

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 12

Introduced By: Mines, 18;
Read first time: January 4, 2007
Committee: Agriculture

A BILL

1 FOR AN ACT relating to the Commercial Dog and Cat Operator
2 Inspection Act; to amend sections 54-628, 54-629, 54-630,
3 54-631, and 54-632, Reissue Revised Statutes of Nebraska,
4 and sections 54-625, 54-627, and 54-633, Revised Statutes
5 Cumulative Supplement, 2006; to change provisions relating
6 to license requirements, inspections, rules and regulations,
7 applications, disciplinary actions, and enforcement powers;
8 to provide for administrative fines; to provide powers and
9 duties; to state intent; to harmonize provisions; and to
10 repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-625, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 54-625. Sections 54-625 to 54-642 and sections 9 and 10 of
4 this act shall be known and may be cited as the Commercial Dog and
5 Cat Operator Inspection Act.

6 Sec. 2. Section 54-627, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 54-627. (1) ~~Beginning April 1, 2001,~~ a A person shall
9 not operate as a commercial breeder, a dealer, ~~or~~ a boarding
10 kennel, ~~and beginning October 1, 2003, a person shall not operate~~
11 ~~as~~ an animal control facility, or an animal shelter unless the
12 person obtains the appropriate license as a commercial breeder,
13 dealer, boarding kennel, animal control facility, or animal shelter.
14 ~~Beginning January 1, 2004,~~ a A person shall not operate as a pet
15 shop unless the person obtains a license as a pet shop. A pet shop
16 shall only be subject to the Commercial Dog and Cat Operator
17 Inspection Act and the rules and regulations adopted and promulgated
18 pursuant thereto in any area or areas of the establishment used for
19 the keeping and selling of pet animals.

20 (2) An applicant for a license shall submit an application
21 for the appropriate license to the department, on a form prescribed by
22 the department, together with the annual license fee. Such fee is
23 nonreturnable. ~~Additionally, the department may conduct an inspection~~
24 ~~of the facilities and sanitation and confinement practices of the~~
25 ~~applicant or any other practices that may affect the humane treatment~~
26 ~~of pet animals.~~ Upon receipt of the application and annual license
27 fee, the appropriate license may be issued by the department. Such

1 license shall not be transferable to another person or location.

2 (3) The annual license fee shall be according to a fee
3 schedule prepared by the director. The fees shall be based upon the
4 number of ~~animals~~ dogs or cats served by the licensee, or if the
5 licensee does not serve dogs or cats, such licensee shall pay a flat
6 fee. ~~There and there~~ shall be startup discounts for new
7 licensees. The maximum annual license fee shall not exceed two
8 hundred fifty dollars.

9 (4) A license to operate as a commercial breeder, a license
10 to operate as a dealer, a license to operate as a boarding kennel, or
11 a license to operate as a pet shop shall be renewed by filing with the
12 department at least thirty days prior to April 1 of each year a
13 renewal application and the annual license fee. A license to operate
14 as an animal control facility or animal shelter shall be renewed by
15 filing with the department at least thirty days prior to October 1 of
16 each year a renewal application and the annual license fee. Failure to
17 renew a license prior to the expiration of the license shall result in
18 an additional fee of twenty dollars required upon application to renew
19 such license.

20 Sec. 3. Section 54-628, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 54-628. The department shall ~~establish an inspection~~
23 ~~program for applicants and~~ inspect all licensees annually to
24 determine whether the ~~standards of care of~~ licensee is in
25 compliance with the Commercial Dog and Cat Operator Inspection Act,
26 ~~are being met.~~ When an inspection produces evidence of a violation
27 of the act or the rules and regulations of the department, a copy of a

1 written report of the inspection and violations shown thereon,
2 prepared by the inspector, shall be given to the applicant or
3 licensee, together with written notice to comply within the time limit
4 established by the department and set out in such notice. The premises
5 of the applicant or licensee shall be open for inspection. The
6 department and any officer, agent, employee, or appointee of the
7 department shall have the right to enter upon the premises of any
8 person who has, or is suspected of having, any dog or cat thereon or
9 any sanitation, housing, or other condition or practice that is in
10 violation of the act.

11 Sec. 4. Section 54-629, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 54-629. The department shall adopt and promulgate rules and
14 regulations to carry out the Commercial Dog and Cat Operator
15 Inspection Act. The rules and regulations may include, but are not
16 limited to, factors to be considered when the department imposes an
17 administrative fine, provisions governing record-keeping and other
18 requirements for persons required to have a license, and any other
19 matter deemed necessary by the department to carry out the act. The
20 department shall use as a guideline for the humane handling, care,
21 treatment, and transportation of dogs and cats the standards of the
22 Animal and Plant Health Inspection Service of the United States
23 Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

24 Sec. 5. Section 54-630, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 54-630. Before the department approves an application for an
27 initial license, an inspector of the department ~~may~~ shall inspect

1 the operation of the applicant to determine whether the applicant
2 qualifies to hold a license pursuant to the Commercial Dog and Cat
3 Operator Inspection Act. An applicant who qualifies shall be issued a
4 license. An applicant who does not receive a license shall be afforded
5 the opportunity for a hearing before the director or the director's
6 designee to present evidence that the applicant is qualified to hold a
7 license should a license be issued. All such hearings shall be in
8 accordance with the Administrative Procedure Act.

9 Sec. 6. Section 54-631, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 54-631. (1) A licensee under the Commercial Dog and Cat
12 Operator Inspection Act shall comply with the act, the rules and
13 regulations, and any order of the director issued pursuant thereto.
14 The licensee shall not interfere with the department in the
15 performance of its duties.

16 (2) A licensee may be put on probation requiring such
17 licensee to comply with the conditions set out in an order of
18 probation issued by the director, may be ordered to cease and desist
19 due to a failure to comply, or may be ordered to pay an administrative
20 fine pursuant to section 54-633, after

21 (a) The director determines the licensee has not complied
22 with subsection (1) of this section;

23 (b) The licensee is given written notice to comply and
24 written notice of the right to a hearing to show cause why an order
25 ~~of probation~~ should not be issued; and

26 (c) The director finds that issuing an order ~~of probation~~
27 is appropriate based on the hearing record or on the available

1 information if the hearing is waived by the licensee.

2 (3) A license may be suspended after:

3 (a) The director determines the licensee has not complied
4 with subsection (1) of this section;

5 (b) The licensee is given written notice to comply and
6 written notice of the right to a hearing to show cause why the license
7 should not be suspended; and

8 (c) The director finds that issuing an order suspending the
9 license is appropriate based on the hearing record or on the available
10 information if the hearing is waived by the licensee.

11 (4) A license may be immediately suspended and the director
12 may order the operation of the licensee closed prior to hearing when:

13 (a) The director determines that there is a significant
14 threat to the health or safety of the dogs or cats harbored or owned
15 by the licensee; and

16 (b) The licensee receives written notice to comply and
17 written notice of the right to a hearing to show cause why the
18 suspension should not be sustained. Within fifteen days after the
19 suspension, the licensee may request in writing a date for a hearing,
20 and the director shall consider the interests of the licensee when the
21 director establishes the date and time of the hearing, except that no
22 hearing shall be held sooner than is reasonable under the
23 circumstances. When a licensee does not request a hearing date within
24 the fifteen-day period, the director shall establish a hearing date
25 and notify the licensee of the date and time of such hearing.

26 (5) A license may be revoked after:

27 (a) The director determines the licensee has committed

1 serious, repeated, or multiple violations of any of the requirements
2 of subsection (1) of this section;

3 (b) The licensee is given written notice to comply and
4 written notice of the right to a hearing to show cause why the license
5 should not be revoked; and

6 (c) The director finds that issuing an order revoking the
7 license is appropriate based on the hearing record or on the available
8 information if the hearing is waived by the licensee.

9 (6) The operation of any licensee which has been suspended
10 shall close and remain closed until the license is reinstated. Any
11 operation for which the license has been revoked shall close and
12 remain closed until a new license is issued.

13 (7) The director may terminate proceedings ~~to suspend or~~
14 ~~revoke a license or subject a licensee to an order of probation~~
15 undertaken pursuant to this section at any time if the reasons for
16 such proceedings no longer exist. A license which has been suspended
17 may be reinstated, a person with a revoked license may be issued a new
18 license, or a licensee may no longer be subject to an order of
19 probation if the director determines the conditions which prompted the
20 suspension, revocation, or probation no longer exist.

21 (8) Proceedings ~~for suspension, revocation, or probation~~
22 undertaken pursuant to this section shall not preclude the
23 department from seeking other civil or criminal actions.

24 Sec. 7. Section 54-632, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 54-632. (1) Any notice or order provided for in the
27 Commercial Dog and Cat Operator Inspection Act shall be properly

1 served when it is personally served on the licensee or on the person
2 authorized by the licensee to receive notices and orders of the
3 department or when it is sent by certified or registered mail, return
4 receipt requested, to the last-known address of the licensee or the
5 person authorized by the licensee to receive such notices and orders.
6 A copy of the notice and the order shall be filed in the records of
7 the department.

8 (2) A notice to comply with the conditions set out in the
9 order of the director provided in section 54-631 shall set forth the
10 acts or omissions with which the licensee is charged.

11 (3) A notice of the licensee's right to a hearing provided
12 for in sections 54-630 and 54-631 shall set forth the time and place
13 of the hearing except as otherwise provided in section 54-631. A
14 notice of the licensee's right to such hearing shall include notice
15 that such right to a hearing may be waived pursuant to subsection (5)
16 of this section. A notice of the licensee's right to a hearing ~~to~~
17 ~~show cause why the license shall not be revoked~~ shall include notice
18 to the licensee that the license may be ~~revoked or suspended, that~~
19 ~~the licensee may be subject to an order of probation, or that the~~
20 ~~license may be suspended and the licensee subject to an order of~~
21 ~~probation, if the director determines such action is more~~
22 ~~appropriate. A notice of the licensee's right to a hearing to show~~
23 ~~cause why the license should not be suspended shall include notice to~~
24 ~~the licensee that the license may be suspended or that the licensee~~
25 ~~may also be subject to an order of probation if the director~~
26 ~~determines such action is more appropriate. subject to sanctions as~~
27 provided in section 54-631.

1 (4) The hearings provided for in the act shall be conducted
2 by the director at the time and place he or she designates. The
3 director shall make a final finding based on the complete hearing
4 record and issue an order. If the director has suspended a license
5 pursuant to subsection (4) of section 54-631, the director shall
6 sustain, modify, or rescind the order after the hearing. All hearings
7 shall be in accordance with the Administrative Procedure Act.

8 (5) A licensee waives the right to a hearing if such
9 licensee does not attend the hearing at the time and place set forth
10 in the notice described in subsection (3) of this section, without
11 requesting the director at least two days before the designated time
12 to change the time and place for the hearing, except that before an
13 order of the director becomes final, the director may designate a
14 different time and place for the hearing if the licensee shows the
15 director that the licensee had a justifiable reason for not attending
16 the hearing and not timely requesting a change of the time and place
17 for such hearing. If the licensee waives the right to a hearing, the
18 director shall make a final finding based upon the available
19 information and issue an order. If the director has suspended a
20 license pursuant to subsection (4) of section 54-631, the director may
21 sustain, modify, or rescind the order after the hearing.

22 (6) Any person aggrieved by the finding of the director has
23 ten days after the entry of the director's order to request a new
24 hearing if such person can show that a mistake of fact has been made
25 which affected the director's determination. Any order of the director
26 becomes final upon the expiration of ten days after its entry if no
27 request for a new hearing is made.

1 Sec. 8. Section 54-633, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 54-633. (1) In order to ensure compliance with the
4 Commercial Dog and Cat Operator Inspection Act, the department may
5 apply for a restraining order, temporary or permanent injunction, or
6 mandatory injunction against any person violating or threatening to
7 violate the act, the rules and regulations, or any order of the
8 director issued pursuant thereto. The district court of the county
9 where the violation is occurring or is about to occur shall have
10 jurisdiction to grant relief upon good cause shown. Relief may be
11 granted notwithstanding the existence of any other remedy at law and
12 shall be granted without bond.

13 The county attorney of the county in which such violations
14 are occurring or about to occur shall, when notified of such violation
15 or threatened violation, cause appropriate proceedings under this
16 section to be instituted and pursued without delay.

17 (2) If alleged violations of the Commercial Dog and Cat
18 Operator Inspection Act, the rules and regulations, or an order of the
19 director or an offense against animals observed by an inspector in the
20 course of performing an inspection under the act poses a significant
21 threat to the health or safety of the dogs or cats harbored or owned
22 by an applicant or licensee, the department may direct an inspector to
23 impound the dogs or cats pursuant to sections 28-1011 and 28-1012 or
24 may request any other law enforcement officer as defined in section
25 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and
26 28-1012. The department shall cooperate and coordinate with law
27 enforcement agencies, political subdivisions, animal shelters, humane

1 societies, and other appropriate entities, public or private, to
2 provide for the care, shelter, and disposition of animals impounded by
3 the department pursuant to this section.

4 (3) The department may impose an administrative fine of not
5 more than five thousand dollars for any violation of the act or the
6 rules and regulations adopted and promulgated under the act. Each
7 violation of the act or such rules and regulations shall constitute a
8 separate offense for purposes of this subsection.

9 Sec. 9. (1) All money collected by the department pursuant
10 to section 54-633 shall be remitted to the State Treasurer for
11 distribution in accordance with Article VII, section 5, of the
12 Constitution of Nebraska.

13 (2) Any administrative fine levied pursuant to section
14 54-633 which remains unpaid for more than sixty days shall constitute
15 a debt to the State of Nebraska which may be collected in the manner
16 of a lien foreclosure or sued for and recovered in a proper form of
17 action in the name of the state in the district court of the county
18 in which the violator resides or owns property.

19 Sec. 10. It is the intent of the Legislature to appropriate
20 \$411,559 from the General Fund and \$127,000 Cash Funds for fiscal year
21 2007-08 to the Department of Agriculture to carry out the Commercial
22 Dog and Cat Operator Inspection Act. Any money appropriated under
23 this section shall be used solely to carry out the purposes of the
24 act.

25 Sec. 11. Original sections 54-628, 54-629, 54-630, 54-631,
26 and 54-632, Reissue Revised Statutes of Nebraska, and sections 54-625,
27 54-627, and 54-633, Revised Statutes Cumulative Supplement, 2006, are

1 repealed.