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CHAPTER 293

FORMERLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 77

AN ACT TO AMEND TITLE 6, DELAWARE CODE CREATING A DELAWARE PET WARRANTY LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend Title 6, Delaware Code by adding thereto a new Chapter 40 to read as follows:

“Chapter 40. PET WARRANTIES

§4001. Definitions.

(a) As used in this chapter, the following words shall have the meaning ascribed to them:

(1) ‘Seller’ means any person, business or other entity engaging in the sale of dogs, except that this definition does not encompass the sale of dogs on the premises of and by a public shelter, pound or other entity operating as a nonprofit organization pursuant to Delaware law. Persons selling fewer than 20 dogs, or 3 litters, whichever is greater, in a single calendar year shall be exempt from the provisions of this chapter.

(2) ‘Purchaser’ means any person purchasing a dog from a seller, as defined by this section.

(3) ‘Clinically ill’ means an illness that is apparent to a licensed veterinarian based on observation, examination, or testing of the dog.

(4) ‘Nonelective surgical procedure’ means a surgical procedure that is necessary to preserve or restore the health of an animal, or to correct a condition that would interfere with the animal’s ability to walk, run, jump, or otherwise function in a normal manner.

§4002. Information Provided at Time of Sale.

(a) Every seller shall, at the time of sale, deliver to the purchaser of each dog a written statement containing the following information:

(1) The date of the animal's birth, if known; the breeder's name and address, if known; and the date the seller received the animal, if not bred by the seller. If the seller does not know the name and address of the breeder, then the seller must provide the name and address of the person who sold or gave the animal to the seller.

(2) The breed, sex, and color of the animal, and identifying marks existing at the time of sale, if any. If the animal is from a United States Department of Agriculture licensed source, the statement shall contain the individual identifying tag, tattoo, or collar number for that animal. If the breed is unknown or mixed, the record shall so indicate.

(3) If the animal is being sold as registrable, the names and registration numbers of the sire and dam, and the litter number.

(4) A record of any inoculations and worming treatments administered to the animal as of the time of sale, to the extent known, including dates of administration and the type of vaccine or worming treatment.

(5) A record of any diagnosis, treatment, or medication received by the animal from a licensed veterinarian while in the possession of the seller.

§4003. Seller Disclosure.

(a) Upon the sale of a dog by any seller, a written disclosure signed and dated by the seller and purchaser shall be provided at the time of sale, which shall include:

(1) A statement by the seller:

(i) that the animal has no known disease or illness, nor any known congenital or hereditary condition that adversely affects the health of the animal at the time of sale or is likely to adversely affect the health of such animal in the future; or

(ii) a record of any known disease, illness, or congenital or hereditary condition that adversely affects the health of the animal at the time of sale, or is likely to adversely affect the health of the animal in the future.

(b) If the animal has not received a veterinary examination prior to sale, this fact shall be disclosed to the purchaser in writing.

§4004. Record Keeping.

A seller shall maintain the written record on the health, status, and disposition of each dog sold by the seller for a period of not less than two years following such sale. The record shall also contain all of the information required to be disclosed pursuant to §4002 and §4003 of this Title. Those records shall be available to animal control officers and law enforcement officers for inspection and copying during normal business hours.

§4005. Purchaser Remedies.

(a) A purchaser is entitled to a remedy from a seller pursuant to this section if, after the purchase of a dog from such seller, one of the following subdivisions becomes applicable.

(1) Within 20 days after purchase of the animal, a licensed veterinarian states in writing that the animal suffers, or has died, from an illness, disease or other defect, adversely affecting the animal's health, that existed in the animal on or before delivery to the purchaser. Intestinal or external parasites shall not be considered to adversely affect a animal's health unless their presence makes the animal clinically ill.

(2) Within two years after purchase of the animal, a licensed veterinarian states in writing that the animal possesses, or has died from, a congenital or hereditary condition adversely affecting the health of the animal, or that requires hospitalization or nonelective surgical procedures.

(b) A purchaser entitled to a remedy pursuant to this section may elect only one of the following remedies:

(1) Return the animal to the seller for a full refund of the purchase price, and reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal.

(2) Exchange the animal for another one, of purchaser's choice, having comparable value, providing such replacement animal is available, and receive reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal; or

(3) Retain the animal, and receive reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price of the animal.

(c) For purposes of this section, the veterinary fees shall be deemed reasonable if the services rendered are appropriate for the diagnosis and treatment of the illness or congenital or hereditary condition made by the veterinarian, and the cost of such services is comparable to that charged for similar services by other licensed veterinarians in proximity to the treating veterinarian. A veterinary fee shall be presumed reasonable in the absence of evidence to the contrary.

(d) Refunds and payment of reimbursable expenses pursuant to this section shall be made by the seller to the purchaser not later than 10 business days following receipt of the veterinarian's statement required by §4006 of this Title, except in cases in which the entitlement to a remedy is contested pursuant to §4008 of this Title.

§4006. Purchaser's Obligations.

(a) To obtain remedies under §4005 of this Chapter, the purchaser shall comply with all of the following requirements:

(1) Notify the seller as soon as practicable, but in no case more than 10 days after the diagnosis by a licensed veterinarian of a medical or health problem, including a congenital or hereditary condition, for which a remedy is requested. Such notice shall include the name and telephone number of the veterinarian providing the diagnosis.

(2) In the case of illness or disease, provide a written statement from a licensed veterinarian within 10 days of diagnosis stating that the animal is clinically ill, suffers from a congenital or hereditary condition, or has symptoms of a contagious infectious disease, that existed on or before delivery to the purchaser, and that adversely affects the health of the animal. At the request of the seller, the purchaser shall also take the animal for an examination by a licensed veterinarian of the seller's choice. The cost of such examination shall be paid by the seller. In the case of death, the seller may have his or her veterinarian perform a necropsy and all other provisions of this section shall apply.

(3) The veterinarian's statement required under this section shall include all of the following:

(i) The purchaser's name and address.

(ii) The date or dates on which the animal was examined.

(iii) The breed and age of the animal, if known.

(iv) That the veterinarian examined the animal.

(v) That the animal has or had an illness or condition subject to a remedy under §4005 of this Title.

(vi) The precise findings of the examination or necropsy, including laboratory results or copies of laboratory reports.

§4007. Limitations.

(a) Notwithstanding any other provisions of this Chapter, no refund, replacement, or reimbursement of veterinary fees shall be made under any of the following conditions:

(1) The illness or death resulted from maltreatment or neglect or from an injury sustained or an illness contracted subsequent to the delivery of the animal to the purchaser.

(2) The purchaser fails to carry out the recommended treatment prescribed by the examining veterinarian who made the initial diagnosis. However, this subdivision shall not apply if the cost for such treatment, together with the veterinarian's fee for diagnosis, would exceed the purchase price of the animal.

(3) The illness, disease or condition was disclosed at the time of sale pursuant to §4003 of this Title.

(4) The purchaser fails to return to the seller all documents previously provided to the purchaser for the purpose of registering the animal.

(b) If a refund for reasonable veterinary expenses is being requested, the veterinary statement shall be accompanied by an itemized bill of fees appropriate for the diagnosis and treatment of the illness or congenital or hereditary condition which is the subject of the remedy requested pursuant to this Chapter.

§4008. Contested Cases.

(a) In the event that a seller disputes a purchaser's entitlement to a remedy under this Chapter, the seller may, except in the case of the animal's death, have the dog examined by a licensed veterinarian designated by the seller. The cost of such examination shall be borne by the seller.

(b) If, following examination of the animal by the seller's chosen veterinarian, the purchaser and the seller are unable to reach an agreement within 10 business days, the purchaser may initiate an action in a court of competent jurisdiction to resolve the dispute or the parties may submit to binding arbitration if mutually agreed upon by the parties in writing. Any court having jurisdiction in a damages or trespass action for the amount in controversy shall have jurisdiction under this Chapter.

(c) The purchaser in any such legal action shall have the right to collect reasonable attorney's fees and court costs, if the opposing party acted in bad faith in seeking or denying the requested remedy.

§4009. Notice.

(a) Every seller shall post, in a conspicuous location, a notice stating that purchasers of animals have specific rights under law, and that a written statement of such rights is available upon request. Such notice shall be in 100-point type and shall read as follows:

'Purchasers of dogs from this seller are entitled to specific rights under the law. Purchasers must be provided a written copy of such rights at the time of sale. Prospective purchasers may receive a copy of such rights from the seller upon request.'

(b) Every seller shall, at the time of sale or upon the request of a prospective purchaser, provide a written notice of rights under this Chapter. Such notice shall be signed by the purchaser and seller at the time of sale acknowledging receipt.

(c) Every seller of an animal sold with the representation that the animal is registered or registrable with a registry shall, in addition to the above notices, provide purchaser a written notice, signed by purchaser and seller at time of sale, which shall read as follows:

'A pedigree or a registration does not assure proper breeding condition, health, quality or claims to lineage.'

§4010. Additional Legal Remedies.

(a) Nothing in this Chapter shall limit the rights or remedies that are otherwise available to a consumer under any other law. Nor shall this Chapter in any way limit the seller and the purchaser from agreeing between

themselves upon additional terms and conditions that are not inconsistent with this Chapter. No waiver of rights under this Chapter shall be effective.

(b) Nothing in this Chapter shall limit prosecution for violation of any criminal statute or of Title 6, Chapter 25, or of any other law.

(c) Nothing in this Chapter shall preclude the imposition of punitive damages otherwise available at law.

§4011. Misrepresentation as to registration or breed; remedies.

(a) A seller shall not state, promise, or represent to the purchaser, directly or indirectly, that an animal is registered or capable of being registered with an animal registering organization, unless the seller provides the purchaser with the documents necessary for that registration with 120 days following the date of sale of such animal.

(b) In the event that a seller fails to provide documents necessary for registration within 120 days following the date of sale, the purchaser shall, upon written notice to the seller, be entitled to retain the animal and receive a partial refund of 75 percent of the purchase price, or return the animal along with all documentation previously provided the purchaser for a full refund. Remedies under this section shall also be available where there was a material misrepresentation in connection with the sale as to the breed of the animal."

Approved May 01, 2000



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