

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 852

An Act to amend and reenact §§ 3.1-796.66, 3.1-796.104, and 58.1-3109 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.1-796.71:1, by adding in Chapter 27.4 of Title 3.1 an article numbered 2.1, consisting of sections numbered 3.1-796.77:1 through 3.1-796.77:6, and by adding a section numbered 3.1-796.122:1, relating to the breeding of companion animals; penalty.

[H 538]

Approved April 23, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-796.66, 3.1-796.104, and 58.1-3109 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.1-796.71:1, by adding in Chapter 27.4 of Title 3.1 an article numbered 2.1, consisting of sections numbered 3.1-796.77:1 through 3.1-796.77:6, and by adding a section numbered 3.1-796.122:1 as follows:

§ 3.1-796.66. Definitions.

The following words as used in this chapter shall have the following meanings:

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.1-796.68 for a period of five consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

"Adequate space" means sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at least once every 12 hours, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are

accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.1-796.98, animal means any species susceptible to rabies. For the purposes of § 3.1-796.122, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § 3.1-796.104.

"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Board" means the Board of Agriculture and Consumer Services.

"Boarding establishment" means a place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barter companion animals. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier, or (ii) any person or organization whose primary purpose is to find permanent adoptive homes for companion animals.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Dump" means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent that causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the United States Department of Agriculture.

"Facility" means a building, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

"Foster care provider" means an individual who provides care or rehabilitation for companion animals through an affiliation with a pound, animal shelter, or other releasing agency.

"Foster home" means a private residential dwelling and its surrounding grounds at which site through an affiliation with a pound, animal shelter, or other releasing agency care or rehabilitation is provided for companion animals.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Home-based rescue" means any person or organization that accepts (i) more than 12 companion animals or (ii) more than nine companion animals and more than three unweaned litters of companion animals in a calendar year for the purpose of finding permanent adoptive homes for the companion animals and houses the companion animals in a private residential dwelling or uses a system of housing

companion animals in private residential foster homes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.1-796.106.

"Humane society" means any incorporated, nonprofit organization that is organized for the purposes of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; caprae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.1-73.6; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"Local ordinance" means any law, rule, regulation, or ordinance promulgated by the governing body of any county, city, or town.

"Locality" or "local government" means a county, city, or town, as the context may require.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 3.1-796.126:1, and who adopts or receives a dog or cat from a releasing agency.

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any municipality, county, or incorporated town thereof, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who: (i) has a right of property in an animal, (ii) keeps or harbors an animal, (iii) has an animal in his care, or (iv) acts as a custodian of an animal.

"Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

"Pet shop" means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Pound" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any county, city, town, or incorporated society for the prevention of cruelty to animals.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Properly cleaned" means that carcasses, debris, food waste and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" when referring to a facility means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the facility; and to promote the well-being of the animals. "Properly lighted" when referring to a private residential dwelling and its surrounding grounds means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to promote the well-being of the animals.

"Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that releases companion animals for adoption.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

"State Veterinarian" means the veterinarian employed by the Commissioner of Agriculture and Consumer Services as provided in § 3.1-723.

"State Veterinarian's representative" means an employee of the Department of Agriculture and Consumer Services who is under the direction of the State Veterinarian.

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species, and has ingested such food, without nursing, for a period of at least five days.

§ 3.1-796.71:1. Pet shops; procurement from unlicensed commercial dog breeders; penalty.

A. It is unlawful for a pet shop to sell or offer for sale any dog procured from a person who is not a dealer or licensed by the U.S. Department of Agriculture pursuant to the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder.

B. It shall be unlawful for any commercial dog breeder who is not licensed by the U.S. Department of Agriculture pursuant to the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder to sell any dog to a pet shop, unless such commercial dog breeder maintains a valid and current USDA dealer's permit.

C. Any person violating any provision of this section is guilty of a Class 1 misdemeanor.

Article 2.1.

Commercial Dog Breeding Operations.

§ 3.1-796.77:1. Business license required.

No commercial dog breeder shall breed dogs in the Commonwealth without a valid business license issued by any locality, as applicable, where he maintains dogs for the purpose of commercial dog breeding.

§ 3.1-796.77:2. Commercial dog breeding; requirements.

Commercial dog breeders shall:

1. Maintain no more than 50 dogs over the age of one year at any time for breeding purposes. However, a higher number of dogs may be allowed if approved by local ordinance after a public hearing. Any such ordinance may include additional requirements for commercial breeding operations;

2. Breed female dogs only: (i) after annual certification by a licensed veterinarian that the dog is in suitable health for breeding; (ii) after the dog has reached the age of 18 months; and (iii) if the dog has not yet reached the age of 8 years;

3. Dispose of dogs only by gift, sale, transfer, barter, or euthanasia by a licensed veterinarian;

4. Dispose of deceased dogs in accordance with § 3.1-796.121;

5. Dispose of dog waste in accordance with state and federal laws and regulations; and

6. Maintain accurate records for at least five years including:

a. The date on which a dog enters the operation;

b. The person from whom the animal was purchased or obtained, including the address and phone number of such person;

c. A description of the animal, including the species, color, breed, sex, and approximate age and weight;

d. Any tattoo, microchip number, or other identification number carried by or appearing on the animal;

e. Each date that puppies were born to such animal and the number of puppies;

f. All medical care and vaccinations provided to the animal, including certifications required by a licensed veterinarian under this chapter; and

g. The disposition of each animal and the date.

§ 3.1-796.77:3. Right of entry.

A. The Commissioner, the State Veterinarian or his assistant, any animal control officer, and any public health or safety official employed by the locality where a commercial dog breeder resides or maintains breeding operations may, upon receiving a complaint or upon his own motion, investigate any violation of the provisions of this chapter. Such investigation may include (i) the inspection of the books and records of any commercial dog breeder, (ii) the inspection of any companion animal owned by the commercial dog breeder, and (iii) the inspection of any place where animals are bred or maintained. In conducting the inspection, the Commissioner or animal control officer may enter any premises where animals may be bred or maintained during daytime hours.

B. Any commercial dog breeder who is the subject of an investigation by the Commissioner, the State Veterinarian, or an animal control officer shall, upon request, provide assistance to the Commissioner, the State Veterinarian, or the animal control officer in making any inspection authorized by this section.

§ 3.1-796.77:4. Concurrent operation of releasing agency prohibited.

It is unlawful for a commercial dog breeder to operate or maintain a controlling interest in any releasing agency.

§ 3.1-796.77:5. Penalty.

Any commercial dog breeder violating any provision of this article is guilty of a Class 1 misdemeanor.

§ 3.1-796.77:6. Duty of attorneys for the Commonwealth.

It shall be the duty of each attorney for the Commonwealth to enforce this chapter.

§ 3.1-796.104. Position of animal control officer created.

The governing body of each county or city shall, or each town may, appoint an officer to be known as the animal control officer who shall have the power to enforce this chapter, all ordinances enacted pursuant to this chapter and all laws for the protection of domestic animals. The governing body may also appoint one or more deputy animal control officers to assist the animal control officer in the performance of his duties. Animal control officers and deputy animal control officers shall have a knowledge of the animal control and protection laws of Virginia which they are required to enforce. When in uniform or upon displaying a badge or other credentials of office, animal control officers and deputy animal control officers shall have the power to issue a summons or obtain a felony warrant as necessary, providing the execution of such warrant shall be carried out by any law-enforcement officer as defined in § 9.1-101, to any person found in the act of violating any such law or any ordinance enacted pursuant to such law of the locality in which the animal control officer or deputy animal control officer is appointed. *Commercial dog breeding locations shall be subject to inspection by animal control at least twice annually and additionally upon receipt of a complaint or their own motion to ensure compliance with state animal care laws and regulations.* The animal control officer and the deputy animal control officers shall be paid as the governing body of each locality shall prescribe.

Any locality in which an animal control officer or deputy animal control officers have been appointed may contract with one or more additional localities for enforcement of animal protection and control laws by the animal control officers or deputy animal control officers. Any such contract may provide that the locality employing the animal control officer or deputy animal control officers shall be reimbursed a portion of the salary and expenses of the animal control officer or deputy animal control officers.

Every locality employing an animal control officer shall submit to the State Veterinarian, on a form provided by him, information concerning the employment and training status of the animal control officers employed by the locality. The State Veterinarian may require that the locality notify him of any change in such information.

§ 3.1-796.122:1. Sale of animals after cruelty or neglect conviction; penalty.

Any person who has been convicted of a violation of any law concerning abuse, neglect, or cruelty to animals that sells, offers for sale, or trades any companion animal is guilty of a Class 1 misdemeanor. However, a person may dispose of animals under the provisions of a court order.

§ 58.1-3109. Duties of commissioners as to personal property, income and licenses.

Each commissioner of the revenue shall:

1. Review the lists of all persons licensed by the commissioner of the revenue and assess, for the current license year, additional license taxes for any person who has reported less than the law requires;

2. Upon investigation, assess the proper license taxes for any person who has without a license conducted any business for which a license is required;

3. Review, in regard to intangible personal property and income, such returns of taxpayers as may be referred to him by the Department of Taxation and report to the Department, for assessment, any additional intangible personal property and income when his review or investigation discloses that such property or income has not been reported for taxation or has been reported for taxation at less than the law requires;

4. Examine causes pending in the courts of his county or city and the records thereof and ascertain and assess all property and income subject to assessment by his office;

5. Require every taxpayer who may not have properly returned to the commissioner of the revenue all of his tangible and intangible personal property, and licenses for the current tax year and the three preceding tax years to make the proper and complete return;

6. Require taxpayers or their agents or any person, firm or officer of a company or corporation to furnish information relating to tangible or intangible personal property, income or license taxes of any and all taxpayers; and require such persons to furnish access to books of account or other papers and records for the purpose of verifying the tax returns of such taxpayers and procuring the information necessary to make a complete assessment of any taxpayer's tangible and intangible personal property, and license taxes for the current tax year and the three preceding tax years;

7. Make such reports to the Department of Taxation as may be required by law or as the rules and regulations adopted by the Tax Commissioner may require; ~~and~~

8. Upon written request of any town treasurer or director of finance or other officer who performs the duties of a treasurer and whose locality is located within such commissioner's jurisdiction, provide the name, address and social security number of any taxpayer who has filed a personal property tax return with such commissioner of the revenue, as long as such town treasurer or director of finance or other officer who performs the duties of a treasurer shall certify that such information is sought in the performance of official duties. Any town official to whom information is furnished pursuant to this provision shall be bound by the provisions and penalties of § 58.1-3; *and*

9. *Notify the animal control officer of the presence of any commercial dog breeder, as defined in § 3.1-796.66, operating within the locality.*

2. That the provisions of this act shall become effective on January 1, 2009.