



[Previous Page](#)

[Next Page](#)

CHAPTER 179

FORMERLY

HOUSE BILL NO. 233

AS AMENDED BY

HOUSE AMENDMENT NOS. 2 & 3

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO COUNTIES AND TITLE 7 OF THE DELAWARE CODE 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 Part 1, Subchapter 17 of Title 7, Delaware Code by striking sections 1701, 1702, 1703, 1704 and 1718 in their entirety.

Section 2: Amend Part I, Title 9, Delaware Code by adding a new chapter 9 to read as follows:

"Chapter 9. DOGS

§ 901. Definitions.

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

(a) '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.

(b) "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.

(c) "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:

(1) 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;

(2) The selling of a single litter of puppies or any part thereof during a calendar year; or

(3) Any publicly operated or private, charitable or nonprofit animal shelter, pound, humane society, or animal rescue organization.

(d) 'County' shall mean New Castle, Kent and Sussex Counties as these territorial political subdivisions within the State of Delaware are delineated respectively in Chapter 1, Title 9 of the Delaware Code.

(e) 'Dog Control Agent' shall mean an individual employed by a County, or employed by an independent contractor of a County, for the purpose of enforcing dog control laws, rules, regulations and ordinances.

§ 902. Fees for dog and kennel licenses; terms.

(a) Dog licenses -- Each County shall issue dog licenses. Every dog owner shall obtain said dog license in the County in which the dog owner resides or where the retail dog outlet is located. Any dog license purchased from the Department of Natural Resources and Environmental Control shall remain valid through the expiration date noted, at which time a license must be purchased from the County. The Counties, in their discretion, shall set the license fees and provide applications for the following licenses:

(1) Individual dog owner licenses -- Except for persons residing within the corporate limits of the City of Wilmington, the owner of any dog, 6 months of age or older, on or before March 1, shall apply to the County or its duly authorized agents on a form prescribed by the County for an individual dog owner license for such dog. All individual dog owner licenses shall be valid through December 31, and the valid period of the license is to be determined by the County but may not exceed three years. The Counties may, in their discretion, charge up to \$10.00, on an annual basis, for an Individual dog owner license for a spayed or neutered dog and up to \$15.00, on an annual basis, for an Individual dog owner license for an unspayed or unneutered dog.

(2) Retail dog outlet licenses -- Each owner of a retail dog outlet in the State of Delaware must apply to the County for a retail dog outlet license on or before March 1. A retail dog outlet license shall be valid through December 31 but may not exceed one year.

(3) Kennel licenses -- Any person who maintains a kennel wherein more than four dogs are kept for show, trial, sale, breeding or other purposes may apply to the County in which the kennel owner resides or its duly authorized agents on a form prescribed by the County for a kennel license in lieu of an individual dog owner license for each dog. Kennel licenses shall be valid through December 31, and shall not be valid for more than one calendar year.

(4) Lost or stolen dog licenses or tags. Each county shall adopt a policy to issue a replacement individual dog owner license, retail dog outlet license or kennel license, or the tags accompanying such license, and shall set the fees for such replacement licenses or tags.

(5) The license fee limitations of \$10.00 for a spayed or neutered dog and \$15.00 for an unspayed or unneutered dog as set forth in paragraph (a)(1) of this Section shall expire 2 years after the enactment of this bill into law, unless otherwise provided by a subsequent Act of the General Assembly.

(b) Upon application and payment of the fee for an individual dog owner license, retail dog outlet license, or kennel license, the applicant shall be entitled to receive a license, provided proof of a currently valid rabies vaccination can be presented for each dog for which the license is sought.

Each individual dog owner license, retail dog outlet license and kennel license shall show the date on which the license fee is paid. The County or its duly authorized agent shall issue each license showing the year for which the license is paid and the serial number of the license. Each issued license will be accompanied by either a metal tag or an alternative method of identification, such as, but not limited to, a microchip or tattoo. In the event a dog tag is issued, the tag shall be of a design to be adopted by the County, and shall be affixed to the collar by the owner of such dog. Dog collars with associated county tags may be removed and need not be worn at all times when the dog is licensed as a kennel or retail dog outlet and is housed in an enclosure or a pen. If the collar has been removed, a valid dog tag and license must be readily available for review by a dog control agent as proof that the individual dog is licensed. Dogs engaged in the act of hunting are exempted from wearing county tags while they are in the act of hunting, but must have some means of valid identification on the dog, and a valid dog tag and license must be available for review by a dog license agent while the dog is in the act of hunting.

(c) Whoever fails to secure a valid dog license, retail dog dealer's license or kennel license for the calendar year on or before March 1, or when otherwise required by this section shall be fined not less than \$50.00. The County may impose fines in excess of \$50.00. For each subsequent offense occurring within 12 months of a prior offense, the person shall be fined not less than \$100.00. The County may impose fines in excess of \$100.00 for subsequent offenses. The minimum fine for a subsequent offense shall not be subject to suspension. Conviction for the failure to pay the license tax is a violation.

(d) Each County may revoke any individual dog owner license, retail dog outlet license or kennel license issued by said County, and may deny any person the right to secure any such license for a period of time within the Department's discretion, if the licensee or person has been convicted of animal cruelty under the Laws of Delaware or any state or federal law.

(e) The license fee set by the County pursuant to subsection (a) of this section shall not be required to be paid when the dog is one which qualifies as a seeing eye, lead or guide dog or as a dog which has previously served in a branch of the United States armed forces. The County shall issue either a metal license tag or an alternative method for identification in accordance with subsection (b) of this section to such persons without the necessity of the payment of the dog license fee.

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

(a) Dog control agents are hereby authorized to inspect the facilities for which a kennel or retail dog outlet 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 § 904 of this title. It shall be unlawful for any person to refuse admittance to a dog control agent for the purpose of making inspections.

(b) Any dog control agent having probable cause to believe a violation of § 904 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 whether a violation of § 904 has occurred; provided that the investigation can be conducted without having to enter a dwelling house or other structure used in connection therewith. A dog control agent may enter into a dwelling house or other structure only with the permission of the owner or occupant thereof or pursuant to a legally obtained search warrant, and is accompanied by a police officer or is a police officer as that term is defined in § 1911 of Title 11.

(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 § 904 of this title,

the operator of such premises or facilities shall be issued a warning identifying the deficiencies. Such operator shall have a minimum of ten (10) business days to bring the premises or facility into compliance with § 904 of this title; provided, that this time period may be extended by the County, at its discretion, for up to sixty (60) days. 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 Title 7. The County may also issue an order suspending the kennel license or retail dog outlet license, if any, until the cited deficiencies are remedied. The licensee shall be entitled to an administrative review of such order as established by the County in accordance with the Administrative Procedures Act.

(d) Whenever the County suspends a license in accordance with this section, a dog control agent 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.

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

(a) General facilities.

(1) 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.

(2) 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.

(3) 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 closed drainage systems are used, they shall be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor.

(b) Indoor housing facilities.

(1) 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/dF (10/dC) 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/dF (10/dC). The ambient temperature shall not fall below 45/dF (7.2/dC) for more than 4 consecutive hours when dogs are present, and shall not rise above 85/dF (29.5/dC) for more than 4 consecutive hours when dogs are present.

(2) 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.

(3) 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.

(4) 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.

(c) Outdoor housing facilities.

(1) 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.

(2) 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/dF (1.7/dC) or lower.

(3) Shelter from sunlight -- In addition to the shelter structure, 1 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.

(4) 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.

(d) Primary enclosures.

(1) 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).

(2) 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 5% of the minimum requirement for the bitch, the housing shall be approved by a licensed veterinarian.

(3) 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.

(4) 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 a minimum of 10 feet in length and allow the dog convenient access to the dog house and to food and water containers.

(5) 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.

(6) Exceptions -- Paragraphs (1) through (5) of this subsection shall not apply to licensed retail dog dealers if all of the following conditions are met:

(A) 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;

(B) 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

(C) 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.

(e) Animal health and husbandry standards.

(1) Compatible grouping. -- Dogs that are housed in the same primary enclosure shall be compatible with the following restrictions:

(A) Females in heat may not be housed in the same primary enclosure with males, except for breeding purposes.

(B) Any dog exhibiting a vicious or overly aggressive disposition shall be housed separately.

(C) 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.

(D) Dogs may not be housed in the same primary enclosure with any other animal species, unless they are compatible.

(E) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

§ 905. Licensing Agents; bond requirement; service charge; regulations.

(a) Each County may authorize as many qualified persons or companies as licensing agents as it deems necessary to effectuate the efficient distribution of dog licenses.

(b) The bond requirement may be determined by the County.

(c) Licensing agents may add a service charge to the required fee for a license. This fee shall be set by each County in its discretion.

(d) Each County may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section. (71 Del. Laws, c. 443, § 4.)

§ 906. Reciprocity of Dog License.

(a) Each County shall establish a licensing system which identifies the county in which the dog's owner maintains his or her primary residence.

(b) When by or pursuant to the authority under this Chapter a dog is licensed by its owner within the County then such dog shall not need an additional license within the other counties of this State.

(b) When by or pursuant to the laws of the state of the owner's primary residence, a person licenses in his or her state of residence, then such dog shall not need an additional license in this state.

§ 907. Rules and Regulations

(a) Each County shall have the authority to enact all rules and regulations, including the authority to set the amount of license fees to license dogs or kennels, in furtherance of the provisions of this Chapter.

Section 3. This act shall take effect on January 1, 2010. Each County shall have in place all necessary Agreements, Rules and Regulations to effectuate this Chapter as of this date.

Approved July 22, 2009

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