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139th General Assembly

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### CHAPTER 431

#### FORMERLY

#### SENATE BILL NO. 370

#### AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 17, TITLE 7, DELAWARE CODE, RELATING TO THE ESTABLISHMENT OF A RETAIL DOG DEALER LICENSE; THE HUMANE HANDLING, CARE AND TREATMENT OF DOGS; AND GENERALLY RELATING TO DOGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 17, Title 7, Delaware Code, by redesignating §§ 1701, 1702, 1703, 1704, 1705, 1706, 1707 and 1708 of Subchapter 1 as §§ 1702, 1703, 1704, 1705, 1706, 1707, 1708 and 1709 of Subchapter 1, respectively.

Section 2. Amend Chapter 17, Title 7, Delaware Code, by adding thereto a new section to read as follows:

"§1701. Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) 'Animal shelter' shall mean a facility which is used to house or contain animals and which is owned, operated or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other not for profit organization devoted to the welfare, protection and humane treatment of such animals.

(2) 'Primary enclosure' shall mean any structure used or designed for use to restrict a dog to a limited amount of space, including, but not limited to, a room, pen, cage, compartment or hutch.

(3) 'Retail dog outlet' shall mean any premises where dogs are sold, or offered or maintained for sale, on a retail basis. The term shall not include: (a) dogs which are produced and raised on such premises and are sold, offered or maintained for sale, by a person who resides on such premises; (b) the selling of a single litter of puppies or any part thereof during a calendar year; or (c) any animal shelter."

Section 3. Amend § 1702, Title 7, Delaware Code, by redesignating subsections (b), (c), (d), (e), (f), (g), (h) and (i) as subsections (c), (d), (e), (f), (g), (h), (i) and (j), respectively. Further amend said section by adding thereto a new subsection (b) to read as follows:

"(b) Retail dog dealer licenses. Any person who owns or operates a retail dog outlet shall, on or before March 1, apply to the Department or its duly authorized agents on a form prescribed by the Department for a retail dog dealer license. Retail dog dealer licenses shall be valid through December 31, and shall not be valid for more than one calendar year. The application shall be accompanied by the appropriate license fee according to the fee schedule prescribed in subsection (a) of this section for kennels."

Section 4. Amend §1702(e), Title 7, Delaware Code, by inserting the phrase "or to secure a valid retail dog dealer license on or before March 1 for the calendar year" between the word "year" and the word "shall".

Section 5. Amend § 1702(f), Title 7, Delaware Code, by striking the phrase "license taxes on dogs and kennels" and substituting in lieu thereof the phrase "issuance of licenses for dogs, kennels and retail dog dealers", and by striking the phrase ", including payment of poultry and livestock claims authorized in § 1711 of this title".

Section 6. Amend § 1702(g), Title 7, Delaware Code, by striking the phrase ", including payment of poultry and livestock claims authorized in §1711 of this title."

Section 7. Amend §1702(j), Title 7, Delaware Code, by striking the phrase "subsection (b)" and substituting in lieu thereof the phrase "subsection (c)".

Section 8. Amend §1703, Title 7, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"§1703. Inspections of facilities and premises; suspension of kennel or retail dog dealer license.

(a) Dog wardens are hereby authorized to inspect the facilities for which a kennel or retail dog dealer license is sought or obtained during normal business hours or by appointment for the purpose of ascertaining whether the facilities satisfy the requirements for the humane handling, care and treatment of dogs specified in §1704 of this title. It shall be unlawful for any person to refuse admittance to a dog warden for the purpose of making inspections.

(b) Any dog warden having probable cause to believe a violation of § 1 704 of this title has or is taking place may enter upon the premises of the owner or custodian of any dog subject to such violation for purposes of investigating the violation, provided the investigation can be conducted without having to enter a dwelling house or other structure used in connection therewith. A dog warden may enter into a dwelling house or other structure only with the permission of the owner or occupant thereof or with a duly issued search warrant.

(c) If, upon inspection or investigation, the premises or facilities are found not to satisfy the requirements for the humane handling, care and treatment of dogs specified in §1704 of this title, the operator of such premises or facilities shall be issued a warning identifying the deficiencies. Such operator shall have at least 10 days to bring the premises or facility into compliance with § 1704 of this title; provided that this time period may be extended by the Department, at its direction, for up to 60 days depending upon the nature of the violation and the action necessary for compliance. If, upon expiration of the warning period, such premises or facilities have not been brought into compliance, the operator shall be fined in accordance with the terms specified in §1714 of this title. Subject to the State Administrative Procedures Act, the Secretary may also issue an order suspending the kennel or retail dog dealer license, if any, until the cited deficiencies

are remedied. The licensee shall be entitled to judicial review of such order as set forth in the State Administrative Procedures Act

(d) Whenever the Secretary suspends a license in accordance with this section, a dog warden may seize and impound any dog in possession, custody or care of the person whose license is suspended if there are reasonable grounds to believe that the dog's health, safety or welfare is endangered."

Section 9. Amend §1704, Title 7, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"§1704. Specifications for the humane handling, care and treatment of dogs.

(1) General Facilities.

(a) Structural strength. - Housing facilities for dogs shall be designed and constructed so that they are structurally sound. They shall have no sharp points or edges that could injure the dogs, and they shall contain the dogs securely and restrict other animals from entering. (b) Storage. - Supplies of food and bedding shall be stored in a manner that protects the supplies from spoilage, contamination and vermin infestation. Foods requiring refrigeration shall be stored accordingly.

(c) Drainage and waste disposal. Provision shall be made for the regular collection, removal and disposal of animal and food wastes, bedding, debris and dead animals in a manner that minimizes contamination and disease risks. If housing facilities are equipped with disposal facilities and drainage systems, they shall be constructed and operated so that animal wastes and water are rapidly eliminated and the dogs stay dry. All drains shall be properly constructed, installed and maintained. If dosed drainage systems are used, they shall be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor.

(2) Indoor housing facilities.

(a) Heating, cooling *and* temperature. - Indoor housing facilities for dogs shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and well-being. When dogs are present, the ambient temperature in the facility shall not be allowed to fall below 50°F ( 10°C) for dogs not acclimated to lower temperatures and for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds). Dry bedding or other methods of conserving body heat shall be provided when temperatures are below 50°F (10°C). The ambient temperature shall not fall below 45°F (7.2°C) for more than 4 consecutive hours when dogs are present, and shall not rise above 85°F (29.5°C) for more than 4 consecutive hours when dogs are present.

(b) Ventilation. - Indoor housing facilities for dogs shall be sufficiently ventilated when dogs are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels and moisture condensation. Ventilation shall be provided by windows, vents, fans or air conditioning.

(c) Lighting. - Indoor housing facilities for dogs shall have ample lighting by natural or artificial means. Lighting in indoor housing facilities shall be sufficient to allow observation of the physical condition of the dogs so housed, and to permit routine inspection and cleaning of the facility. Dogs housed in these facilities shall be provided a regular diurnal lighting cycle of either natural or artificial light. Primary enclosures shall be placed so as to protect the dogs from excessive light.

(d) Interior surfaces. - The floors and walls of indoor housing facilities shall be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized.

(3) Outdoor housing facilities.

(a) Restrictions. - Dogs that are not acclimated to the outdoor temperatures prevalent in the area or region where they are maintained and breeds of dogs that cannot tolerate the prevalent outdoor temperatures without stress or discomfort (such as short-haired breeds in cold climates) may not be kept in outdoor facilities unless the practice is specifically approved by a licensed veterinarian.

(b) Shelter from the elements. - Dogs shall be provided with proper shelter to protect them against inclement weather, preserve their body heat, and allow them to remain dry during rain or snow. Sufficient clean bedding material or other means of protection from the weather shall be provided when the ambient temperature falls below the temperature to which the dog is acclimated. Additional bedding material or other means of protection shall be provided when the temperature is 35°F (1.7°C) or lower.

(c) Shelter from sunlight. - In addition to the shelter structure, one or more separate outside areas of shade shall be provided to allow the dogs to protect themselves when sunlight is likely to cause overheating or discomfort.

(d) Construction. - Housing facilities for dogs shall be constructed to provide for the health and comfort of the animals. The floors and walls of outdoor housing facilities shall be constructed and maintained so that they are substantially impervious to moisture and may be readily sanitized. Mobile or traveling housing facilities, metal barrels, cars, refrigerators or freezers, and the like shall not constitute proper shelter.

#### (4) Primary enclosures.

(a) Space requirements. - Primary enclosures shall be constructed and maintained to provide sufficient space to allow each dog to turn about freely and to stand erect, sit and lie down in a comfortable, normal position. Each dog housed in a primary enclosure shall be provided with a minimum amount of floor space, which shall be calculated according to the procedure prescribed in Title 9, Code of Federal Regulations, § 3.6(c)(1).

(b) Space requirements when nursing puppies. - Each bitch with nursing puppies shall be provided with an additional amount of floor space, based on her breed and behavioral characteristics, and in accordance with generally accepted husbandry practices. If the additional amount of floor space for each nursing puppy is less than 50% of the minimum requirement for the bitch, the housing shall be approved by a licensed veterinarian.

(c) Height. - The interior height of a primary enclosure shall be at least 6 inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position.

(d) Use of tethers. If dog houses with tethers are used as primary enclosures for dogs kept outdoors, the tethers shall be attached so that the dog cannot become entangled with other objects or come into physical contact with other dogs in the housing facility, and so the dog can roam to the full range of the tether. The tether shall be of a type commonly used for the size dog involved, made of material not normally susceptible to being severed by the dog through chewing or otherwise, and shall be attached to the dog by means of a well-fitted collar that will not cause trauma or injury to the dog. The tether shall be 6 feet or at least 3 times the length of the dog as measured from the tip of its nose to the base of its tail and allow the dog convenient access to the dog house and to food and water containers.

(e) Wire flooring. - A dog may be sheltered in a primary enclosure having wire flooring if the wire flooring is kept in good repair and does not result in injuries to the dog. The flooring shall be constructed so as not to allow passage of the animal's feet through any openings in the floor of the enclosure. Such flooring shall not sag or bend significantly between structural supports. For primary enclosures built after October 1, 1998, or any floors installed after that date, if the flooring is constructed of metal strands, such strands shall either be greater than 1/8 of an inch in diameter (9 gauge wire) or shall be coated with a material such as plastic or fiberglass.

(f) Exceptions. - Subparagraphs (a) through (e) of this paragraph shall not apply to licensed retail dog dealers if all of the following conditions are met:

1. The primary enclosure is constructed and maintained to provide sufficient space to allow the dog to turn about freely and to stand erect, sit and lie down in a comfortable, normal position;
2. The dog is being offered for sale on a retail basis, or has been sold and is awaiting physical transfer to its new owner; and
3. The dog is maintained in a primary enclosure that keeps the dog *on display* to patrons of the retail dog outlet during its normal business hours.

(5) Animal health and husbandry standards.

- 1., Females in heat may not be housed in the same primary enclosure with males, except for breeding purposes;
2. Any dog exhibiting a vicious or overly aggressive disposition shall be housed separately;
0. Puppies 4 months of age or less may not be housed in the same primary enclosure with adult dogs other than their dams or foster dams;
1. Dogs may not be housed in the same primary enclosure with any other animal species, unless they are compatible; and
2. Dogs under quarantine or treatment for a communicable disease shall be separated from other dogs and other susceptible animal species in such a manner as to minimize the dissemination of such disease.

(b) Feeding. - Dogs shall be *fed* at least once each day, except as otherwise might be required to provide adequate veterinary care. The food shall be free from contamination, wholesome, palatable and of sufficient quantity and nutritive value to maintain the normal condition and weight of the dog. The diet shall be appropriate for the individual dog's age and condition.

(c) Food receptacles. - Food receptacles shall be readily accessible to all dogs and shall be located so as to minimize contamination by excreta. The receptacles shall be durable and shall be kept clean. The food receptacles shall be sanitized at least once per week. Disposable food receptacles may be used but shall be discarded after each feeding. Self feeders may be used for the feeding of dry food but shall be sanitized regularly to prevent molding, deterioration or caking of feed.

(d) Watering. - If potable water is not continually available to the dogs, it shall be offered to the dogs as often as necessary to ensure their health and well-being. Watering receptacles shall be kept clean and shall be sanitized at least once per week.

(e) Cleaning of primary enclosure. - Excreta and food waste shall be removed from a primary enclosure, including any floor area or ground surface beneath the primary enclosure, on a daily basis. When steam or water is used to clean the primary enclosure, whether by hosing, flushing or other methods, dogs shall be removed, unless the enclosure is large enough to ensure that the dogs will not be harmed, wetted or distressed in the process. Standing water shall be removed from the primary enclosure and dogs in other primary enclosures shall be protected from being contaminated with water and other wastes during the cleaning.

(f) Housekeeping for premises. - Premises where housing facilities are located, including buildings and surrounding grounds, shall be kept clean and in good repair to protect the dogs from injury and to facilitate the husbandry practices set forth in this section."

Section 10. Amend § 1709, Title 7, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"\*1709. Injuring or killing dogs for certain acts.

(a) Any police officer, constable or dog warden who finds a dog running at large and deems such dog to be an immediate threat to the public health and welfare may kill such dog.

(b) Any person may injure or kill a dog in self-defense or to protect livestock, poultry or another human being at the time such dog is attacking such livestock, poultry or human being.

(c) Any person may injure or kill a dog at the time such dog is wounding another dog if the dog being wounded is on the property of its owner or under the immediate control of its owner and being wounded by a dog that is running at large.

(d) Any person who injures or kills any dog in accordance with the provisions of this section shall not be held criminally or civilly liable therefor."

Section 11. Amend §1711, Title 7, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"§1711. Liability of dog owner for damages.

The owner of a dog is liable in damages for any injury, death or loss to person or property that is caused by such dog, unless the injury, death or loss was caused to the body or property of a person who, at the time, was committing or attempting to commit a trespass or other criminal offense on the property of the owner, or was committing or attempting to commit a criminal offense against any person, or was teasing, tormenting or abusing the dog."

Section 12. Sections 3 and 4 of this Act shall become effective on January 1, 1999. and Sections 1, 2, 5, 6, 7, 8, 9, 10 and 11 of this Act shall become effective upon their enactment into law.

Approved July 13, 1998



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