording and language can well affect good dog owners, hobbyists and breeders in the state of the Texas. Here are some of my concerns:

<!--[if !supportLists]-->• <!--[endif]-->Section 91.10.Definitions. "(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic orrubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

No animal should be raised on wire or wire mesh. Flooring for dogs and cats needs to be firm flooring, most likely concrete WITH protection such as matting and raised beds for comfort and cleanliness.

<!--[if !supportLists]-->• <!--[endif]-->Section 91.22.License Required—Dog or Cat Breeder. "(a) A person may not act as, offer to act as, or represent 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 personowns or operates in this state."...

This is vague. There will be dog or cat breeders, with less than the mandated 11 breedable females. I would adjust the above to read "A person may not act as, offer to act as, or represent that the person is a "licensed" dog or cat breeder"

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veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions established by the attending veterinarian and documented in the medical records maintained foreach animal based on Tufts Animal Care and Condition Scale or equivalent."...

Does not present Texas Law on cruelty already cover this? If not, itshould and this should be removed. Why so much duplication or rewriting laws that are already in existence? These laws should apply to ALL cats and dogskept as pets. And there is no way to consistently enforce such laws, given weather changes and conditions. Any law that is written needs to be enforceable, sensible, not duplicating other laws, nor unintentionally costing the state more money in the long run. Asking for temperatures over a time period to be consistent..? One would need to stay there all night, or be there during very hot or cold temperatures.

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This is too vague to enforce. I would simply state puppies or kittens cannot be sold, traded,given away until 8 weeks of age.

In my opinion,this bill duplicates many other laws and frankly, a good animal cruelty/abuse law would be better served to enforce good care of all animals. Licensing of dog and cat breeders is singling out one small part of all animal care (livestock, exotics) when all animal populations could be better served by good, enforceable animal cruelty laws. Incorporating new laws for dog and cat breeders and expecting to be able to pay for these laws by licensing fees in unrealistic, as least as written out in this Bill. It is badly written and a poor law. **My question is, where did this come from?** It does not sound like something that a Texas law

maker would suggest, and frankly, it sounds more like it came from outside of Texas. Even our own Governor vetoed a bill that prohibited sales of puppies on the roadside (which is extremely cruel in poor weather, gives no screening or education of potential owners or age of the puppies) by saying Texans had the right to be 'entrepreneurs". Yes, he did not veto this bill, which is more of a barrier to 'entrepreneurism'.

I predict thisbill will cost the state of Texas far money money than expected, may well result in lawsuits, NOT prevent animal cruelty and in fact, cause animal suffering from breeders going underground, not visiting vets for fear of being 'turned in' and create animal illness.

I ask that youlook over my comments carefully and that the state of Texas reconsidering the feasibility of enforcing such a bill. There are effective and sensible ways to prevent animal abuse and in my opinion, instead of using good tax dollars to make more laws, let Texas use the manpower and money instead to enforce current animal abuse laws already in place and help educate the public, which helps ALL animals in Texas.

Sincerely,

Lew Olson

[redacted]

Melissa Rinard, Legal Assistant
General Counsel's Office, Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Concerns with Licensed Dog and Cat Breeder Proposed Regulations

Dear Ms. Rinard:

I am writing you today because I am concerned with some of the proposed rules for dog and cat breeders as developed by the Licensed Breeders Advisory Committee and the Texas Department of Licensing and Regulation (TDLR). I respectfully request that TDLR address the concerns I outline below before adopting these rules.

I have been showing and training dogs for over 33 years. I am an AKC conformation judge and I am active in my breeds AKC Parent Club. I work extensively with rescue and also as a volunteer with 4H children and inner city children on dog care and training. Education makes a big difference in welfare, care for dogs and enjoying their companionship.

For every rescue dog I place, or puppy that I might raise for sale, extensive work is done with the new owners on training, feeding, grooming and vet care to make sure both owner and the dog are good citizens and that the dogs are part of the family. Extensive screening is done before each placement.

While this new law won't affect my work with rescue or my personal dogs, I have some deep concerns with this law, and how the wording and language can well affect good dog

owners, hobbyists and breeders in the state of the Texas. Here are some of my concerns:

- Section 91.10. Definitions. "(19) Wire or Wire Mesh—Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor."

  No animal should be raised on wire or wire mesh. Flooring for dogs and cats needs to be firm flooring, most likely concrete WITH protection such as matting and raised beds for comfort and cleanliness.

- Section 91.22. License Required—Dog or Cat Breeder. "(a) A person may not act as, offer to act as, or represent 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."...

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Sincerely,

Lew Olson

[redacted]

A Non-partisan, Volunteer Effort to Inform The Voting Public and Their Representatives in Government

February 20, 2012

Melissa Rinard, Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711
erule.comments@license.state.tx.us

RE: Chapter 91. Dog or Cat Breeder Program Proposed Rules

To Whom It May Concern:

The Sportsmen's & Animal Owners' Voting Alliance (SAOVA) is a nationwide, nonpartisan group of volunteers working to protect the rights of animal owners and sportsmen in Texas and nationwide.

We are writing today with concerns over the Proposed Rules which will implement HB1451 now enacted into law under Chapter 802 of the Occupations Code. SAOVA opposed HB1451 in the 2011 legislative session as we believed the bill was flawed, fiscally irresponsible, and did not present a viable solution to animal welfare in Texas.

Our specific concerns with the Proposed Rules are listed below.

§91.30.EXEMPTIONS

The exemption stated in Sec. 802.005. Exemption For Certain Persons Who Breed Special Purpose Dogs has been narrowed by stipulations in the Proposed Rules. The Rules now state a dog is presumed to count toward licensing requirements unless evidence such as entry registration forms or event receipts are submitted to TDLR to prove these dogs qualify for exemption from kennel licensing. Further, conclusive evidence must be submitted for every dog.

(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:
(1) evidence of agriculture activity or business operations using a dog described by this section;
(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.
(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

This contradicts the very clear intent of the exemption which the legislature included in HB1451. Active hunting and herding dogs are bred for work not for event competition. Sec. 802.005 intended these hunting and herding dogs to be exempt from licensing without onerous burdens of proof submitted from owners. By proposing additional stipulations in §91.30 TDLR has exceeded the authority granted to it by the legislature.

We request that TDLR remove § 91.30(e) and corresponding § 91.30(f).

§91.55 RESPONSIBILITIES OF THE DEPARTMENT--DIRECTORY
§91.56 RESPONSIBILITIES OF THE DEPARTMENT--DISCIPLINARY DATABASE
Due to the low thresholds of the law, breeders who utilize their homes will be regulated. Thus private homes will become subjects of public information. The draft regulations should clarify what information is absolutely necessary for inclusion in this public database so as not to create opportunities for harassment by activists or predators.

§91.112.STANDARDS OF CARE--VETERINARY CARE
Both HB1451 and Sec. 802.201. Adoption of Standards. (b)(11) clearly prohibit a person from performing a **surgical birth** of an animal unless the person is a veterinarian. Surgical birth is a very clear statement in the law and thus not open to interpretation. However, this has been modified in §91.112. Standards of Care--Veterinary Care. (b) to read "perform a **surgical procedure such as**" caesarian birth. This modification changes the intent of the law and opens it to be interpreted as also prohibiting common practices/procedures such as dewclaw removal and tail docking. These simple practices certainly were not meant to be disrupted by legislation.

We request that 91.112 be corrected to read as the law intended.

§91.104.STANDARDS OF CARE--PRIMARY ENCLOSURE
(3) Additional requirements for dogs. (A) Space--Facilities Licensed on or before September 1, 2012. "(iii) The interior height of a primary enclosure must be at least 12 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position"
In addition to mandating excessive cage sizes, this unnecessarily exceeds the requirement of 6 inches in USDA standards and arbitrarily penalizes breeders who cannot afford to comply with the new law by September 1st.

We request the interior height of a primary enclosure follow USDA guideline of 6 inches higher than the head of the tallest dog in the enclosure.

§91.112. STANDARDS OF CARE--VETERINARY CARE.
(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.

Federal regulations Title 9 CFR, Part 3, Subpart D Attending Veterinarian and Adequate Veterinary Care (a) (1) require that dealers have formal arrangements made with a veterinarian that include a written program of care and regularly scheduled visits to the premises. Neither HB1451 enacted into law or federal regulations require an annual "hands on" examination of every animal on premise as required in §91.112.Standards of Care-Veterinary Care. A hands on examination of animals who visually, in the veterinarian's opinion, appear to be vigorous, active, in appropriate weight, free of hot spots or skin irritations, should not require a hands on examination. This requirement exceeds the law at great cost to the kennel/cattery owner.

We request "Annual hands on examination" be stricken from the Proposed Rules and substituted with Federal regulations Title 9 CFR, Part 3, Subpart D Attending Veterinarian and Adequate Veterinary Care (a) (1)

§91.110.STANDARDS OF CARE - ONSITE PERSONNEL

(a) Each licensed facility must have enough employees onsite to carry out the level of husbandry practices and care required in this chapter.

Due to the low thresholds of the law, hiring even one employee could be cost prohibitive for the kennel/cattery. If the goal is to meet required care set forth in the Dog and Cat Breeder Program, we would suggest the Proposed Rules reflect wording that employees may be utilized only on an "as needed" or "on call" basis without penalty to the breeder.

Respectfully submitted,

Susan Wolf, President
Sportsmen's & Animal Owners' Voting Alliance (SAOVA)