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□ 143rd General Assembly

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CHAPTER 326

FORMERLY

HOUSE BILL NO. 425

AS AMENDED BY

HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1
AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO AGRICULTURE.

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

Section 1. Amend Part VI, Chapter 82, Title 3 of the Delaware Code by creating a new subchapter to read as follows:

"SUBCHAPTER II.

Animal Population Control Program and Spay/Neuter Fund

§ 8214. SHORT TITLE.

This Chapter shall be known and may be cited as the 'Animal Population Control Program'.

§ 8215. FINDINGS.

The General Assembly for the State of Delaware hereby finds that:

A. During 2002, of the 22,165 dogs and cats which were received at Delaware's primary animal facilities, of those received:

(1) 2,409 (11%) were returned to their owners/guardians; while

(2) 7,290 (33%) were adopted; and

(3) 12,659 (57%) were euthanized.

B. During 2003, of the 24,510 dogs and cats which were received at Delaware's primary animal facilities, of those received:

(1) 2,186 animals (9%) were returned to their owners/guardians; while

(2) 7,125 animals (29%) were adopted; and

(3) 13,653 animals (56%) were euthanized.

C. During 2004, of the 21,254 dogs and cats which were received at Delaware's primary animal facilities, of those received:

(1) 2,193 animals (10.3%) were returned to their owners/guardians; while

(2) 5,500 animals (25.8%) were adopted; and

(3) 13,067 animals (61.4%) were euthanized.

D. During 2005, of the 21,062 dogs and cats which were received at Delaware's primary animal facilities or those received:

(1) 2,299 animals (10.9%) were returned to their owners/guardians; while

(2) 5,837 animals (27.7%) were adopted; and

(3) 13,583 animals (64.4%) were euthanized.

E. As Delaware's human population growth rate increases so too will the population growth rate of the dog and cat populations, the intake at animal facilities and the consequent disposition rates associated therewith.

F. Controlling the dog and cat population would have a significant benefit to the public health and safety in the following manner:

(1) reducing nuisance complaints regarding homeless dogs and cats;

(2) reducing the number of homeless dogs and cats seeking to mate;

(3) reducing the number of dog and cat bite cases involving children;

(4) minimizing opportunities for rabies transmission;

(5) decreasing the number of automobile accidents caused by stray dogs and cats; and

(6) reducing cruelty to animals opportunities by addressing and decreasing the presence of unwanted/nuisance populations.

G. This Act recognizes the economic hardships associated with animal population control, the problems associated with homeless animals, and the societal impacts associated with failing to address these problems and establishes a program focused upon addressing dog and cat population control by providing a means by which population control and rabies vaccinations may be financed.

§ 8216. PURPOSE.

The purpose of the spay/neuter program is to assist low-income residents and low-income communities. The Animal Population Control Program's goals include:

A. population growth among stray and unwanted cats and dogs; and

B. stray and unwanted cats and dogs entering animal shelters; and

C. cat and dog euthanasia rates; and

D. animal-inflicted injuries to humans (e.g. bites); and

E. threats to public health and safety (e.g. from rabies and vehicular accidents).

§ 8217. DEFINITIONS.

- A. 'Abandoned/free roaming/homeless/stray/unwanted animal' – a cat or dog with no known owner or keeper or not wanted by its owner or keeper or that may be deserted by its owner or keeper.
- B. 'Administrator' – Department of Agriculture.
- C. 'Animal Control Agency' – Any state, county or municipally authorized animal control agency.
- D. 'Animal Shelter' – A public or private facility which includes a physical structure that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals.
- E. 'Cat' – A member of the genus and species known as felis catus.
- F. 'Dog' – A member of the genus and species known as canis familiaris.
- G. 'Keeper' – A person in possession or control of a cat, dog or other animal becomes the keeper of a stray domesticated animal, other than livestock, if the person feeds that animal for at least three (3) consecutive days.
- H. 'Owner' – Any person, firm, partnership, association or corporation owning, keeping or harboring a cat, dog or other animal.
- I. 'Program' – The mandatory pre-adoption sterilization and rabies inoculation program established by and set forth in this Subchapter for cats and dogs.
- J. 'Spay/neuter' – To sterilize a female animal by removing the ovaries or to castrate a male animal by removing the testicles or by FDA approved pharmaceutical sterilization.

§ 8218. FUNDING.

- A. Spay/Neuter Fund shall be established for the purpose of funding the Animal Population Control Program.
- B. All monies received by the Administrator in accordance with the authority provided by this Subchapter shall be deposited into a separate, non-lapsing account and shall be dedicated for use by the Administrator exclusively for veterinarian reimbursement and administration costs associated with the Program and set forth in this Subchapter.
- C. All interest earnings shall be credited to the assets of the Fund and shall become part of the Fund.
- D. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward for the next fiscal year for this Program.
- E. The Fund shall be created from a combination of the following:
- (1) Upon adoption of this Bill, \$250,000, subject to appropriation, shall be deposited in the account for use during fiscal year 2007.
 - (2) In addition to the foregoing, a three dollar (\$3.00) surcharge shall be added to each rabies shot administered to cats and dogs in Delaware on or after September 1, 2006. It shall be the responsibility of the veterinarian administering the inoculation to collect said funds and forward same on a monthly basis, together with all applicable rabies inoculation verifications and other forms to the Administrator.
 - (3) The surcharge shall be deposited in the Fund's account and shall become part of the Fund's corpus.
 - (4) The funding stream established in this Section shall be evaluated on or before December 30, 2007, to assess the measurable impacts as set forth in § 8226 below and to determine the potential necessity for an extension of subsidized funding compared to the ability of the Fund's corpus, as set forth below, to generate sufficient on-going revenues to provide a self-sustaining funding mechanism.
- F. Soliciting and accepting funds from public or private sources:

- (1) The Administrator is authorized to solicit and accept donations, grants, gifts, and bequests of money, property or personal services from individuals and/or organizations including, but not limited to, private foundations or alliances, non-public agencies, institutions, organizations or businesses. All funds generated shall be retained by the Administrator in order to defray costs associated with the Animal Population Control Program and any volunteer and community service activities and events of the Animal Population Control Program. Funds received will not be used for employee salaries or benefits. All funds received are subject to audit by the Office of Management and Budget, and employees of the Administrator or the Animal Population Control Program, if any, are bound by § 5806 of Title 29 of the Delaware Code when engaging in fundraising activities.
- (2) Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Administrator if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Administrator, the property, estate or interest therein expressed or described.
- (3) Any property, real or personal, acquired by the Administrator on behalf of the Animal Population Control Program may be used solely for purposes related to the goals of the Animal Population Control Program or, at the discretion of the Administrator, sold at public auction to raise funds to support the Animal Population Control Program.
- (4) All money donated or bequeathed to the Administrator or otherwise received hereunder shall be deposited with the Secretary of Finance and shall be appropriated semi-annually to the Administrator for purposes of the Animal Population Control Program.

§ 8219. ELIGIBILITY.

A. The proceeds of the Spay/Neuter Fund outlined in this Subchapter shall be available to those parties qualifying for participation under the following eligibility requisites:

- (1) a person must be an adult (18 years or older); and
- (2) be a resident of the State of Delaware; and
- (3) be the owner or keeper of the cat or dog being spayed or neutered by a participating veterinarian or clinic and shall:
 - a. establish proof of being a recipient of one (1) of the following programs:
 - (i) AFDC
 - (ii) Food Stamps
 - (iii) General Assistance
 - (iv) Medicaid
 - (v) Social Security Disability (SSD)
 - (vi) SSI
 - (vii) Temporary Assistance for Needy Families (TANF)
 - (viii) WIC; and
 - b. establish further proof of identity through photo identification; or
 - c. an individual recognized by a county or municipal government or an authorized state, county or municipal animal control agency as being an abandoned, free-roaming, homeless, feral cat or stray dog keeper; or

d. an organization which establishes proof of being a 501(c)(3) animal welfare, animal rescue and/or animal humane organization registered in the State of Delaware by means of the registered corporate purpose clause and a copy of an IRS 501(c)(3) determination letter.

(4) The first two (2) year's fiscal allotment shall be divided by the Administrator as follows:

- a. 75% of the funding shall be dedicated to subsidizing the cost of sterilizing domesticated animals owned by those participants qualifying under the terms set forth in § 8219A(3)(a) and (3)(d) above.
- b. 25% of the funding shall be dedicated to subsidizing the cost of sterilizing those abandoned/free-roaming/homeless/stray/unwanted animals located in communities by participants qualifying under § 8219A(3)(c) and (d).
- c. An individual seeking a low-income subsidy pursuant to the requisites of § 8219A(3)(a) or (c) shall be limited to three (3) such procedures per fiscal year and shall be ineligible to seek additional funding by participating in the Program under the terms set forth in Section (3)(d) above.
- d. Those organizations participating in the Program subject to the parameters of § 8219A(3)(d) above shall be limited to a maximum of 25 spay/neuter/inoculation procedures per fiscal year per organization.
- e. The division of the Program's fiscal allotment established above shall be re-evaluated by the Administrator after two (2) years.

§ 8220. PRE-ADOPTION SPAY/NEUTER MANDATE.

A. Effective upon the passage of this Act it shall be mandatory for all cats and/or dogs of reproductive age to be spayed or neutered and inoculated for rabies prior to adoption from any of the following:

- (1) a private animal welfare or rescue agency/group or organization;
- (2) any adoption clinic endorsed, operated, managed, or sponsored by an animal welfare or rescue agency, organizations, commercial enterprises or private parties or combination thereof; or
- (3) an animal shelter as defined herein.

B. Exceptions to the pre-adoption spay/neuter mandate shall be limited to the following:

- (1) An animal which, following a medical examination by an accredited veterinarian, is found to be in a state of health which would preclude the safe and humane implementation of a spay/neuter procedure or rabies inoculation; or
- (2) A dog or cat under the age of six (6) months provided that:
 - a. the adopted shall post a deposit of \$75.00; and
 - b. in the absence of an exemption as provided in § 8220B(1) above, said deposit shall be held by the adopting agency until such time as:
 - (i) said deposit is rebated to the adopter upon proof that the spay/neuter procedures has been completed within five (5) months of the date of adoption; and
 - (ii) the animal has received a rabies inoculation in accordance with the existing laws governing rabies inoculations and such inoculation was not postponed beyond the 7th month of age; or
 - (iii) the deposit is disbursed subject o and in accordance with the procedures elaborated in § 8221C below.

§ 8221. ENFORCEMENT, VIOLATIONS AND PENALTIES.

A. The Administrator shall adopt regulations pursuant to this Chapter relative to:

(1) Format and content of all forms required under this Chapter.

(2) Proof of eligibility under § 8219.

(3) Administration of the Fund established under § 8222.

(4) Any other matter necessary for the administration of the Animal Population Control Program and Spay/Neutering Fund established under this Chapter.

B. Any person who knowingly falsifies proof of eligibility for, or participation in, any program established under this Chapter, or who knowingly furnishes any licensed veterinarian with inaccurate information concerning ownership of a pet submitted for sterilization, or who falsifies an animal sterilization certificate shall be guilty of an unclassified misdemeanor and shall be subject to a minimum mandatory fine, which shall not be subject to suspension, of \$250.00.

C. Failure to spay/neuter a dog or cat once within the parameters established in § 8220 of this Subchapter:

(1) In the absence of a medical exemption resulting from an examination by an accredited veterinarian, which finds that the dog/cat has reached reproductive age but is in a state of health which precludes the safe and humane implementation of a spay/neuter procedure or rabies inoculation (as is outlined in § 8220B(1) above) the adopter's spay/neuter deposit shall be escheated to the Fund's corpus after the specified timeframe has lapsed, and the proceeds shall be disbursed in accordance with the guidelines and process elaborated in § 8218E(5), (6) and (7) above.

(2) The Administrator shall be notified and prosecution shall follow.

(3) In addition to the forfeiture of the spay/neuter deposit, which shall not be subject to suspension, the adopter shall be responsible for the actual cost of having the animal spayed/neutered and inoculated for rabies within a period of 15 calendar days.

(4) In addition to the forfeiture of the deposit monies and the actual cost of having the animal spayed/neutered and inoculated for rabies within the established period of 15 calendar days a mandatory minimum fine of \$250.00, plus all enforcement and court costs, all of which shall not be subject to suspension, shall be levied upon the violator for failure to comply with the spay/neuter and inoculation requisite within the established timeframe.

(5) If the adopter fails to comply with the spay/neuter and inoculation process within the extended fifteen 15 day timeframe, the minimum mandatory fine, which shall not be subject to suspension, shall be doubled and the animal shall be forfeited to the original adopting agency.

(6) The Administrator shall employ all available remedies at law in any court of competent jurisdiction in pursuing the collection of any and all fines.

D. Agency failure to spay/neuter an animal of reproductive age:

(1) Any agency, organization, or other entity cited under § 8220 of this Subchapter failing to comply with the mandatory pre-adoption spay/neuter and rabies inoculation program set forth in this Subchapter shall be subject to a mandatory minimum fine of \$500, which shall not be subject to suspension, for each violation of this Subchapter.

(2) An agency's holding of animals of reproductive age until such time as said animals are the subject of an adoption application does not constitute a violation of this Subchapter.

E. All fines collected in association with this Subchapter shall be deposited in and become a part of the Fund's corpus, shall be invested with the proceeds thereof and the monies earned therefrom, together with other interest income generated by the Fund's corpus shall be disbursed according to the guidelines and process elaborated in § 8218E(5), (6) and (7) above.

§ 8222. PROGRAM ADMINISTRATION.

A. The Administrator shall administer the Program and shall be responsible for:

- (1) distributing, collecting and compiling all forms, including but not limited to, veterinarian participation agreements, sterilization and immunization certifications, and creating a database there from for enforcement and accountability purposes; and
- (2) maintaining a list of participating veterinarians; and
- (3) determining keeper/owner eligibility; and
- (4) collecting co-payments; and
- (5) obtaining the maximum number of spay/neuter/inoculation procedures available to the Program's financial parameters per calendar year.

B. Veterinarian reimbursement shall be through the Administrator.

C. The cost of the program manager position to administer the Pet Population Control Spay/Neuter Program shall be paid for out of General Funds until this Special Fund of \$500,000, at which time the position and support costs shall be paid for out of Appropriated Special Funds.

§ 8223. VETERINARIAN PARTICIPATION.

A. Any veterinarian licenses in the State of Delaware may participate in the Program established under this Chapter. To participate, a veterinarian must file an application provided by the Administrator spanning a two-year period from date of approval agreeing to all pre-set fees and program conditions. Pre-set fees shall be set by the Administrator, in consultation with the Delaware Veterinary Medical Association and shall be subject to revision at two (2) year intervals.

B. For all cats and dogs sterilized under this Program, the Administrator shall reimburse the veterinarians for services on a monthly basis. The pre-set fee shall cover the cost of a pre-surgical medical evaluation; spay/neuter surgery, rabies vaccination and routine post-surgical care required by the servicing veterinarians post-operative protocol. The keeper/owner shall be responsible for the payment of any additional fees for procedures mutually agreed upon and administered by the veterinarian that are not covered under this Program.

C. To receive reimbursement for procedures performed, the participating veterinarian shall submit an animal sterilization form signed by the owner of the dog or cat and the veterinarian together with a copy of the completed Spay/Neuter Fund Certificate to the Administrator.

D. The current rabies forms shall be revised in such a manner as to create an area for recording a serialized tag number for purposes of accountability.

E. This process shall also apply to all inoculations clinics except that it shall also be the responsibility of the organization conducting the clinic to maintain copies of the certificates for a minimum of 12 months after the expiration date of the vaccination.

F. In addition to that which is already established by law, a copy of the rabies registration form shall be generated and provided to the Program's Administrator. The Administrator's copy shall be utilized for establishing and maintaining a database for enforcement, performance review analysis and tax credit reporting purposes.

§ 8224. VETERINARIAN SERVICES TAX CREDIT.

A. For taxable years beginning on or after January 1, 2008, any veterinarian who performs spaying or neutering procedures in accordance with the terms and conditions established under this Subchapter on animals that have been held in public shelters or in § 501(c)(3) shelters shall be entitled to a credit against the tax levied pursuant to

Title 30 of the Delaware Code. The amount of the allowable credit shall be \$50 for each combined spay/neuter and rabies inoculation procedure performed and shall not exceed the taxpayer's annual tax liability.

B. The total number of allowable tax credits available statewide for the Program set forth in this Subchapter shall not exceed 5,000 tax credits or \$250,000 per calendar year.

C. The tax payer shall submit proof of the number of applicable procedures performed in the taxable year based on information requirements established by the Tax Commissioner that are explained in the income tax return instructions.

D. The Administrator shall compile a listing of the number of spay/neuter procedures performed each year by each clinic and each veterinarian and shall provide a copy of same to the Performance Review Committee.

E. The Administrator shall compile a listing of the number of tax credits assigned to each veterinarian during the preceding tax year and report same to the Department of Revenue on or before February 28th of the following tax year.

§ 8226. PERFORMANCE MEASUREMENT.

Performance measurement is necessary to determine the success of the Program and to assess if any changes in the Program should be made.:

A. To measure the performance of this Program, the Administrator shall establish a standardized statewide yearly reporting system for the following:

- (1) the number of spay/neuter surgeries; and
- (2) the number of rabies inoculations performed pursuant to this Subchapter; and
- (3) cat and dog shelter intake statistics; and
- (4) euthanasia statistics; and
- (5) such other criteria as the Administrator shall find necessary for the purposes of performance review analysis.

B. Performance Review Committee: For purposes of this Section, the 'Committee' shall mean a committee comprised of the following 13 representatives:

- (1) The Secretary of the Department of Agriculture or the Secretary's designee, which person shall also act as Chairperson of the Committee;
- (2) A representative of the Delaware Division of Public Health, Rabies Control or designee;
- (3) The President of the Delaware Veterinary Medical Association or the President's designee;
- (4) A representative of the Delaware SPCA;
- (5) A representative of the Kent County SPCA;
- (6) A representative of Faithful Friends;
- (7) A representative of the Delaware Humane Association; and
- (8) The following representative of animal rescue organization not cited above, one (1) from New Castle County, two (2) from Kent County and (3) three from Sussex County to be appointed by the Secretary of the Department of Agriculture.

C. The Performance Review Committee shall meet as often as is necessary at times and in locations specified by the Chairperson. The Performance Review Committee shall issue recommendations to the Department of Agriculture as often as the Chairperson deems necessary, but no less often than annually.

D. Subject to and in accordance with Robert's Rules of Order, a quorum shall consist of 51% of the Performance Review Committee's membership and actions by the Committee may only be taken by majority vote of those members present. The members shall receive no compensation for their services.”.

Approved June 29, 2006



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