

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB360

Hearing Date: Tuesday February 17, 2015
Committee On: Agriculture
Introducer: Johnson
One Liner: Change provisions of the Commercial Dog and Cat Operator Inspection Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Chambers, Harr, Johnson, Kolterman, Larson, Riepe
Nay:	1	Senator Bloomfield
Absent:		
Present Not Voting:	1	Senator Schilz

Verbal Testimony:

Proponents:

Senator Jerry Johnson
Judy Varner
Clem Disterhaupt
Greg Ibach
Jocelyn Nickerson

Representing:

Introducer
Nebraska Humane Society
Nebraska Professional Pet Breeders Association
Nebraska Department of Agriculture
Humane Society of the United States

Opponents:

Lori Hook
Lynn Erisman
Jason Paine
Pauline Balta
Mary Douglas
Julie Lavin
Rachel Curry

Representing:

Hearts United for Animals
Hearts United for Animals
Hearts United for Animals
Hearts United for Animals
Hearts United for Animals
Hearts United for Animals
Hearts United for Animals

Neutral:

Representing:

Summary of purpose and/or changes:

LB360 as introduced inserts a series of clarifying revisions to the Commercial Dog and Cat Operator Inspection Act as follows:

Significant threat to the health and safety of dogs or cats is inserted as a new defined term in Sec. 54-626. This currently undefined term is utilized in existing section 54-633(2) as a standard authorizing interventions by the Department of Agriculture and referral to law enforcement when inspectors observe inhumane conditions.

Amends Sec. 54-627 which sets forth a requirement of licensure to operate as a commercial breeder or other licensed activity, and establishes application procedures and initial and annual license renewal fees. The Act currently provides for an annual license expiration and annual license fee collected with renewal application. LB360 would provide for a non-lapsing license but retain the annual license fee. In addition, LB360 makes the following revisions to this section:

Specifies in subsection (2) that an initial application for licensure shall include a one-time fee of \$125. A corresponding deletion of text is found in subsection (3)(b) providing for an initial license fee of first-time license applicants of \$125.

Inserts express authority for the Department for entry to inspect premises of new license applicants. If animals are not present, the inspection shall be of the applicant's records and facility plans.

Provides that licenses lapse upon change of ownership.

Resolves a statutory uncertainty regarding the annual license fee of persons who meet the definition of more than one license category. LB360 inserts new text in subsection (3)(b) that the operator shall pay one fee according to the primary licensed activity.

Revises subsection (5), which currently assigns a duty of a licensee to make licensed premises available for inspection. LB360 would expand this duty to include an applicant or other person the Department has reason to believe is subject to licensure.

Explanation of amendments:

The committee amendment (AM1151) strikes the original provisions and becomes the bill, although the original provisions of the bill are retained, and additional revisions and clarifications of existing authorities of the Department are inserted by the amendment. Revisions to the Commercial Dog and Cat Operator Inspection Act pursuant to the committee amendment are presented in section-by-section summary of AM1151 as follows:

Sec 1: Revises Sec. 28-1008 providing definitions for terms utilized in Chapter 28, Art. 10. The defined term law enforcement officer is revised by excluding inspectors under the Commercial Dog and Cat Operator Inspection Act and instead includes special investigators appointed as a deputy state sheriff employed by the Department pursuant to 81-201 while acting within the Directors authority pursuant to the Commercial Dog and Cat Operator Inspection Act.

Sec. 2: Amends Sec. 54-625 to incorporate sections 7 and 10 of AM1151 into the Commercial Dog and Cat Operator Inspection Act.

Sec. 3: Amends Sec. 54-626 by making a series of revisions to defined terms and phrases. The revisions insert new defined terms for harbor, normal business hours, operator, significant threat to the health and safety of dogs or cats, and revises the term premises to be consistent with the definition of the term currently found in 54-628. The definition of significant threat is modified from LB360 as introduced by removing implication that animals must be hemorrhaging before a condition is a significant threat.

Sec. 4: Amends Sec. 54-627 which sets forth a requirement of licensure to operate as a commercial breeder or other licensed activity, and establishes application procedures and initial and annual license renewal fees. The Act currently provides for an annual license expiration and annual license fee collected with renewal application. AM1151 retains the revisions necessary to this section from LB360 to provide for a non-lapsing license but retain the annual license fee. Additional clarifying text is added to provide that any license issued on or before Nov. 30, 2015 remains in effect past expiration unless otherwise lapsed or revoked or surrendered. In addition, AM1151 makes the following revisions to this section:

Relocates to subsection (2) that an initial application for licensure shall include a one-time fee of \$125. There is a corresponding deletion of text found in subsection (3)(b) providing for an initial license fee of first-time license applicants of \$125.

Inserts express authority for the Department for entry to inspect premises of new license applicants. If animals are not present, the inspection shall be of the applicant's records and facility plans.

Provides that licenses lapse upon change of ownership.

Resolves a statutory uncertainty regarding the annual license fee of persons who meet the definition of more than one license category. LB360 inserts new text in subsection (3)(b) that the operator shall pay one fee according to the primary licensed activity.

Revises subsection (5) which currently assigns a duty of a licensee to make licensed premises available for inspection. AM1151 would expand this duty to include an applicant or other person the Department has reason to believe is subject to licensure.

Sec. 5: Amends Sec. 54-628 as follows: AM1151 removes an unnecessary reference to the Bureau of Animal Industry.

Inserts clarification in subsection (3) to expand authority to serve notice of violation to any operator, i.e. not confined to licensees or applicants.

Incorporates a concept introduced in LB389 to authorize the Department to charge a re-inspection fee and mileage for re-inspection trips to determine if correction of defects found in previous inspections have been completed, for compliance with a stop movement order, or if return trip is required due to operator's failure to be available for inspection within a reasonable time. The re-inspection fee is \$150 and designated as an administrative cost recovery. Any fees collected are directed to be remitted to the program cash fund.

Inserts new subsection (4) expressly authorizing the Department to make unannounced inspections during normal business hours and imposing a duty of licensees, applicants and any person acting as an operator to provide the department with contact information and designate an adult who can be contacted to make premises available for inspection.

Expands an existing right of entry to include premises of persons believed to be an operator (i.e. not confined to persons complying with licensure if required). A definition of premises is stricken as the term premises is inserted as a defined term under section 3 of AM1151.

Inserts new subsection (8) providing an express duty of any licensee, applicator or other person believed to be an operator not to hide animals and to provide accurate information regarding the location of dogs and cats.

Inserts new subsection (9) stating statutory interpretation that a licensees, applicant's or other operator's refusal to answer the door, failure to be available for inspection, or otherwise obstruct the ability of the Department to perform inspection is a violation of 54-634 and subject to administrative fine.

Sec. 6: Amends Sec. 54-628.01 which sets forth authority and procedures by which the Department may impose a stop-movement order. Currently, this section authorizes imposition of stop-movement for non-compliance with the Act or regulations, particularly citing unreasonable sanitation. AM1151 expands the conditions that authorize stop-movement to include failure to comply with standards for care, treatment or transportation, operating without a license, interference with the Department, or existence of conditions that without intervention pose a threat to the health and safety of animals. Harmonizing revisions regarding contents and enforcement of a stop movement order are made in the remainder of the section, and includes direction that the order notify that should conditions posing a threat to health and safety persist, the Department may refer the violator to law enforcement for potential investigation of criminal animal cruelty violations . A process for a violator to request administrative hearing to contest imposition of the order is revised to incorporate into the requested hearing provisions of 54-632.

Sec. 7: Inserts a new section into the act to expressly provide authority for the Department to serve notice of a show cause hearing on the question of whether a cease and desist order, administrative find or other administrative sanction should not be imposed.

Sec. 8: Amends Sec. 54-630 with harmonizing revisions to be consistent with a non-lapsing license.

Secs. 9 and 10: Currently, 54-633 assigns authority to the Department to impose administrative fines and to seek judicial remedies of injunction or restraining order for violations of the Commercial Dog and Cat Operator Inspection Act, its regulations, or orders of the Director. Additionally, subsection (2) of 54-633 provides that if violations of the Act or offenses against animals observed by an inspector pose a significant threat to the health or safety of dogs or cats, the Director may instruct the inspector to impound the dogs or cats as provided in cited sections of Chapter 28, Article 10 (crimes against animals), or request any other law enforcement agency to impound animals. Commercial dog and cat program inspectors (when acting within the scope of their duties) are currently included within the definition of law enforcement officer pursuant to 28-1008 for purposes of animal cruelty enforcement authorities under Chapter 28, Art. 10. 28-1012 authorizes a law enforcement officer to obtain a warrant to inspect, care for an impound animals upon suspicion an animal is being cruelly neglected or mistreated, or abandoned (criminal violation defined by 28-1009), and declares that impounded animals are subject to seizure and court disposition.

AM1151 makes the following revisions:

Sec. 9 strikes existing subsection (2) of 54-633. Section 10 reinserts the concepts of stricken subsection (2) of 54-633 in a revised form in a wholly new section to be inserted into the Act. This new section assigns authority to the Director to direct a special investigator (see Sec. 1) to exercise the authorities of a law enforcement officer pursuant to 28-1011 and 28-1012 regarding animal cruelty investigation or request other appropriate law enforcement to inspect, care for or impound animals as authorized pursuant to 28-1011 and 28-1012, if the Director has reason to believe that violations of the act or other condition posing a threat to the health or safety of animals constitutes cruel neglect or mistreatment, or abandonment. The new section retains instruction that the Director cooperate and coordinate with local authorities, animal shelters public or private, and other entities as appropriate to provide for care and disposition of impounded animals.

Sec. 11: Inserts an operative date of December 1, 2015 to coordinate with transition to non-lapsing licensure.

Sec. 12: Repealers

Jerry Johnson, Chairperson