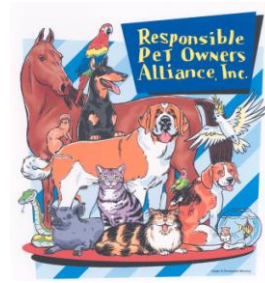


February 18, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing & Regulation
PO Box 12157
Austin, Texas 78711



Re: COMMENTS, Proposed Rules, Chapter 91, DOG OR CAT BREEDERS PROGRAM

Gentlemen:

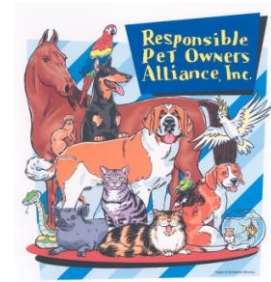
Our membership includes a diverse group of animal “owners,” not only pet breeders. Some of our home based breeders have devoted 40 years developing their bloodlines for many activities besides dog or cat shows. The human/animal bond with our pets *and* “working” dog breeds is legend, dating back to pioneer days. Animals have served their masters in many ways but now there are those who want to end all our interaction with animals. Pet ownership is under a vicious public relations attack from extreme “animal rights” organizations that strive to end all dog and cat breeding and subsequent pet sales through legislation and regulations. Brief major points are listed below with more extensive Public Comments to follow:

- **No Economic Impact Report** on the **state** and on **breeders** themselves **has been prepared.**
- **With estimates of \$35,000 - \$50,000 for new facilities** to comply with new regulations, smaller breeding facilities plan to cease operations.
- **Pet ownership** is a major income generator for many businesses in Texas.
- **This is not a “breeder” issue.** It is a “pet” issue.
- **Conflict of TDLR interest: Della Lindquist, TDLR Assistant General Counsel,** is a very active Austin “Animal Rights” Activist with “**Emancipet,**” an Austin nonprofit organization whose website clearly states that they are seeking comments to TDLR which are identical to HSUS and Texas Humane Legislative Network demands (“Animal Rights” organizations).
- **Breeder definition threshold** is too low -- deliberately to eliminate home based breeders.
- **Word “commercial” breeders is not found anywhere in the Anti-Breeder Bill HB 1451.**
- **One Strike and breeders are out! No appeals, no Review Process, no Complaint Process for Inspectors.** Demonstrates what we are telling you about eliminating breeders.
- **All Fees are astronomical** as TDLR administration of HB 1451 is required to be self funding.
- **With Annual Budget of \$565,000 divided by 150 Licensed Breeders? \$3.766.00!**
- **Vagueness of many sections** allows TDLR inspectors too much discretion.
- **Regulations must work for all sizes** of dogs and cats, dog breeds are from 2 lbs to 150 lbs.
- **Rewards for “Snitches” should require that complainants pay all TDLR costs if proven to be malicious or frivolous.** TDLR will be flooded with anonymous complaints. If breeders have to pay, so should these radical extremists.

Sincerely,
Mary Beth Duerler
Executive Director

February 18, 2012

Melissa Rinard, Legal Assistant
General Counsel's Office
Texas Department of Licensing & Regulation
PO Box 12157
Austin, Texas 78711



Re: COMMENTS, Proposed Rules, Chapter 91, DOG OR CAT BREEDERS PROGRAM

Director William Kuntz statements regarding “grandfathering” the size of the enclosures and the type flooring in dog and cat breeding facilities should be included in Section [§91.23.License Requirements--Dog or Cat Breeder and clarified.](#)

§91.10.Definitions.

Primary importance that everyone is aware that the definitions and all content of HB 1451 were written by “Animal Rights” Activists with an agenda. These extremist radicals have publicly stated they want to “end all breeding and sales of pets.” Responsible Pet Owners has participated in Focus Groups with them for over 20 years and know them well.

(1) Adult animal--An animal six months of age or older.

Statute but: Puppies and kittens are NOT adults at six months of age. One year is closer.

(8) Dog or cat breeder--A person who possesses 11 or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year.

Although this is in Statute, it clearly states that the breeder is breeding 11 or more adult intact female animals and selling 20 or more animals in EACH calendar year. What happens for borderline dog/cat breeders who may barely meet this standard one year and NOT QUALIFY the next year? Once licensed, always licensed? There is no process to have your case reviewed.

(14) Possess--To have custody of or control over.

Many AKC show/hobby breeders co-own dogs in Texas. “Handlers” for Conformation Show dogs have many dogs in their “possession” that they don’t own. What about stud service where the female is boarded for a while? This is a very bad definition.

(15) Primary enclosure--Any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.

Vague definition. Makes “everything” primary.

(17) Third-party inspector--Any of the following entities with which the department contracts under Texas Occupations Code, §802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

TDLR employees should be only Inspectors allowed due to state liability and training issues. Allows TDLR to contract with another Texas Department, not just an individual. Can be any employee of a state agency or the agency itself, any local law enforcement agency itself or even the local Fire Department.

(19) Wire or Wire Mesh--Any metal, alloy or other material which allows a free air flow through the material when used as, or constructed to be used, as flooring or walls or ceilings for any structure required by this chapter. The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating and designed so the animal's paws are unable to extend through, or become caught in, the floor.

We agree with American Kennel Club: “The strands of metal, alloy or other material must be completely encased with a plastic or rubberized coating; and be of an appropriate construction for the species, breed or size of the animal contained therein to best prevent injury, especially to fee.”

§91.21.License Required--Presumptions.

For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

Vague. Difficult to prove a negative! Specifically state what “reasonably acceptable evidence” is acceptable to TDLR to prove a female dog/cat was not bred. Would “no records” suffice? It does not give the breeder clear directions for compliance.

§91.22.License Required--Dog or Cat Breeder.

- (a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state.

Vague. This rule (per statute) is confusing to breeders who may not qualify for licensing under the statute. We agree with American Kennel Club: a person may not present themselves as a “Licensed Breeder” in Texas unless they hold a license under this chapter.

§91.23.License Requirements--Dog or Cat Breeder.

(4) successfully pass a criminal background check for each applicant and controlling person;

Vague: “Successfully” used here does not contain Statute wording in Sec. 802.107 which is very explicit. Same applies to “successfully” in §91.24 (b) below.

§91.24. License Requirements--Dog or Cat Breeders License Renewal.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal--the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a breeder that requires a license under this chapter.

“Can’t perform any functions of a breeder” during this time. Has anyone given this deep thought? Bred females may have their litters and a myriad of actions will have to be taken care of for the health and safety of the breeding stock.

§91.25(b)(2) (4) and (5):

The department may deny issuance to, refuse to renew the license held by a person who (2) has had a similar license issued by a federal, state or local authority denied, revoked or suspended; ... (4) has failed to meet a standard adopted by rule under this chapter; or failed to comply with any corrective action required under an inspection report in the time provided by the report.

ONE STRIKE AND YOU’RE OUT! License to be revoked for failure to meet one standard “OR” has failed to comply with any corrective action required under inspection report in time provided. Shouldn’t this be changed to say “AND” instead of “OR?”
Isn’t the purpose to “keep” breeders licensed for the Fees?

§91.28. Department Notifications to Licensee or Registrant.

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or registrant.

Sending an email is definitely not satisfactory and it must be sent by registered mail.

§91.30. Exemptions.

(a) This section applies only to a dog bred with the intent that it be used primarily for:

- (1) herding livestock, as defined by §1.003, Agriculture Code, or other agricultural uses;
- (2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or
- (3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by subsection (a).

(c) Notwithstanding subsection (b), a person described by subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by §91.10(8).

(e) For purposes of this section a dog is presumed to count under §91.10(8) unless a person submits evidence acceptable to the department demonstrating the dog meets an exemption described in subsection (a), including but not limited to:

- (1) evidence of agriculture activity or business operations using a dog described by this section;

(2) entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events.

(f) All evidence submitted under this section must uniquely and conclusively identify and relate to the specific dog or dogs for which an exemption is requested.

(d) (e) and (f): This is unenforceable and was defeated in a California state law proposal by state working dog organizations for that very reason. The animal owner has to “prove” EVERY YEAR when purchasing license renewal that the law doesn’t apply to them: requires entry registration forms or receipts issued by an entity sponsoring, conducting or organizing competitive events. It is impossible to document all these exemptions because some activities have NO organized performance events! What about a year the specific dog does not participate for some reason – not in condition, has litter, minor injuries? Best to clarify that “dog” here refers to Intact Female, if that is the intent. Not just a “dog.” Exemptions aren’t necessary for male dogs here, or are they?

§91.40. Inspector Registration Requirements.

(a) An applicant seeking an inspector registration must:

(1) be a state agency, local law enforcement agency, fire department; or

(2) be an employee of an agency or department identified in subsection (a)(1);

(c)(3) An applicant seeking an inspector registration ... must ... (3) successfully pass a criminal background check.

No criteria to “successfully pass the criminal background check.”

§91.52. Inspections--Periodic.

(c)(d)(e)(f)(h)(i)(k) “(c) if necessary...the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder...before arriving at the facility...”

What are the guidelines for “appropriate not to provide advance notice to licensed breeder? Entering our private homes for any reason without permission or a Search Warrant is not permissible.

“(e) The inspector may request that relevant documents or records be provided for inspection.”

Relevant documents should be listed specifically by examples. Too broad. You cannot violate individual privacy rights under the Constitution.

(h) The licensee, manager, or representative must, upon request, make available to the inspector all records and other documents required by this chapter.

Relevant documents should be listed by examples. Too broad.

(k) The department may assess administrative penalties and/or administrative sanctions for violations disclosed during inspections under this chapter.

This authorization for administrative penalties or sanctions for violations disclosed during inspections is not granted in Statute and if it is to be included should include set penalties or it reverts to \$5,000 per day. Occupations Code sec. 51.302 Amount of Penalty. Sets the

administrative penalty at \$5,000 per day with no limit on days if the amount of penalty is not otherwise stated else where in the regulations.

<http://www.bing.com/search?q=texas+administrative+code+penalty+%245%2C000&qs=n&form=QBRE&pq=texas%2520administrative%2520code%2520penalty%2520%25245%252C000&sc=0-0&sp=-1&sk=>

This is in addition to refusing a license renewal, etc.

§91.55. Responsibilities of the Department--Directory.

(a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

(b) The department shall make the directory available to the public.

Will lead to harassment and possible vandalism from animal rights activists

§91.59. Responsibilities of the Department--Reporting Violations; Eligibility of Applicant.

(a) The department shall establish an online complaint reporting system for reporting violations of this chapter, including unlicensed activity by persons required to obtain a license under this chapter.

There should be an appeal or review process for a breeder before being placed on the list and to for them to be removed from the list at a later time.

There should be an online complaint reporting system for reporting inspectors and their findings.

(b) The online reporting system shall provide an option designed to protect from disclosure the identity of persons electing to provide information anonymously.

Any complaints that are investigated and proven to be frivolous or malicious should require the complainant to pay all TDLR costs of investigation. TDLR will receive countless such reports due to radical "animal rights" extremists who want to stop all dog and cat breeding. Or even from other breeders who want to put each other out of business.

(c) A person shall be eligible to receive a reward if information submitted online or in writing to the department leads to the issuance of a final order by the commission finding unlicensed activity under this chapter.

(d) A person providing information under this section may be identified either by name, address and telephone number or may request an anonymous code number which shall be used in lieu of person's name in all subsequent transactions.

(e) Information provided by a person under this section shall be independently verified and substantiated by department inspectors or investigators.

All complaints that have been investigated and proven to be frivolous or malicious should require the complainant to pay all TDLR costs of investigation. There will be many such claims for harassment. TDLR will receive countless such reports due to radical "animal rights" extremists who want to stop all dog and cat breeding.

§91.66. Responsibilities of Inspectors--Inspections, Investigations, and Reports of Animal Cruelty.

(a) An inspector or investigation must conduct inspections during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(b) If an inspector determines it is not appropriate to provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility, the inspection report must describe the reasons supporting the determination.

There is too much left to the discretion of the inspector regarding “given a reasonable opportunity to be present during the inspection.”

(c) In conducting an inspection or investigation under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. This subsection does not apply to the investigation of unlicensed activity.

Major point of contention: Inspectors may not access private residences of a licensed breeder for any reason without breeder’s permission.

§91.72. Responsibilities of Licensee--Display of Breeders License.

A licensed breeder shall prominently display at the breeder's facility, in an area readily accessible to the public, a copy of the department issued breeders license.

There is nowhere in private homes to hang this license and there are no “hours” that private homes are open to the public. These USDA regulations are written originally for animal research facilities, then commercial breeding facilities were added later. Now HSUS says they want ALL breeders licensed under the Animal Welfare Act.

§91.80. Fees.

All of these fees are astronomical and deliberately designed to close down all dog and cat breeders in Texas. Responsible Pet Owners Alliance has heard from breeders who are leaving the state or reducing numbers of Intact Female Dogs and/or Cats to under 11 Intact Females. Others are shutting down their breeding operations completely. You’ll be lucky to get over 150 Licensed Breeders total. With a \$565,000 Annual Budget, divide that by 150 Breeders and what do you get per breeder? \$3,766.66 Annual Breeders License! Statute requires that TDLR set fees to cover all expenses! These fee amounts are so preposterous they truly don’t merit comment.

(a) Application Fees.

(1) Dog or Cat Breeder License (11-25 Intact Female Animals):

(A) Prelicense Inspection Fee--\$175 per facility.

(B) Original Application--\$475.

(C) Renewal--\$475.

(D) Periodic and Out-of-Cycle Inspections--\$175.

(E) Duplicate License--\$25.

(2) Dog or Cat Breeder License (26-60 Intact Female Animals):

(A) Prelicense Inspection Fee--\$350 per facility.

(B) Original Application--\$950.

(C) Renewal--\$950.

Add them all up: Pre-inspection Fee, Re-Inspection Fee (if fails), Annual License Fee, “Department Related Expenses,” and what do you get?

(D) Periodic and Out-of-Cycle Inspections--\$350.

(E) Duplicate License--\$25.

(3) Dog or Cat Breeder License (61 or more Intact Female Animals):

(A) Prelicense Inspection Fee--\$700 per facility.

(B) Original Application--\$1,900.

(C) Renewal--\$1,900.

(D) Periodic and Out-of-Cycle Inspections--\$700.

(E) Duplicate License \$25.

(b) Revised/Duplicate License/Certificate/Permit/Registration--\$25.

(c) Late renewal fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

§91.92. License Revocation and Suspension.

(b) The department may revoke or suspend a license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

(4) ONE STRIKE AND YOU'RE OUT! License to be revoked for failure to meet one standard “OR” has failed to comply with any corrective action required under inspection report in time provided. Shouldn't this be changed to say “AND” instead of “OR?”

§91.100. Standards of Care--Housing Generally.

(c) Surfaces.

(1) General requirements. The surfaces of housing facilities--including houses, dens, and other furniture-type fixtures and objects within the facility--must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(f) Drainage and waste disposal. Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and

animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry.

(g) Washrooms and sinks. Washing facilities such as washrooms, basins, sinks, or showers must be provided for animal caretakers and must be readily accessible.

In private homes, once again. Are the showers, basins and washrooms in private homes acceptable? Is an elaborate drainage system a basic requirement for small kennels? Or are these rules not written for small kennels in the first place?

WE'D LIKE TO ADDRESS ALL THESE STANDARDS OF CARE AS BEING SO FAR OVER THE TOP FOR HOME BASED DOG AND CAT BREEDING, THAT TO ADDRESS THEM LINE BY LINE OR EVEN UNDERSTAND THEM IS MINDBOGGLING !

(d) BELOW: REQUIRES ALL FLOORS, WALLS AND CEILINGS TO BE IMPERVIOUS TO MOISTURE IF THEY COME IN CONTACT WITH THE ANIMALS (PER USDA). THIS ONE PROVISION ALONE OUTLAWS HOME BASED FOR MOST DOG AND CAT BREEDERS.

NO ANIMALS IN THE HOUSE unless it's built like a commercial kennel!

§91.101. Standards of Care--Indoor Housing Facilities.

(a) Heating, cooling, and temperature. Indoor housing facilities for dogs and cats must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature or humidity extremes and to provide for their health and well-being. When dogs or cats are present, using best efforts, the ambient temperature in the facility must not fall below 50° F (10° C) for dogs and cats not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress or discomfort (such as short-haired breeds), and for sick, aged, young, or infirm dogs and cats, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below 50° F (10° C). Using best efforts, the ambient temperature must not fall below 45° F (7.2° C) for more than 4 consecutive hours when dogs or cats are present, and must not rise above 85° F (29.5° C) for more than 4 consecutive hours when dogs or cats are present. The preceding requirements are in addition to, not in place of, all other requirements pertaining to climatic conditions.

(b) Ventilation. Indoor housing facilities for dogs and cats must be sufficiently ventilated at all times when dogs or cats are present to provide for their health and well-being, and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation must be provided by windows, vents, fans, or air conditioning. Auxiliary ventilation, such as fans, blowers, or air conditioning must be provided when using best efforts, the ambient temperature is 85° F (29.5° C) or higher. The relative humidity must be maintained at a level that ensures the health and well-being of the dogs or cats housed therein, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices, as documented in the medical records maintained for each animal.

(c) Lighting. Indoor housing facilities for dogs and cats must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the dogs and cats. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed so as to protect the dogs and cats from excessive light.

(d) Interior surfaces. The floors and walls of indoor housing facilities, and any other surfaces in contact with the animals, must be impervious to moisture. The ceilings of indoor housing facilities must be impervious to moisture or be replaceable (e.g., a suspended ceiling with replaceable panels).

(3) Additional requirements for dogs

(A) Space ---Facilities Licensed on or before September 2, 2012

(B) Space – Facilities Licensed after September 1, 2012

§91.106.Standards of Care--Exercise for Dogs.

(a) A licensee must develop, document, and follow an appropriate plan to provide dogs with the opportunity for daily exercise. In addition, the plan must be approved by the attending veterinarian and documented by the attending veterinarian in the medical related to each dog. The plan must include written standard procedures to be followed in providing the opportunity for exercise.

§91.107.Standards of Care--Feeding.

§91.108.Standards of Care--Watering.

§91.109.Standards of Care--Cleaning, Sanitization, Housekeeping, and Pest Control.

§91.111.Standards of Care--Grooming.

§91.112.Standards of Care--Veterinary Care.

(a) Annual hands on examination. A licensed breeder shall have each animal used for breeding examined by a veterinarian at least once in every twelve month period and provide the animal with any treatment recommended by the veterinarian. The annual examination required by this section must be hands on by the veterinarian and documented by the attending veterinarian in the medical records related to each animal.

(d) Breeding cycles. A licensed breeder shall provide breeding females adequate rest between breeding cycles as recommended by the attending veterinarian based on the breed, age, and health of the individual breeding female and documented by the attending veterinarian in the medical records related to each animal.

§91.113. Standards of Care--Sales and Transfers.

A licensed breeder shall not sell, trade, or give away an animal before the animal is at least eight weeks of age **and two pounds or twelve weeks of age** and has been weaned.

This should be deleted: “two pounds or twelve weeks of age” as many toy dog breeds and kittens are ready to go and is TDLR going to be there to check the scales on each puppy/kitten sale?

§91.200. Transportation Standards--Food and Water Requirements.

§91.201. Transportation Standards--Mobile or Traveling Facilities.

Heating, cooling, and temperature. Not below 45 degrees for more than four hours.

Nor more than 85 degrees F for more than four hours.

Ventilation

Lighting

§91.202. Transportation Standards--Primary Enclosure Used to Transport Live Dogs and Cats.

We agree with American Kennel Club Comments regarding:

Section 91.104 Standards of Care –Primary Enclosure;

Section 91.112 Standards of Care – Veterinary Care;

Section 91.113 Standards of Care Sales and Transfers;

Section 91.202 Transportation Standards;

These are all “unclear and should be either edited or deleted.”