State of Nebraska
Office of Public Counsel/Ombudsman

PO Box 94604, State Capitol
Lincoln, Nebraska 68509
(402) 471-2035
Toll free - 800-742-7690
Fax (402) 471-4277
ombud@leg.ne.gov

REPORT OF INVESTIGATION

NEBRASKA DEPARTMENT OF AGRICULTURE'S

COMMERCIAL DOG AND CAT OPERATOR INSPECTION PROGRAM

October 8, 2020

Investigated by:

Carl Eskridge
Deputy State Ombudsman

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EXECUTIVE SUMMARY

An employee of the Nebraska Department of Agriculture (Dept of Ag), Commercial Dog & Cat Inspection Program, filed a complaint with the Nebraska Office of Public Counsel alleging the Dept of Ag has repeatedly failed to adequately enforce administrative sanctions after wrongdoing by commercial dog and cat operators as well as failing to refer animal abuse and neglect for criminal prosecution. The complaint to the Office of Public Counsel was made under the State Government Effectiveness (Whistleblower) Act.

Whether enforcing the Dog & Cat Inspection Act through the use of administrative hearings or by reporting allegations of dog or cat abuse to officials for criminal prosecution, the Dept of Ag serves an important enforcement role, making certain that those who abuse and neglect animals are held accountable for their actions. The duty of the Commercial Dog & Cat Inspection Program is to enforce the provisions of the Dog & Cat Inspection Act. In that regard, the program is responsible for holding operators accountable for following such Act, ensuring that dogs and cats are being treated humanely.

The allegations of wrongdoing that were identified for investigation by the Ombudsman's Office were analyzed and the following was found:

- The Dept of Ag did not fulfill its full responsibility under the Dog & Cat Inspection Act to provide administrative oversight and accountability of operators, or non-operators, who have been inspected and/or reported to be in violation of such Act by fully utilizing the methods available to them to hold bad actors accountable administratively.

- The Dept of Ag did not fulfill its responsibility under the Dog & Cat Inspection Act to, in every instance, refer complaints of abuse and neglect by commercial dog and cat operators to county authorities for possible criminal prosecution. (Neb. Rev. Stat. §54-629).

Overall, there were several instances found where there was failure to adequately act on wrongdoing under the Dog & Cat Inspection Act. The Dept of Ag operates like it is uniquely the responsibility of law enforcement and/or the courts to hold violators accountable and not the Dept of Ag. Though law enforcement and the courts play a very important role under the Dog & Cat Inspection Act, any practice or protocol to almost solely rely on the courts as the way to deal with violations under the Dog & Cat Inspection Act is flawed. Indeed, the Dog & Cat Inspection Act gives the Dept of Ag options to hold bad actors responsible through administrative means which may be more flexible, faster, and have lower burdens of evidence than are required in criminal actions.

The Office of Public Counsel is concerned about the Dept of Ag's lack of zealously enforcing the provisions of the Dog & Cat Inspection Act, and offers several recommendations to enhance

the performance of the Dept of Ag's duties in the operation of the Commercial Dog & Cat Inspection Program:

1. Give special attention to the issues related to non-licensed facilities and contemplate ways to get them licensed.
2. Review, analyze, and fully utilize the administrative processes at the Dept of Ag's disposal in overseeing and holding accountable operations that are or should be licensed. This should include clearly establishing the appropriate circumstances compliance conferences should be utilized and the appropriate burden of proof needed to more readily pursue the use of administrative hearings.
3. Develop requirements for subsequent inspections after compliance conferences and stop-movement orders, to verify that the agreed upon changes and requirements have been made and animals are receiving human care and treatment.
4. Develop an effective strategy in working with local law enforcement and county attorneys in cases of suspected animal abuse, neglect, and abandonment.
5. Improve integration of the commercial Dog & Cat Inspection Program within the Dept of Ag, or, in the alternative, identify a different agency in state government where the program could be better managed.
6. Strengthen coordination with federal officials and representatives from comparable programs in neighboring states to establish best practices in commercial dog and cat operator licensing and accountability.
7. Utilize the passion and expertise of current providers, organizations and individuals by establishing an advisory group to the Dept of Ag for positive changes in the prevention of cruel and inhumane treatment of animals and the better operation of the Commercial Dog & Cat Inspection Program.
8. Review the intent of the Commercial Dog & Cat Inspection Program in light of the emerging trends towards more in-home service providers.
9. Contract with an outside entity to review the operations of the Commercial Dog & Cat Inspection Program, making specific recommendations for needed improvements and publicly report the results of the external review.

In addition, upon review of this report and the subsequent response of the Dept of Ag, the Office of Public Counsel suggests that the Agriculture Committee of Nebraska Legislature with the Legislative Performance Audit Committee, consider a performance audit of the Commercial Dog & Cat Inspection Program.

INTRODUCTION

The Nebraska Office of Public Counsel/Ombudsman conducted an investigation of the Department of Agriculture (Dept of Ag) Commercial Dog & Cat Inspection Program, in accordance with the Nebraska State Government Effectiveness Act (Neb. Rev. Stat. §§81-2701 through 81-2710).

It is our standard investigative practice to interview complainants and employees, review related records and documents, and analyze the allegations in light of whether they rise to a level of government not operating according to law, and without fraud, waste, or mismanagement.

This report is the culmination of the investigation into the allegations of a whistleblower.

Whistleblower Allegations

The whistleblower, who has authorized the Ombudsman's Office to disclose his identity as part of this investigation, is Mr. Rick Herchenbach.[1] Mr. Herchenbach began his employment with the Nebraska Department of Agriculture (Dept of Ag) as an Animal Inspector in 1981 and has served as a Program Specialist in the Dept of Ag's Commercial Dog and Cat Operator Inspection Program since 2003. His current assignment is to conduct investigations, including inspections, as the Program Specialist in southeastern Nebraska. Mr. Herchenbach asserted that the Dept of Ag's administration has consistently failed to enforce the provisions of the Commercial Dog and Cat Operator Inspection Act (Dog & Cat Inspection Act) (Neb. Rev. Stat. §§54-625 to 54-643).

Program Specialist Herchenbach's allegations were initially raised in a March meeting with the Ombudsman's Office on March 14, 2019. At that time Mr. Herchenbach indicated that he had prior contact with members of the Nebraska Legislature who referred him to the Ombudsman's Office. For over one year Mr. Herchenbach regularly met with Deputy Ombudsman Carl Eskridge and other staff of the Ombudsman's Office regarding his concerns about the management of the program where he has worked since 2003. Mr. Herchenbach's initial discussions with the Ombudsman's Office suggested a long-standing pattern, as well as recent specific instances, of the Dept of Ag's failure to enforce the provisions of the Dog & Cat Inspection Act.

The allegations of wrongdoing that were identified for investigation included complaints in two primary areas.

1. Whether the Dept of Ag has fulfilled its responsibility under the Dog & Cat Inspection Act to provide administrative oversight and accountability of operators, or non-operators, who have been inspected and/or reported to be in violation of such Act by utilizing the methods available to them including, but not limited to, compliance conferences, hearings, and stop-movement orders.

2. Whether the Dept of Ag has fulfilled its responsibility under the Dog & Cat Inspection Act to refer complaints of abuse and neglect by commercial dog and cat operators to county authorities for possible criminal prosecution. (Neb. Rev. Stat. §54-629). Under 23 NAC 18-006.06 the Department is required to refer complaints involving cruelly neglected or cruelly mistreated dogs and cats to law enforcement on the day the complaint is received. By statute, "cruelly neglect means to fail to provide any animal in one's care, whether an owner or a custodian, with food, water, or other care as is reasonably necessary for the animal's health." (Neb. Rev. Stat. §28-1008(4)). Similarly, "cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal." (Neb. Rev. Stat. §28-1008(3)).

<u>"Wrongdoing" under the Whistleblower Act</u>

The first step in this analysis is to determine whether the allegations qualify as "wrongdoing" under the meaning of the Whistleblower Act. Determining wrongdoing is essential to the application of the Whistleblower Act, since it only provides protection to a whistleblower who reports information that the employee/whistleblower "reasonably believes evidences wrongdoing." (Neb. Rev. Stat. §81-2705(1)). For purposes of the Whistleblower Act, "wrongdoing" is defined to include "any action by an agency which is

(a) a violation of any law,
(b) results in gross mismanagement of gross waste of funds, or
(c) creates a substantial and specific danger to public health or safety."
(Neb. Rev. Stat. §81-2703(5)).

After evaluating the concerns of Mr. Herchenbach, it was determined that these allegations could involve all three areas. Failure to routinely enforce the provisions of the Dog & Cat Inspection Act for a period of twenty years may be considered as a "violation of law," as "gross mismanagement," and certainly presents a "substantial and specific danger to public health or safety."

BACKGROUND

Commercial Dog & Cat Operator Inspection Act

In 2000, the Nebraska Legislature created the Commercial Dog and Cat Operator Inspection program with its approval of Legislative Bill 825. Lincoln Senator Marian Price, the legislation's principal introducer, brought the bill in 1999 in response to the public's vocal concerns about the reported cruel and unhealthy practices of some breeders and other facilities for cats and dogs within the State of Nebraska. While an earlier legislative effort to address these issues was attempted in 1993 via LB 147, introduced by Ewing Senator Merton "Cap" Dierks; throughout the decade of the 1990's the issue of "puppy mills" was a hot topic. During that time Nebraska had been identified as one of seven problematic dog-breeding states and was actively targeted by animal rights organizations which organized a campaign urging consumers to boycott purchasing dogs from commercial facilities in Nebraska and the other six states.

Prior to the 2000 Nebraska legislation, the neighboring states of Iowa, Kansas, and Missouri, adopted enhanced programs to license and inspect commercial breeding facilities for both dogs and cats. However, in the interim, Nebraska had become the dumping ground for animals of poor health and a haven for puppy mills, causing an unfair marketplace for Nebraska's reputable breeders. In addition to policing bad actors, LB 825 sought to recognize that the majority of Nebraska's breeders are reputable breeders of Nebraska's pets, protecting them from the economic impact of those whose animals are experiencing poor health and are kept in inhumane conditions.[2]

On March 2, 1999, 19 persons from across Nebraska testified before the Agriculture Committee's lengthy hearing on LB 825. Those testifying in support of the legislation included representatives of humane societies in Omaha, Lincoln and other parts of the state, veterinarians, local animal control departments, rescues, kennels, and others who advocated for improving the conditions of dogs and cats in Nebraska. Among the proponents was Carol Wheeler of Auburn, NE, who in 1990 founded Hearts United for Animals, a private, non-profit, no-kill sanctuary and animal welfare organization. In her testimony before the committee Ms. Wheeler indicated that her organization had rescued 93 dogs, many of them from puppy mills. Carol Wheeler's vivid descriptions to the committee of the afflictions of the dogs she received were most telling. She stated that the dogs had "bulging inguinal hernias, tumors, infected anal glands, urinary tract infections, ovarian cysts, brittle reproductive organs, uterine infections, ear mites, itching and painful skin disorders. Their teeth and gums were so infected that their salivary glands had swollen into painful lumps. After dental work is done, many of the dogs had no teeth left." Her description of animals being held in small wooden crates on a hot September afternoon awaiting their sale at a Southeast Nebraska dispersal auction was most troubling. In Ms. Wheeler's eyes, these animals were experiencing their Holocaust. However, this incident apparently was not an isolated occurrence as the problems in Nebraska drew the attention of the Humane Society of the United States that included thirty-five Nebraska dog breeders on the "Horrible Hundred" list of problematic puppy mills nationwide.[3]

The provisions of the bill and the creation of the Dog & Cat Inspection Act received strong legislative support, was co-sponsored by 19 of the 49 senators, passing the final round of debate on April 11, 2000 by a vote of 29 – 0, and signed into law by Governor Mike Johanns on April 12, 2000, becoming effective July 1, 2000, and fully operational on January 1, 2001. In 2003, Rick Herchenbach, at that time an established 22-year animal inspector for the Department of Agriculture, was recruited to the position of lead inspector in the new Commercial Dog and Cat Inspection Program. Subsequently, the Dept of Ag has added two additional inspectors for the program.

Subsequent Amendments to the Dog & Cat Inspection Act

Unfortunately the Legislature's establishment of the Commercial Dog & Cat Inspection Program failed to fully address all of the problems with the treatment of dogs and cats across the State of Nebraska. In 2015, additional concerns were brought forward alleging escalating problems with Nebraska's dog and cat breeders. When newly elected Governor Pete Ricketts re-nominated Greg Ibach as the Director of the Nebraska Department of Agriculture, a position he had held for ten years, vocal animal rights advocates appeared in large numbers at his re-confirmation hearing to protest his reappointment. One of the oft-repeated complaints was the Dept of Ag's unwillingness to effectively work with state and local law enforcement and county attorneys to bring charges against breeders for abuse and neglect of animals. Director Ibach admitted during his re-confirmation hearing that "the Department could do a better job overseeing chronically substandard cat and dog breeders and stated that he spent the last 18 months working to do that by updating existing regulations and working with advocacy groups; including, the Nebraska Humane Society, which is proposing legislation to improve the statutory toolbox available to the three inspectors responsible for overseeing facilities."[4] In December 2017 Governor Ricketts appointed Steve Wellman as the 27th Director of the Nebraska Dept of Ag and Mr. Wellman remains the Director today.

Indeed, in 2015, the Nebraska Legislature adopted LB 360, legislation to enhance the enforcement of the Act, whereby "the director may direct a special investigator employed by the department as authorized pursuant to section 28-1011 and 28-1012 with respect to dogs or cats…to inspect, care for, or impound the dogs or cats pursuant to 28-1011 and 28-1012." (Neb. Rev. Stat. §54-633.01). Presumably this change was to help facilitate the program's enforcement of animal cruelty and neglect cases with state and local officials. The Dept of Ag currently has two special investigators who are required by statute to be deputy state sheriffs; Gary Cline, an Agriculture Investigation Officer, and Program Manager Tom Dozler, who previously served as an Agriculture Investigation Officer.[5] The 2015 legislation also improved the program's funding mechanism.

One of the results of the legislation and the additional oversight has been a substantial reduction in the state's commercial dog and cat breeders. One opponent to the Act, commercial dog breeder Clem Distenhaupt of Stuart, Nebraska, observed "many breeders are getting out and

nobody is getting in." He believed that the increased oversight from the state's program to be a key factor in driving people out.[6] According the Program's most recent Annual Report, there were 138 commercial breeders in Nebraska; whereas, the prior year's report indicated there were 216 commercial breeders, a decrease of 78 operators in one year. It appeared that over one-third of the state's commercial breeders ceased operation in one year.[7] However, it is unclear whether they ceased to exist or they simply became unlicensed but are still operating, which would be contrary to the Dog & Cat Inspection Act.

Surrounding States' Actions

Efforts to address problematic dog and cat breeders are certainly not unique to Nebraska. Indeed the experiences of Nebraska and its neighboring states are often similar and may impact one another as operators relocate to less restrictive states.

In 2018 Kansas Legislative Auditors reviewed its 2002 report of the Kansas Department of Agriculture's oversight of the state's commercial pet animal facilities and found that the problems identified in their report 16 years earlier had not been addressed. Licenses were being issued improperly, inspections were not being conducted in a timely manner, and the Department failed to establish an inspection protocol. In response to the audit, Kansas Secretary of Agriculture Jackie McClaskey indicated that support of the pet industry was a priority. However, Secretary McClaskey failed to appear before the Kansas Legislature's Audit Committee to discuss the report or to defend the actions of the department.[8]

Though the State of Missouri had adopted the Animal Care Facilities Act in 1992, Missouri was also developing a reputation as one of the worst states for problem puppy mills. In its 2000 Audit, the Oversight Division of the Committee on Legislative Research found that in those eight years not a single license had been revoked by the State of Missouri. The Canine Cruelty Prevention Act, known as Proposition B, was approved in a statewide referendum of Missouri voters and became law in April of 2012. The Act provided more regulatory authority, including enhanced options for court actions to address concerns. By the middle of 2013 the Missouri Department of Agriculture referred 37 businesses or individuals to the Missouri Office of the Attorney General for prosecution resulting in fines of over $25,000, the revocation of nine licenses, and the rescue of more than 1300 dogs.[9]

In short, the challenge of regulating commercial breeders is not a phenomenon unique to Nebraska. These programs are typically housed within each state's Department of Agriculture, agencies that are understandably very concerned with the state's top industry; that is, crops and livestock production. Indeed, the 2017 Economic Impact of Nebraska Agriculture report, released on October 1, 2020, indicated that "agriculture accounts for nearly 34% of business sales, 22% of gross state production and nearly a quarter of the state's jobs." As a result, some feel the regulation of commercial dog and cat operations may be viewed by state Departments of Agriculture as a distraction from their primary responsibilities. Nonetheless, in Nebraska and

elsewhere people are passionate about their pets, and any incidents of animal abuse and neglect evoke deep feelings, as if a family member were mistreated.

Additionally, the abuse of animals can also represent important indicators of other problematic behaviors. Therefore, as long as the Commercial Dog & Cat Inspection Program is housed within the Dept of Ag, it is crucial that it provides meaningful oversight of operators and the protection of dogs and cats provided in state law. This historical background is provided to establish a necessary context on the issues discussed within this report.

INVESTIGATION

Preliminary Investigation under the Whistleblower Act

After determining whether a whistleblower's allegation, if true, amounts to wrongdoing, a determination is made about whether to conduct a preliminary investigation and whether reasonable grounds exist to support the employee's allegation (Neb. Rev. Stat. §81-2704). Reasonable grounds did exist in this case, so a preliminary report was drafted.

The Ombudsman's Office conducted its preliminary investigation, reviewed the findings with Mr. Herchenbach, and on August 15, 2019, presented a Preliminary Report to Director Steve Wellman, thereby notifying the Dept of Ag of the results of the initial investigation and of the intent of the Ombudsman to conduct a full investigation of the Dept of Ag's enforcement of the Dog & Cat Inspection Act.[10]

The Preliminary Report provided background information on the general issues presented by Mr. Herchenbach about Dept of Ag's Commercial Dog & Cat Inspection Program, as well as evidence of Mr. Herchenbach's 39-year record of service to the Dept of Ag and of his considerable knowledge and strong dedication to the program where he has served for the last 18 years, nearly half of his tenure with the Dept of Ag. It became clear in discussions with Mr. Herchenbach and others that he was and continues to be deeply committed to his life's work.

The Preliminary Report provided an explanation of the purpose of the Whistleblower Act and the conclusion that Mr. Herchenbach had appropriately sought protection under the Whistleblower Act. The Ombudsman's Office is regularly approached by state employees who inquire about becoming whistleblowers.

The report identified the two main avenues available to the Dept of Ag to address alleged bad actors under the Dog & Cat Inspection Act; namely, through the Dept of Ag's own administrative processes, and through the Dept of Ag's cooperation with law enforcement for criminal prosecution when appropriate, were rarely being utilized in response to complaints about problem operators. Additionally, the preliminary investigation suggested a culture of retaliation against those who brought complaints to the Dept of Ag.

The Preliminary Report reviewed several specific cases involving reported abuse and neglect of dogs, among other issues, and considered the evidence of wrongdoing including the adequacy of the Dept of Ag's response to the allegations involving these commercial dog operations. Based upon the preliminary investigation, the report found there to be reasonable grounds to support the allegations of wrongdoing, and such findings were reported to Director Steve Wellman on August 15, 2019.

Director Wellman acknowledged his receipt of the Preliminary Report and responded the Dept of Ag's full cooperation in the Office of Public Counsel whistleblower investigation, identifying

Chief Administrator Robert Storant as the assigned contact person during the course of the investigation.[11]

Conducting the Full Investigation

This investigation was conducted by Deputy Ombudsman Carl Eskridge in consultation with Ombudsman Julie Rogers and assisted by staff of the Ombudsman's Office. The investigation commenced with an in-person interview of Mr. Herchenbach by Assistant Ombudsman Barb Brunkow on March 14, 2019. In subsequent meetings with Mr. Herchenbach he provided documentation of specific complaints that were made to the Commercial Dog & Cat Inspection Program against operators who complainants alleged were in violation of the Dog & Cat Inspection Act, as well as discussions on the issues involved. In addition to the complaints about the actions of the operators, Mr. Herchenbach voiced complaints about the Dept of Ag's repeated failure to act on such complaints administratively or by referring the complaints for criminal prosecution.

The Ombudsman's Office conducted over 30 interviews with Mr. Herchenbach between March 14, 2019, and October 1, 2020. Additional persons of interest were identified and interviewed by the Ombudsman's Office. Both current and previous staff of the Dept of Ag were contacted; including, Chief Administrator Robert Storant, Department Attorney Vanessa Rohrs, Program Director Tom Dozler, Program Specialist Darcy Wiebelhaus, and Program Specialist Douglas Zarek. The Director of the Dept of Ag, Steve Wellman, was presented the preliminary report, outlining many of these scenarios (See Exhibit 10). Additionally, during the investigation the Ombudsman's Office has received direct complaints from many other individuals about the enforcement of the Dog & Cat Inspection Act provisions and spoke to others with substantial and direct knowledge about complaints made to the Commercial Dog & Cat Inspection Program as well as substantial and direct knowledge of abuse of dogs by commercial operators in the State of Nebraska.

As the Agriculture Committee of the Nebraska Legislature discovered in its 1999 hearing of LB 825, there are a number of people who continue to be deeply passionate about the well-being of dogs and cats within the State of Nebraska and who have no tolerance whatsoever of any abuse and neglect by commercial operators.

INCIDENTS & FINDINGS

Commercial Dog & Cat Operator Inspection Act [12]

According to the Dog & Cat Inspection Act, Neb. Rev. Stat. §54-628.02 provides that whenever operators who have been inspected and/or reported to be in violation of the Dog & Cat Inspection Act, and the director has reason to believe that a person has violated any provision of the Nebraska Commercial Dog and Cat Operator Inspection Act, any rule or regulation promulgated pursuant to the act, or any order of the director,

> "[T]he director may issue a notice of a hearing as provided in section 54-632 requiring the person to appear before the director to
> (1) Show cause why an order should not be entered requiring such person to cease and desist from the violation charged,
> (2) Determine whether an administrative fine should be imposed or levied against the person …, or
> (3) Determine whether the person fails to quality for a license…
> Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions according to law."

In this regard the Nebraska Legislature has entrusted the Dept the Ag with the duty to provide oversight of commercial dog and cat operators via the administrative licensure of commercial facilities, and to take actions against violations of licensure.

Additionally, under the Dog & Cat Inspection Act, the Dept of Ag is charged with the responsibility to receive complaints and to report allegations of abuse to county authorities for criminal prosecution where warranted (Neb. Rev. Stat. §54-629). Furthermore, by regulation the Dept of Ag may refer commercial operators for criminal prosecution in instances where dogs and cats have been cruelly neglected or cruelly mistreated.

Whether enforcing the Dog & Cat Inspection Act through the use of administrative hearings route or by reporting allegations of dog or cat abuse to officials for criminal prosecution, the Dept of Ag serves an important enforcement role, making certain that those who abuse and neglect animals are held accountable for their actions.[13]

This investigation has focused its attention on the Dept of Ag's failure to adequately enforce these provisions of the Dog & Cat Inspection Act by several commercial operations within Program Specialist Herchenbach's geographic area of southeastern Nebraska. The following outlines instances brought to the Ombudsman's Office attention.

1. T[redacted] B[redacted], Waverly, Nebraska

T[redacted] B[redacted], previously located outside of Waverly, NE, was an unlicensed rescue and boarding kennel that was also engaged in breeding dogs and selling puppies until the owners were evicted from the premises on or about December 31, 2019. Although this rescue facility was never licensed, the owners were engaged for over one year in operations requiring licensure with the full knowledge of Commercial Dog & Cat Inspection Program administrators. According to the Dog & Cat Inspection Act, when the director has reason to believe that the operator of such a facility is in violation of the Act, the director can issue a notice of hearing to enforce the provisions of such act. Despite numerous complaints, the Dept of Ag never issued a notice of hearing or conducted a hearing on this rogue operation, though a stop-movement order was issued in April 2019.

Timeline & Description of Events

On January 2, 2019, the Dept of Ag received its first complaint about T[redacted]; whereupon, Program Specialist Rick Herchenbach inspected the premises discovering conditions of concern as well as learning that the operators were not licensed. As this case was the Dept of Ag's first complaint on T[redacted], steps were taken by Mr. Herchenbach to assist the owners in addressing concerns about the conditions at the facility, as well as advising them about how to successfully complete their application for licensure. However, the Administration in charge of the Commercial Dog & Cat Inspection Program advised Mr. Herchenbach that he was not allowed to assist the owners with their licensure. Furthermore, he was instructed that he was not to inspect the operation until the owners resolved their licensure issue. Given that the Dept of Ag's jurisdiction and its administrative oversight of commercial operators occurs through its functioning as the licensing agency, one would reasonably expect administrators to actively encourage staff to facilitate the application process. However, that was not the direction provided to Mr. Herchenbach in what would prove to be an extremely difficult case.

On February 27, 2019, a second complaint was received by the Dept of Ag, indicating that the owners of T[redacted] were falsely claiming to be licensed by the State of Nebraska. The complainant also went directly to the Lancaster County Sheriff alleging the mistreatment of the dogs at the T[redacted] facility due to complainants' concerns about the Dept of Ag's willingness to enforce the Dog & Cat Inspection Act. The Lancaster County Sheriff inspected the location and reported that they did not observe neglect; however, as the deputy did not have a search warrant, they were unable to go inside the house or garage to observe the actual condition of the facility and the dogs within it. On Friday, March 1, 2019, Dept of Ag Chief Administrator Bob Storant ordered Program Manager Tom Dozler to arrange a site visit with Rick Herchenbach to inspect T[redacted] B[redacted] within one week. Mr. Storant advised Mr. Dozler to encourage the owners "to downsize, as we have enough evidence to call for an administrative hearing and take

legal action." On Monday, March 11, 2019, Tom Dozler emailed Dept of Ag administrators that the owners were unavailable and that he would seek to set up a meeting with them the following week.

On March 28, 2019, the Dept of Ag received a third complaint about T[redacted] B[redacted]. Rick Herchenbach attempted to inspect the premises on April 1, 2019, but was denied access to the facility by the owners. Under its administrative authority, the Dept of Ag issued a stop-movement order against the owners on April 4, 2019. Additionally, an inspection warrant was issued and served on the owners of T[redacted].

Upon his inspection of the facility on that date, Mr. Herchenbach's inventory identified nine adult dogs and two pups in the garage and two adult dogs in the house. On April 18, 2019, Rick Herchenbach conducted a follow-up inventory of the dogs at T[redacted] B[redacted] to determine whether dogs were being bred or sold, and he discovered one unaccounted for dog. When he questioned the owners about the missing dog, they refused to answer him and became belligerent, accusing Mr. Herchenbach of trespassing. One owner stood behind Mr. Herchenbach's vehicle, preventing him from leaving and indicating they were calling the Lancaster County Sheriff. Furthermore, at the same time, Rick Herchenbach observed the other owner acting suspiciously, repeatedly going into and out of the house during the confrontation, an obvious concern to Mr. Herchenbach as he had observed the presence of guns in the home during prior inspections. Given the owners' elevated level of anger, Mr. Herchenbach agreed that the owner's call to the sheriff was appropriate and welcomed the deputies' prompt response and assistance in de-escalating the situation. Mr. Herchenbach also indicated that he notified State Veterinarian Dr. Dennis Hughes by phone about the adverse situation at T[redacted]. Dr. Hughes advised Rick: "Hold tight. We will get back with you." Approximately twenty minutes later two Lancaster County Sheriff's cruisers arrived. The three officers intervened and advised Mr. Herchenbach that the owners were not going to cooperate with his inspection. In light of the hostile situation, the deputies suggested leaving the premises and meeting together offsite. Mr. Herchenbach reported that at 5:00 p.m., while still meeting with the deputies, he received a voicemail message from Dr. Hughes advising Mr. Herchenbach that "Tom Dozler was unavailable and, since Rick had not called him back, he assumed that things were o.k." Rick Herchenbach reported not only feeling traumatized by the incident, but also felt a lack of support from his own administration at the Dept of Ag.

Even though the facility's owners were operating without a license, violated the Director's stop-movement order, prevented the inspection of the premises, and treated the inspector in a hostile and threatening manner, the Dept of Ag failed to issue T[redacted] B[redacted] a notice of an administrative hearing to appear to show cause under Neb. Rev. Stat. §54-628.02.

On June 7, 2019, the fourth complaint of 2019 was filed on T[redacted] B[redacted] raising concerns that with the advent of summer and the lack of any oversight of the dogs during the heat of the day, the wellbeing of the animals may well be in jeopardy. The

complaint indicated that the dogs did not appear to be receiving adequate water, exercise, and attention to their needs. Rick Herchenbach and Tom Dozler went to inspect the premises; however, the owners refused to provide them the necessary access to conduct the inspection. Here again, had this facility been licensed, there would have been a stronger mandate for the inspection of the facility, although with the stop-movement order having been issued, there was already a compelling reason that warranted an inspection. Nonetheless, no inspection occurred.

On August 20, 2019, the fifth complaint filed on T[redacted] B[redacted] indicated that one of the owners was out-of-town for one month. The other owner was reported to be periodically checking on the dogs, although they were not living on the premises at the time. Complainants indicated that the dogs were being neglected and were not receiving regular exercise, fresh water, food, or adequate oversight. Furthermore, it was reported that, even with the stop- movement order in place, dogs were being sold from the T[redacted] facility. Although it was also alleged that some of the dogs that were reported as sold had been returned by the owners due to the dogs being overly aggressive. The Program Manager Dozler indicated that the Lancaster County Sheriff's Office was notified and a Deputy Sheriff subsequently reported that he went to the location of T[redacted] B[redacted] and reported observing dogs through the windows of the house and the garage, but he did not report observing abuse or neglect. Mr. Dozler also said that the Dept of Ag would continue to enforce the stop-movement order through the courts. However, there seemed to be no acknowledgement that, the under the Dog & Cat Inspection Act, the Dept of Ag had an ongoing and continuing duty to monitor the conditions of the dogs at this facility, whether the enforcement of the stop-movement order was going through the courts or not.

On September 9, 2019, the Dept of Ag received a sixth complaint against T[redacted] B[redacted]. Two anonymous complainants indicated that the property was in foreclosure, with a sheriff's sale scheduled to be conducted on the property by the end of September. Given the anticipated change in ownership of the property, the complainants requested that an inventory be conducted to determine the number of dogs prior to their being moved. In addition to the stop-movement order, they were also concerned about the condition of the dogs, should they be abandoned. In a huddle meeting of program staff, the Program Manager instructed Mr. Herchenbach not to pursue this complaint because this case is already before the court with a trial date set for November 18, 2019, approximately ten weeks from the date the complaint was received.

On December 10, 2019, the seventh complaint of 2019 was filed against T[redacted] B[redacted]. The complainant indicated that one of the owners posted on social media that they did not have food for the dogs and was seeking donations of dog food. This information raised obvious concerns about the wellbeing of the dogs and the owners' compliance with the still-existing stop-movement order. The complainant also contacted the Lancaster County Sheriff, as well as the Dept of Ag, expressing their concerns about the wellbeing of the dogs at this facility. The Program Manager assured the

complainant that "we have the situation under control." Mr. Dozler reported that on December 20, 2019, he drove to the facility, but he found no one there. There was no report made on the conditions of the dogs or the facility after the visit.

On January 2, 2020, Rick Herchenbach reported to the Dept of Ag that on or before December 31, 2019, the owners had been evicted from the Waverly facility. Mr. Herchenbach contacted the property's new owner who agreed to meet him at the premises to allow his inspection of the conditions. While all the dogs had been removed from the facilities, the new owner indicated that he had previously counted 29 dogs at the location. In his inspection report, Mr. Herchenbach described the deplorable conditions that he witnessed on January 2, 2020. "Inside of the garage where most of the dogs were located were… piles of fresh feces, indicating that dogs were recently inside the garage. Inside the garage were urine-soaked floors, including urine-soaked wood chips used for bedding. These conditions created very high ammonia levels, reaching as high as 22 ppm. Piles of trash and clutter made walking around the garage difficult. Numerous rodent droppings were present, indicating that the garage was infested with mice and rats. Throughout the house there were piles of fresh feces present with urine-soaked carpets and floors. Rodent droppings were everywhere inside the house indicating that the house was also infested with mice and rats. The house was also filled with trash and clutter making walking difficult and at times dangerous. The dogs that were inside of the house and the garage WERE NOT BEING HUMANELY TREATED." Mr. Herchenbach also provided photographs from his January 2, 2020, inspection of the facility.[14]

Additionally, a neighboring resident provided the Office of Public Counsel with video footage of the condition of the premises following the eviction of the owners of T[redacted] B[redacted], further verifying by Deputy Ombudsman Eskridge the disgusting conditions described by Program Specialist Herchenbach.

Subsequent to the owners' eviction from the Waverly location, City of Lincoln Animal Control officials notified Mr. Herchenbach that the owners and some of their dogs had moved into Room 243 of the Oasis Inn, 5250 Cornhusker Highway, Lincoln. On January 8, 2020, Lincoln Animal Control inspected Room 243 and identified 3 adult dogs and 6 pups, and also suspected that there were newborn pups in the bathroom, as the T[redacted] owners had recently posted on social media that a breed dog would be having pups soon. The dog owners also denied the request of the Animal Control Officer to inspect the bathroom where it was suspected that the pups were located. On January 13, 2020, during a follow-up visit to the hotel room, Lincoln Animal Control failed to get a response to the door but reported to the front desk the "strong smell of urine coming from the room." Hotel staff went to the room and the T[redacted] owner opened the door, whereupon three adult pit bulls burst out of the room and began running down the hallway. Six newborn pups were in the bathroom and the smell of ammonia in the room was described as "eye-watering." Before the end of January 2020 the owners were evicted from the Oasis Inn. They then moved with numerous dogs to

the Motel 6 near the Lincoln Airport where the owners were again evicted from the premises for allowing dogs to urinate and defecate in the room and on the balcony.

Following the eviction of the owners and their dogs from Motel 6, it was uncertain as to the whereabouts of their dogs, and the number of dogs the owners possessed. Lincoln Animal Control indicated to Mr. Herchenbach that on March 10, 2020, they were contacted by persons who received dogs from the owners of T[redacted] B[redacted] who wished to surrender the dogs to Animal Control due to the poor treatment and condition of the dogs. Veterinary examinations revealed the dogs to be underweight and having hookworms. Some of the dogs were dehydrated pups with severe hookworm infestations. Other pups apparently had died at birth, or shortly thereafter. It was also reported that an underweight female dog with hookworms and mange and her pups were taken back to the Oasis Inn where they were living with a friend of the T[redacted] B[redacted]' owners. Additionally, other dogs belonging to the owners of T[redacted] B[redacted] that had already or were about to have pups were reported to be living with another individual who was watching the dogs for the owners of T[redacted] B[redacted]. In the end, there was never a full accounting of the dogs T[redacted] B[redacted] possessed or what may have happened to them.

On or about April 7, 2020, the owners of T[redacted]B[redacted] appeared at the Capital Humane Society demanding information about their dogs in a confrontation with staff. While at the shelter one owner behaved in a hostile and aggressive manner, demanding to see a Lincoln Animal Control officer. Lincoln Police officers responded to the incident and issued two citations for neglect and cruelty to their dogs and another citation for sanitation issues upon the request of the owner who indicated that they were seeking a court date to resolve their issues and to get their dogs back. This confrontation was self-recorded by one of the owners, posted on social media, and was viewed by Deputy Ombudsman Eskridge.

Summary

The inspection of the T[redacted] facility shorty after it was vacated, together with the series of horrors that occurred to these dogs in the subsequent months, provide a compelling rationale for the need to give greater attention to suspected problem operations that are unlicensed. Prior to the January 2, 2020, inspection of the vacated facilities, the last time the Dept of Ag actually inspected T[redacted] B[redacted] was on April 18, 2019, in what became a highly confrontational exchange between the owners and Rick Herchenbach who was present to enforce the Dept of Ag's stop-movement order. Since that date there were five subsequent complaints, including the complaint of January 2, 2020. For a full year complaints were lodged with the Commercial Dog & Cat Inspection Program against T[redacted] B[redacted] being a suspected breeder while also conducting business as a rescue and boarding kennel, yet the owners never applied for a license.

There was considerable evidence that dogs were breeding and the pups were being sold, and clear evidence that the dogs were routinely neglected. Yet the Dept of Ag indicated that it was satisfied that it performed its duty by issuing the stop-movement order and relying on the

prosecution of the alleged violation of the order. In a December 12, 2019, conversation with the Commecial Dog & Cat Inspection Program Manager, a complainant indicted that he assured them, "We have the situation under control." Following this mid-December conversation, the Program Manager went to inspect the premises, but finding no one there he did not complete the inspection and apparently made no attempts to follow-up with the owners. Based upon the documented conditions of the facilities on January 2, 2020, it was obvious that T[redacted] B[redacted] was extremely "out of control" and had been throughout 2019 and would continue to be well into 2020. In fact, the condition of the house where T[redacted] B[redacted] was located in Waverly was beyond repair because of their neglect of the dogs, forcing the property's new owner to demolish the house he had purchased on auction a few months earlier.

While the Director issued a stop-movement order on April 4, 2019, after the inspection of April, 18, 2019, which found there to be one less dog at the facility, there was no administrative hearing sought by the Director to show cause for violating the order. Although the facility was unlawfully operating without a license for over one year, the Dept of Ag did not seek an administrative hearing. Even with seven complaints from multiple parties being brought to the clear attention of the Commercial Dog & Cat Inspection Program against this operator within one year, many of which involved documented issues of inadequate care of the animals, there was no administrative hearing sought. And finally, although the operator had been evicted from the premises and took the dogs to a single motel room in two separate motels where pups were born and intentionally hidden from Lincoln Animal Control inspectors, the Dept of Ag still did not seek an administrative hearing to show cause under the Dog & Cat Inspection Act on this unlicensed operator. Rather than direct staff to refer specific complaints about T[redacted] B[redacted] to the Lancaster County Sheriff, the Dept of Ag's sole approach was to enforce their stop-movement order, but only through the courts. For eight months there were no inspections of a known commercial operation where neglect had been regularly reported.

Finding

This case illustrates that the Dept of Ag's apparent protocol to almost solely rely on the courts to give consequences for violations under the Dog & Cat Inspection Act. This approach is flawed because the Dog & Cat Inspection Act gives the Dept of Ag faster options to hold bad actors responsible through administrative means which may be more flexible and also have lower burdens of evidence than are required in criminal actions. The failure to utilize administrative options constitutes the Dept of Ag's failure to fulfill its statutory responsibilities. For over one year, T[redacted] B[redacted] operated as an unlicensed rescue, kennel and breeder, but other than a stop-movement order, which was not enforced by the Dept of Ag, there were no steps taken to protect the dogs from these unlicensed operators. Though the Dog & Cat Inspection Act required licensure in this instance, the Dept of Ag failed to hold the owners accountable to the law. Additionally, the Dept of Ag did not notify law enforcement of the complaints alleging abuse and neglect of animals.

2. A[redacted] H[redacted] D[redacted], Walton, Nebraska

A[redacted] H[redacted] D[redacted] was a licensed dog rescue kennel located in Walton, NE. In March 2018 a complaint-initiated inspection of this facility indicated that there were piles of feces, trash, as well as mice and rats in the kennels. There was evidence that the dogs were not adequately cared for during working hours and that a number of dogs were not in good condition. Investigations found that dogs suffered from "bites, lacerations, skin infections, a pregnancy, malnutrition, and visible nutritional neglect." The owner was charged and convicted of one count of animal neglect.

Timeline & Description of Events

During 2019, the Dept of Ag received additional complaints about the unsanitary and dangerous conditions that existed for dogs housed at A[redacted] H[redacted] D[redacted]. On April 10, 2019, complaints were received indicating that the kennel was housing heartworm positive dogs but failed to provide veterinary care for dogs with heartworm and other serious medical conditions. On April 17, 2019, Rick Herchenbach conducted an inspection of the facility housing 27 dogs and which resulted in four identified violations with two dogs requiring immediate veterinary care. During his April 24, 2019, follow-up inspection, Mr. Herchenbach found that the facility continued to be out-of-compliance for failure to provide veterinary care for sick dogs and for failure to provide a sufficient number of staff to adequately care for the animals. As the dogs from A[redacted] H[redacted] D[redacted] were placed with other rescues, the receiving rescues reported to Rick Herchenbach that dogs from A[redacted] H[redacted] D[redacted] required immediate veterinary care. As a result, Mr. Herchenbach immediately contacted Program Manager Tom Dozler and State Veterinarian Dr. Dennis Hughes in order for them to report his findings to the Lancaster County Sheriff's Office.

On May 1, 2019, Rick Herchenbach conducted another inspection of A[redacted] H[redacted] D[redacted] Rescue, finding the facility to be out of compliance as to the number of staff required and the lack of cleanliness of the facility. He reported that the facility needed to further downsize the number of animals it housed, as they were unable to adequately care for the dogs that they were housing at that time. Rick Herchenbach notified his Program Manager and the Dept of Ag's administration of a call that he received from the Lancaster County Sheriff's Office requesting reports and other information about A[redacted] H[redacted] D[redacted]. A Lancaster County deputy sheriff also sought to interview Rick Herchenbach, who requested authorization from the Commercial Dog & Cat Inspection Program Administrators to cooperate with the Lancaster County Sheriff's investigation. The following day Program Manager Dozler advised Mr. Herchenbach that, as he is out of hours for the week, he must wait to talk to the deputy the following week. Subsequently, on or about May 8, 2019, Rick Herchenbach informed his Program Manager that he had been contacted by a local investigative reporter seeking information about A[redacted] H[redacted] D[redacted] for an upcoming news story.

On May 16, 2019, a deputy Lancaster County attorney requested a meeting with Rick Herchenbach about A[redacted] H[redacted] D[redacted]. Mr. Herchenbach contacted Program Manager Dozler about the request, and Rick Herchenbach was advised by Mr. Dozler that Director Wellman and Administrator Bob Storant ordered that he not have contact with the Lancaster County Attorney's Office. On the same day, Mr. Dozler informed Mr. Herchenbach that the owner had voluntarily surrendered their license. Rick Herchenbach conducted an exit inspection of A[redacted] H[redacted] D[redacted] on May 22, 2019. Mr. Herchenbach also indicated that the callers asked Mr. Herchenbach why the Dept of Ag had not called in A[redacted] H[redacted] D[redacted] for an administrative hearing regarding their license as a rescue prior to or after the owner voluntarily surrendered their license on or about May 16, 2019. Mr. Herchenbach referred the complainants' questions to the Dept of Ag administration.

Three months later, on August 27, 2019, the Dept of Ag received a new complaint against A[redacted] H[redacted] D[redacted] indicating that the unlicensed facility was an active rescue operating without a license. The complaint arose from an incident on July 10, 2019, when Cinnamon, a stray dog that had been picked up by Lincoln/Lancaster Animal Control and taken to the Capital Humane Society, was discovered by microchip to be owned by A[redacted] H[redacted] D[redacted]. The owner of A[redacted] H[redacted] D[redacted] came to the Capital Humane Society to retrieve Cinnamon and wrote the $70 check for the applicable fees. The owner signed the Receipt for Fees Paid as Rescue Director, but also stated that Cinnamon's owner was actually a home that served as a foster home affiliated with A[redacted] H[redacted] D[redacted]. On September 10, 2019, the complaint was discussed during a Commercial Dog & Cat Inspection Program staff huddle call. The Program Manager instructed Rick Herchenbach not to follow-up on the complaint as the owner had a case pending in Lancaster County Court. On November 4, 2019, the Lancaster County Court found the owner guilty of one count of Animal Neglect. The court fined the owner $1000 and ordered that they "shall not own possess or reside with any animal for five years," except for the eight healthy dogs that were specifically identified by the court.

On December 18, 2019, a new complaint was brought to the Lancaster County Sheriff against A[redacted] H[redacted] D[redacted], indicating that an additional six dogs and five cats were in the custody of the owner. The Lancaster County Sheriff's Office inspected the facilities; however, no animals were removed. The following day, December 19, 2019, the complainant contacted the Lancaster County Attorney seeking enforcement of the court order and suggesting that the owner be charged with contempt of court. That same date the Lancaster County Sheriff served a warrant on the owner and removed six dogs and two cats from the unlicensed facility.

On January 7, 2020, Rick Herchenbach requested approval from his superiors to follow-up on the complaint against A[redacted] H[redacted] D[redacted] brought to the Dept of Ag on December 19, 2019. Mr. Herchenbach indicated that the purpose of the inspection would be to verify the number of dogs on the premises, to ascertain whether a rescue license was needed, to assess that condition of the dogs, and to verify that they were

receiving proper care. Program Manager Dozler responded to the email that since the Lancaster County Sheriff had difficulty gaining access to the facility, the Dept of Ag could expect the same result. Mr. Dozler stated, "I would like to see some solid evidence that she is operating as a rescue before making an attempt to access the property." Rick Herchenbach reminded Mr. Dozler of the document signed by the owner on July 10, 2019, as well as the fact that six dogs and two cats were seized by Lancaster County Sheriff on December 20, 2019. On January 13, 2020, Mr. Dozler and Mr. Herchenbach went to the A[redacted] H[redacted] D[redacted] and were met by the owner and their attorney. Hearing barking coming from a building that the owner had used for rescue dogs in the past, Mr. Herchenbach sought to gain access to the building. The A[redacted] H[redacted] D[redacted] attorney advised him that they could return to see the dogs and to conduct an inventory in a couple of days. However, there is no indication that a follow-up inspection was made to verify the inventory. Following conversations between the Program Manager and the A[redacted] H[redacted] D[redacted] attorney, the facility was inspected on January 29, 2020, and an inventory of the dogs was taken identifying seven pet dogs at that time. It was determined that the owner did not need to be licensed as a rescue because they indicated that they were not operating as a commercial rescue, though the owner had previously self-identified as the rescue director when they signed the Capital Humane Society form as "Rescue Director."

Summary

The Dept of Ag's handling of complaints against A[redacted] H[redacted] D[redacted] is similar to the complaints against T[redacted] B[redacted]. While A[redacted] H[redacted] D[redacted] had been licensed, after two inspections in which the owner of A[redacted]H[redacted] D[redacted] was found to be out-of-compliance for her failure to provide proper veterinary care and adequate oversight of her dogs, they voluntarily surrendered their license to the Dept of Ag. When Mr. Herchenbach reported his findings to his superiors on May 16, 2019, no administrative action was taken against the owner. Presumably the fact that the owner had surrendered their license and the Lancaster County Sheriff was involved, closed the door to any administrative processes. However, it seems likely that, while the owner may have surrendered their license, they apparently never ceased to operate as a rescue and/or kennel. Indeed, the fact that on January 13, 2020, Mr. Herchenbach was denied access to a building that at the time was housing what appeared to be a large number of barking dogs strongly suggests that A[redacted] H[redacted] D[redacted] continued to operate as a rescue and/or kennel.

In addition to its administrative oversight, the Dept of Ag is required to report incidents of cruel neglect and mistreatment to county officials for possible criminal prosecution. In the case of A[redacted] H[redacted] D[redacted], the May 2019 reports from three veterinary clinics treating dogs from that facility indicated that there were issues rising to the criminal level. However when a deputy Lancaster County attorney sought to meet with Rick Herchenbach about this case, the Dept of Ag ordered that Mr. Herchenbach was not to have contact with the deputy county attorney. Though the owner had voluntarily surrendered their license in May of 2019, by the end of the

year it became apparent that this facility had never ceased its operations as a rescue and kennel, but was not licensed as either one. [15]

When there is an active case involving neglected or abused dogs being prosecuted by the county, one would expect the administrators of the program to be fully engaged and ready to act without hesitation. Certainly prompt attention would be expected in this instance, as the program had received reports from three veterinary clinics that were treating dogs with serious medical conditions that had been housed at A[redacted] H[redacted] D[redacted]. Candace Lohman of Vintage Heights Veterinary Hospital described the conditions of the dogs they treated as follows. "In my opinion these dogs were neglected and so were all of the others there. They were put at risk of disease, pregnancies leading to complications, aggression due to being intact and leading to fighting. Heartworm positive dogs being untreated is extremely neglectful. It is torture. These dogs were supposed to be rescued. This isn't a rescue, it seems to be more of a hoarding situation."

Finding

The Dog & Cat Inspection Act provides two main avenues to address problem operations. Under the Dept of Ag's administrative processes, the Director can make certain that commercial operators meet the requirements for licensure. If they fail to do so, the operators can face corrective actions, which, if not corrected, results in the loss of their license and they can no longer operate. However, for those who continue to operate but are not licensed, or those operators whose licenses have been revoked, the Dept of Ag has the option of seeking criminal prosecution. In this instance there was an immediate need for action. Medical professionals documented the serious neglect of animals in what was described as a "hoarding situation." When a deputy county attorney sought to meet with Rick Herchenbach related to their potential prosecution of the case, the Dept of Ag denied the deputy county attorney's request. While it is the case that under the Dog & Cat Inspection Act the Director has the discretion to contact law enforcement for prosecution, in instances of strongly documented abuse and neglect, the report should be made without hesitation.

3. H[redacted] H[redacted], Louisville, Nebraska

Timeline & Description of Events

On August 26, 2019, the Dept of Ag received a complaint that H[redacted] H[redacted] out of Louisville, NE, was operating as an unlicensed boarding kennel. Social media posts indicated that H[redacted] H[redacted] received two dogs from the Animal Alliance Rescue-Shelter, Mt. Ayr, Iowa. In addition to the concerns about licensure, there were also reports that dogs at the Louisville facility were not receiving adequate water and there was the excessive use of prong collars as tool to correct unwanted behavior of dogs while in the owners' care. On October 2, 2019, Program Manager Tom Dozler advised Rick Herchenbach that the owners were a foster home for dogs, which are not licensed by the Dept of Ag, but that the owners had applied to Cass County for a use permit as a kennel that was pending with the county. He also reported that the owners indicated at

the time that they had four foster dogs, with two of the dogs expected to leave in November, and the remaining two dogs leaving in December of 2019. We recognize that foster homes serve a vitally important service for rescues, providing humane in-home care for neglected dogs and cats rather than being confined in cages in larger facilities. However, H[redacted] H[redacted] was primarily operating as a commercial venture, not as a foster home for a rescue.

On October 9, 2019, a second complaint was received against H[redacted] H[redacted] indicating that the facility is receiving dogs from unlicensed rescues, which was an issue because, as foster homes are unlicensed, they are required to operate under the licenses of rescues from whom they receive dogs. When there are issues at a foster home, those same issues attach to the rescue under whose license the foster home operates. It was reported that the dogs were coming to H[redacted] H[redacted] from out-of-state facilities with proper health records, having been seen by licensed veterinarians, as is required. In this instance the issue, however, was the treatment of the dogs while in the care of H[redacted] H[redacted]. Complaints were received from individuals who purchased dogs from H[redacted] H[redacted] stating that the dogs had puncture wounds around their neck area, likely caused by the aggressive use of prong collars. The complaints raised questions as to whether H[redacted] H[redacted] is a boarding kennel, requiring licensure, or a foster home, which is not licensed. During a routine office huddle call on October 30, 2019, Rick Herchenbach asked Program Manager Dozler whether he should follow-up on the most recent complaint against H[redacted] H[redacted]. Mr. Dozler stated that he would contact the Cass County Sheriff and instructed Mr. Herchenbach not to follow-up on this complaint.

On October 10, 2019, Mr. Herchenbach forwarded Program Manager Dozler a June 2019 email he received from an Omaha resident regarding their family's experience in purchasing a diabetic alert dog for their son from H[redacted] H[redacted]. The writer indicated that they received their dog, Hawkeye, on October 27, 2016, and described the training provided by H[redacted] H[redacted], which, in their judgment involved inhumane practices including limiting water, tethering, man-handling, and jerking excessively hard on the dog's prong collar. While the writer did not agree with the practice, she still agreed to send Hawkeye back to H[redacted] H[redacted] the following summer for further training during the two weeks that their son was away at camp. They reported that when Hawkeye returned to their home two weeks later there were fresh injuries to the dog's neck and leg, as well as a noticeable difference in Hawkeye's appearance. The writer also reported talking to an unnamed employee of the facility who confirmed the abuse of dogs at H[redacted] H[redacted]. Additional evidence indicated that the owners of H[redacted] H[redacted] were actively marketing their diabetic alert dogs and had been doing so since 2013. The advertised cost of a diabetic alert dog from H[redacted] H[redacted] at that time was $8500.

On October 29, 2019, an additional complaint was received from the new trainer of Hawkeye. The complainant also expressed concerns about the care of these dogs including limiting water, puncture wounds on their necks, confinement in small kennels

resulting in improper socialization, and limited exercise. The complainant reported that Hawkeye was extraordinarily fearful of people, a frequent indication of abuse and neglect. While the complainant was expecting a response from the Dept of Ag to their complaint about the practices of H[redacted] H[redacted], none was received. While the current status of H[redacted] H[redacted] is uncertain, social media posts reported that H[redacted] H[redacted] is going out of business; however, that report was not confirmed by the Dept of Ag.

Summary

In the case of H[redacted] H[redacted], the Dept of Ag focused disproportionate attention on the operator's status as a foster home, rather than on the owners' actual operations. Though H[redacted] H[redacted] was recognized by the Program Director as a foster home, it was in fact operating as a commercial facility training dogs to provide a service. Even though foster homes are not licensed, the fact is that they come under the jurisdiction of the Dept of Ag by operating under the umbrella of a licensed rescue; therefore, it is the duty of the Dept of Ag to verify that the foster home is providing the care demanded under the Dog & Cat Inspection Act. Additionally, as it was reported by the Program Manager that the operators had applied for a use permit as a kennel that was pending before Cass County officials, there apparently was no application for licensure before the Dept of Ag. Lastly, the reports of persons who had purchased these trained dogs from H[redacted] H[redacted] reported evidence of cruel neglect and mistreatment of dogs; yet there is no indication that these concerns were ever brought to the attention of the Cass County Sheriff or the Cass County Attorney.

Finding

Under the Dept of Ag's administrative processes, it has neglected to fully enforce its duties to oversee H[redacted] H[redacted], a commercial dog operator, which is either an unlicensed kennel or a foster home, operating under the license of another operator. Additionally, even though it was reported that there was possible neglect and abuse, there is no indication that law enforcement was contacted about these issues. For both reasons, the Dept of Ag failed to diligently perform its duties under the Dog & Cat Inspection Act in this case.

4. H[redacted] B[redacted], Malcolm, Nebraska

H[redacted] Br[redacted] out of Malcolm, NE, is a licensed dog kennel. There have been concerns about the owner's operations for over eight years. A 2013 complaint against the owner resulted in criminal prosecution by the Lancaster County Attorney, and a pleading of no contest to the charges of animal cruelty and neglect.[16] This criminal case was highly publicized in the local media, including the public's open questioning of the Dept of Ag's upper level management for its reluctance to report allegations of neglect and mistreatment by commercial dog and cat operators to county officials for prosecution. At the time this case was resolved when the owner pleaded no contest to the charges, Dr. John Boucher, former Program Manager of the Dog and Cat Operator Inspection Program, congratulated Rick Herchenbach via email as he "demonstrated

courage and determination in dealing with not only this breeder but also with extreme resistance from the Dept of Ag and law enforcement and I admire you for it. Good job, Rick."

Timeline & Description of Events

Prior to the court's action, the Lancaster County Sheriff brought a complaint against the owner to the Dept of Ag, apparently resulting in the Dept of Ag's placing their license on probationary status. Even though Rick Herchenbach was extremely knowledgeable about the issues of the operation, his superiors ordered that he not have contact with county officials without the Administration's approval. In this instance there were no administrative actions taken, as the Dept of Ag solely relied upon the owner/operator's statement that they were no longer breeding dogs. Evidence subsequently established that their assertion was incorrect and the owner was indeed found to have been breeding dogs and selling puppies at that time. Even after this misrepresentation there was no administrative action by the Dept of Ag taken against this license. Additionally, on October 28, 2013, an attorney for the Dept of Ag indicated by email that the owner spoke to them at church about their problems with the Commercial Dog & Cat Inspection Program. In the email the Dept of Ag's attorney, who could have been conflicted in this case because of a relationship through church, stated that the publicity against H[redacted] B[redacted] was "grossly unfair, especially since public opinion seems to want them out of business."

In September 2018 a new complaint was brought against H[redacted] B[redacted] indicating that they were again breeding dogs and selling puppies without a license. Rick Herchenbach attempted to inspect the facility but was denied entrance by the owner. Mr. Herchenbach contacted the Lancaster County Attorney's Office who obtained an inspection warrant authorizing Rick Herchenbach to inspect the premises. When he attempted the inspection on the morning of October 9, 2018, Mr. Herchenbach observed that the owner was inside the house but refused to answer the door to allow the inspection. Mr. Herchenbach returned that afternoon and spoke to a family member who indicated that the owner was inside the house. The inspection took place and resulted in the discovery of three female and two male dogs used for breeding purposes. The Director subsequently issued a stop-movement order for eight adult dogs and another eight puppies. The Dept of Ag followed a commonly utilized strategy in seeking to obtain the owner's cooperation in downsizing their numbers of dogs. However, in a subsequent inspection it was determined that the stop-movement order had been violated. The owner complained about Mr. Herchenbach's thorough review to the State Veterinarian Dr. Hughes, indicating that the owner has a "personality conflict" with Rick Herchenbach.

An administrative hearing was scheduled for February 21, 2019, but was subsequently canceled even though it was established that H[redacted] B[redacted] had violated the stop-movement order. However, approximately six months later the complaint against H[redacted] B[redacted] came before the Dept of Ag for a rare administrative hearing on July

30, 2019; whereupon, Dept of Ag retroactively rescinded the October 10, 2018 stop-movement order effective February 19, 2019, a finding that favored the owner of H[redacted] B[redacted].

In January 2020 it was again reported that H[redacted] B[redacted] was selling pups, though they were still unlicensed at that time. In a meeting with Commercial Dog & Cat Inspection Program Administrators, Rick Herchenbach was asked if he wanted to follow-up on the report. Mr. Herchenbach indicated that he would do so; however, based upon the Administration's past actions, he wanted to be assured that he would be allowed to complete the job; that is, have the necessary access to fully inspect the facilities, the animals, and the records, as well as to be assured that the Dept of Ag would take other actions, as appropriate, if H[redacted] B[redacted] were found to be out of compliance. The complaint was assigned to other staff who sought to make an inspection on January 15, 2020, but were unable to gain access to the house or the garage to complete their inspection.

A particularly disturbing incident happened in February of 2020 when the owner of a shelter facility brought a new complaint against H[redacted] B[redacted] that resulted in perceptible retribution against the person making the complaint instead of action against wrongdoing by H[redacted] B[redacted]. The complainant indicated that, rather than investigating concerns brought forth, the Dept of Ag chose to target the complainant who reported being stalked and harassed on social media by the Program Manager. Instead of performing its duties and focusing on the known issues of H[redacted] B[redacted], the Dept of Ag employee attempted to intimidate the complainant, insisting that the complainant's operation as a temporary shelter required licensure as both a rescue and a boarding kennel. The complainant contacted Director Wellman personally informing him of the inappropriate treatment they were receiving from the Program Manager. The Director agreed to investigate the situation indicating that legal staff would be in contact with the complainant. The following day, March 24, 2020, the complainant received a call from a Dept of Ag attorney informing the complainant that the Dept of Ag would not require a rescue license but they would need to be licensed as a kennel. The complainant explained that the facility is not a kennel but only provides short term shelter to animals whose owners leave their homes due to domestic abuse and explained that it was a similar situation to many others across the state who are unlicensed and providing home boarding services under Rover.com and other similar online animal service providers. The complainant questioned why they would be treated differently, for if they needed to be licensed as a kennel, then the same should hold true to the hundreds of other online operators who are providing short term care for dogs and cats. The Dept of Ag ultimately agreed and on March 27, 2020, the complainant was notified by the Program Manager in writing that the temporary shelter did not meet licensing requirements, while also providing appropriate instruction as to the conditions when licensing would be required.

Summary

H[redacted] B[redacted] is a licensed dog kennel/breeder with a decade of well-documented problems; including its criminal prosecution by the Lancaster County Attorney and pleading to animal cruelty and neglect. However, despite evidence showing that H[redacted] B[redacted] is operating outside the law since then, they seem to have received preferential treatment by the Dept of Ag with the legal counsel possibly an inside advocate, the inspector for southeast Nebraska being taken off the case, and an administrative act that was taken—a stop-movement order—and then rescinded less than seven months later by the Dept of Ag. Additionally, when a new complaint was brought against this operator, the Dept of Ag targeted the complainant, rather than investigate the operator suggesting that preferential treatment was being given to the owner of H[redacted] B[redacted].

Finding

In addition to the Dept of Ag's failure to fully employ the powers of administrative procedures and referral for criminal prosecution, the H[redacted] B[redacted] complaints indicate that complainants may be harassed while favoritism is showed to certain operators, thereby not objectively upholding the Dog & Cat Inspection Act. The program was established to serve as a strong advocate for the humane treatment of dogs and cats, not the defender of bad actors.

5. H[redacted] H[redacted] Rescue, Beaver Crossing, Nebraska

H[redacted] H[redacted] is a rescue located in Beaver Crossing, Nebraska that is focused on the care of dachshunds, dogs known to be highly susceptible to a number of challenging medical conditions.

Timeline & Description of Events

In a March 2019 investigation of H[redacted] H[redacted], Rich Herchenbach identified several areas of concern which included the following:

a. Failure to seek veterinary medical care or to maintain a dog in a healthy condition as evidenced by any injury or illness to a dog which creates a substantial risk of death or which causes broken bones, prolonged impairment or the function of any bodily organ.

b. No veterinary care plan.

c. No intake or adoption record.

d. Two dogs with inadequate space.

e. Soiled blankets with urine stains in pens.

f. High ammonia levels of 7 ppm.

g. Evidence of self-mutilation.

h. Evidence of dogs with emaciated ribs, spinal cord and hipbones showing, extreme loss of muscle mass causing dogs to drag the back half of the body across the floor, other dogs unable to walk.

i. Because of fecal incontinence and the loss of the ability to control bowel movements, the owner had to express the bowel (poop on demand) on 3 to 4 dogs during the inspection.

In his March 2019 inspection report,[17] Mr. Herchenbach concluded that dogs located at H[redacted] H[redacted] Rescue were being neglected and/or cruelly mistreated, and, as a result, he sought approval from the Dept of Ag administration to contact the County Sheriff regarding the operation. On March 13, 2019 Rick Herchenbach indicated that he received a phone call from Program Manager Dozler who stated that he had contacted the County Sheriff's Office. However, the sheriff was contacted without a review of the problems identified in Rick Herchenbach's report and the accompanying photos. It was reported by the Nebraska Humane Society that Program Manager Dozler and the County Sheriff officers visited H[redacted] H[redacted] finding no problems after notifying the owner in advance of their inspection.

Indeed, the March 2019 case was not the first investigation of H[redacted] H[redacted] Rescue. During an October 2016 inspection, Rick Herchenbach interviewed two of the three veterinarians used by the owner regarding numerous violations he had observed at the facility. Both veterinarians corroborated their concerns about the care of dogs at H[redacted] H[redacted] Rescue. Mr. Herchenbach reported his findings to the Dept of Ag, asking to contact the local County Sheriff as to the possible neglect. He was advised by then Program Director Dr. Bredthauer, that in her judgment there was "no evidence that neglect or abuse has occurred; therefore, we will not be contacting the Seward County Sheriff or other law enforcement personnel." The Dept of Ag's actions suggest that the Commercial Dog & Cat Inspection Program was not interested in positively addressing unacceptable conditions and inhumane treatment certain operators were providing to animals under their care.

Administratively, on November 4, 2019, approximately eight months after Mr. Herchenbach's March 2019 inspection, the Dept of Ag convened a compliance conference with the owners to address complaints about the conditions and treatment of animals at their facility. An agreement was reached and signed by the owner. Though this occasion was not the first time that the Dept of Ag had used the compliance conference process, it is a more recent procedure without promulgated rules notifying the public, or staff, about the compliance conference procedures. Deputy State Ombudsman Carl Eskridge, when notified of the compliance conference, attended the meeting to observe the process.

Summary

H[redacted] H[redacted] is a rescue specializing in the care of a most unique and lovable type of dog, dachshunds. However, these adorable dogs are also uniquely susceptible to certain serious

medical difficulties, demanding an elevated level of attention and care. Simply put, to be a rescue for dachshunds, while understandable and commendable, is extremely demanding. Similarly, the Commercial Dog & Cat Inspection Program also has a duty to monitor the care that is being provided to these vulnerable dogs.

Finding

The failure of the program manager to review documents on this operator prior to contacting the County Sheriff, in addition to notifying the operator prior to the inspection, suggest the need for developing protocol that outline the best practices in such matters. We also find that the Dept of Ag's use of the November 2019 compliance conference with the operators was an appropriate process whereby the owners were presented the evidence of their violations of the Act in an open forum, allowing them to question the investigator and where they could negotiate their interests with the Dept of Ag and its interest in making certain that the dogs are receiving a high level of care. Importantly, when such informal processes are utilized, there must be subsequent inspections to verify that the agreed upon changes have been made and dogs are receiving humane care and treatment.

6. Additional Areas of Concern

a. Unlicensed Facility - Rural Lyons, Nebraska

The Office of Public Counsel was approached directly by complainants who had contacted the Dept of Ag about an unlicensed rescue and/or breeder located in rural Burt County near Lyons, Nebraska. The complainants indicated that they first notified the Dept of Ag about this facility in early 2019 in a conversation with Program Manager Dozler informing him that there were up to 30 dogs living in horrible conditions on the property. The complainants observed that the owners of this property appeared to be operating as an unlicensed breeding facility for dogs. Mr. Dozler informed the complainant that, according to the County Sheriff, the owners of the property have only one dog. A local complainant, who had observed 30 pups running loose on the property, was informed by Mr. Dozler that before the Dept of Ag would seek to inspect the facility the complainant would need to provide 30 statements from 30 different people who bought puppies from the owners in order for any actions to be taken by the Dept of Ag. The Office of Public Counsel could find no such rule in statute, rules, regulations, operations, procedures, or practice. Therefore, it seems that this rule was manufactured to discourage the complainant from formally making a complaint, which is unacceptable.

In July 2019, a new complaint was received by Rick Herchenbach and assigned to a different Inspector, whose assigned territory includes the area surrounding Lyons. The complainant reported that in a conversation with the owners of the property, the owners stated that at that particular time they had 32 adult dogs for breeding purposes as well as 15 pups, though they indicated that they were having difficulty selling the pups. The complainant stated that the dogs were kept in the basement of the house. The

complainant also witnessed the pups running loose on the road and observed that they were not clean, had a terrible odor, and appeared to have a variety of medical issues. Such detailed descriptions indicated that the complainant had close contact with the pups.

The assigned Inspector visited the facility, but finding no one available, did not conduct the inspection. The Inspector then contacted the County Sheriff and was informed by the Sheriff's Office that there was no evidence to justify the issuance of a search warrant for the house and other buildings that potentially housed dogs.

Much like the complainant in the H[redacted] B[redacted]' case, where the program manager was accused of harassing the complainant, so too in this instance the complainant reported that on two occasions they were visited and harassed at their home by Program Manager Dozler. On one occasion they reported that Mr. Dozler inquired about the number of animals in the complainant's possession and indicated that they needed to be licensed. The complainant responded to Mr. Dozler that they had two dogs and two diabetic cats, all pets. Under Neb. Rev. Stat. §54-626 (8)(a), which defines as a commercial dog breeder "one who owns or harbors four or more dogs intended for breeding," it was clear that the complainant was not a commercial operator that requires licensure. But still, the subject of the complaint against the rural Lyons home met this definition, according to the owner's statement to the complainant. Further, the complainant stated that the Program Manager treated them rudely, tried to be intimidating, and appeared to be retaliating against them for filing a complaint with the Dept of Ag about an unlicensed commercial operator located nearby the complainant.

On April 7, 2020, the County Sheriff contacted the Nebraska Humane Society seeking the organization's assistance in conducting a search warrant at the rural Lyons property. A Nebraska Humane Society Investigator reported finding four horses, three ponies, and one heifer in poor condition at the location. The animals were released to her and the Nebraska Humane Society. It was also reported that there were dead animal carcasses on the property. Only one dog was observed, an emaciated adult german shepherd which the Humane Society Investigator scored as a "4", with "5" being the most severe. Though there was clear evidence of animal neglect and possibly abuse or abandonment, and reports that the owners also operated as a commercial breeder, the search warrant did not grant access to the home or other buildings on the property to conduct an inspection for the dog operation, so no search for the conditions or the numbers of dogs was conducted. Even the report from the Deputy Sheriff who stated that he heard dogs in the house and the garage did not result in a search warrant. While we understand that search warrants must be issued by the courts, it is nonetheless disturbing that the Dept of Ag made no subsequent efforts to work with local officials in obtaining a warrant to search the premises for dogs, though the enhanced ability of the program to search suspected problem operators was a key component of the legislation creating the Dog & Cat Inspection Act.

When notified of the April 7th seizure of animals in rural Lyons, the next morning Rick Herchenbach contacted the Nebraska Humane Society Investigator about her findings, opened a new case on this unlicensed breeding operation, appropriately assigning the case to the Inspector for the area, again, as Lyons is within her geographic assignment. The Inspector promptly investigated the new complaint, but, finding no evidence that that the owners were operating as breeders or a rescue, she determined that license was not required. Rather, concluding that the owners were *hoarders*, the Inspector observed that there is no statute defining or prohibiting hoarding. But if hoarding results in a violation of the Dog & Cat Inspection Act, action should be taken. She also stated that if there were allegations of neglect and abuse, then those issues needed to be addressed by the County Sheriff.

Finally, in his report of the April 7, 2020, incident, it was alleged that Mr. Herchenbach falsely reported that the complaint filed with the Dept of Ag came from the Nebraska Humane Society Investigator. It was correct that Rick Herchenbach spoke to her on April 8, 2020. Mr. Herchenbach also stated that from this conversation he sincerely believed she was filing a complaint. However, she subsequently indicated that she did not file the complaint with Mr. Herchenbach, as he had indicated. When the Ombudsman's Office interviewed staff of the Nebraska Humane Society for this investigation, the Investigator stated that in August of 2019 Program Manager Tom Dozler contacted her supervisor at that time, Mark Langan, and instructed Mr. Langan that staff of the Nebraska Humane Society were to file any and all complaints directly with the Program Office and not with their area's inspector, Rick Herchenbach. Mr. Dozler's call to Mr. Langan was made within days of when the Dept. of Ag was notified that Mr. Herchenbach sought protection as a whistleblower. As the Nebraska Humane Society's Investigator was aware of this instruction from the Program Manager to her supervisor, she was understandably concerned about putting herself at risk, as well as not wanting to risk problems for her employer by failing to comply with the orders to Mr. Langan. Meanwhile, with no knowledge that Program Manager Dozler had issued these directives to the Nebraska Humane Society in August of 2019, Rick Herchenbach subsequently called the Investigator on April 9, 2020 to discuss the matter further, as he had apparently misunderstood her intent during their April 8, 2020 conversation when he thought that she was filing a complaint. She clarified the issue and informed him during their second conversation that she did not intend to make a complaint.

Mr. Herchenbach, who had enjoyed a long and positive working relationship with the Nebraska Humane Society, was subsequently disciplined twice for the same incident. First, for stating that the report was filed by the Nebraska Humane Society's Investigator, and second, for calling her on April 9, 2020 to clarify the prior day's conversation. While Mr. Herchenbach takes responsibility for his actions, this incident seems to be in large part due to the Program Manager's August 2019 instructions to the Nebraska Humane Society, the largest provider in the state, and which instructions were never communicated or explained to Mr. Herchenbach. This avoidable situation resulted in the Dept of Ag reassigning the Nebraska Humane Society, the largest provider in

Nebraska, to the Inspector for southwest Nebraska, the most distant inspector from Omaha.

Summary

The Dept of Ag has been receiving complaints about this unlicensed rural operator since early 2019. Though there is evidence indicating that the owners have been operating as a breeder and rescue, the facility has never been inspected. The assigned Inspector attempted to inspect the facility in August of 2019, but finding no one there she was unable to complete the inspection. The Inspector subsequently contacted the local sheriff, who indicated that there was insufficient evidence to justify issuing a search warrant. While an April 7, 2020, search and seizure of several large animals in poor condition was directed by the Sheriff's Office, the warrant did not include searching for dogs inside the house, where the owners had reported that they were breeding dogs and where the dogs were kept. Though there were also dead animal carcasses and a malnourished german shepherd on the premises, the Dept of Ag made little effort to investigate the condition of the dogs inside the house and whether the facility was operating as a breeder. Rather, the statement was made that there is no statute prohibiting hoarding, acknowledging that there were many dogs inside the home. However, rather than focusing attention on the operations of the unlicensed facility, the program manager chose to pursue unfounded allegations against the complainant and discipline Rick Herchenbach for his mistake in reporting the Investigator's complaint.

Finding

Much like the owners of T[redacted] B[redacted], the owners of this Burt County facility were operating an unlicensed commercial facility. While there were attempts made to inspect the facility for dogs, no full inspection of the premises has ever been completed, though the owners reported that they were breeding dogs. And yet, according to the program's rules, where there is no one present for an inspection the owners may be called and "the owners or their representative must be onsite within a reasonable amount of time, not to exceed two hours, to allow the inspection." (NAS Titlec 23, Chapter 18, 006.04A) There is no indication that such calls were made in this case or in others similar situations. Though there were large animals in poor condition seized from the property, a malnourished german shepherd and reports of animal carcasses on the same property, there was no evidence of urgency by the Dept of Ag to inspect the dog operations. Furthermore, the Dept of Ag did not set up an administrative hearing, nor did it issue a stop-movement order which would necessitate an inspection. While the Dept of Ag contacted the county sheriff about this location, it did not zealously coordinate and advocate with county officials for their assistance. At the time of this report, none of the issues related to this unlicensed operator have been addressed by the Dept of Ag.

While the owners of this facility indicated that they were breeding and selling dogs, they were chalked up as *hoarders*, therefore no action taken. Whether or not they are hoarders, the issue of animal hoarding—the compulsive need to collect and own animals—should not minimized. Rather than constituting deliberate cruelty toward animals, animal hoarding is a mental disorder, and is an issue in and of itself. Whether or not hoarding is happening, if the tragic

results of such is starvation, illness, poor socialization, and death of animals, these consequences are equally as inhumane for abused and neglected animals as for hoarded animals who in neither case may be provided even minimal standards of nutrition, sanitation, shelter, or veterinary care. If animal hoarding is suspected, and the result is abused animals, then the Dept of Ag must work diligently with local officials to intervene and to protect such suffering animals.

b. D[redacted] C[redacted] H[redacted] S[redacted]

Timeline & Description of Events

In May 2020 several F[redacted]-area residents contacted the Office of Public Counsel regarding the Dept of Ag's response to their complaints about the D[redacted] C[redacted] H[redacted] S[redacted]. Specific issues included concerns about the treatment of animals and the conditions at the facility, the unwillingness to promptly return animals to their owners, the failure to maintain accurate records including the numbers of animals taken into custody at the D[redacted] C[redacted] H[redacted] S[redacted], and the number of animals from the facility that have been adopted and euthanized.

Upon review of these and other concerns, the Ombudsman quickly learned that this F[redacted], NE facility, established in 1988, has become a controversial operator in the F[redacted] area, as well as within the larger animal-rights community. Illustrative of the high level of interest, a private social media site, Help the Animals and Families of D[redacted] C[redacted] H[redacted] S[redacted], was established as a virtual venue to discuss concerns about the D[redacted] C[redacted] facility. According to the group's Facebook page, as of October 1, 2020, there were 1569 members of this private group.

Among the concerns brought to the Office of Public Counsel were questions about the accuracy of the facility's records. The complainant indicated that when their two dogs got loose from their yard, both dogs were subsequently located and taken to the D[redacted] C[redacted] H[redacted] S[redacted]. Despite their best efforts, the complainant reported that the facility would not release the dogs to the family. Unable to obtain their dogs' return, they sought records to learn what happened to their dogs. They also reported that, when records were requested of the D[redacted] C[redacted] H[redacted] S[redacted], and the records were not provided, they contacted the Dept of Ag to file a complaint against the facility under the Commercial Dog & Cat Inspection Program and to seek their assistance in obtaining the requested records for their dogs, so they could know what happened to the dogs after they were taken to the D[redacted] C[redacted] facility.

When the Dept of Ag failed to respond, the complainant contacted the Ombudsman's Office, which immediately notified the Dept of Ag of the complaint via email at approximately 1:30 p.m. on Thursday, May 7, 2020. On that same date, within one hour, the Program Manager directed Rick Herchenbach to complete "a routine inspection" of the D[redacted]C[redacted] H[redacted] S[redacted]. Mr. Herchenbach was also directed to notify the facility prior to the inspection. Rick Herchenbach indicated that he called

the Executive Director of the D[redacted] C[redacted] H[redacted] S[redacted] to let them know that he was on his way the morning of May 11th approximately thirty minutes prior to his arrival. Though Mr. Herchenbach's advance notification was minimal, local F[redacted] complainants indicated that from May 7th through May 10th there was an unusual amount of evening activity at the facility, presumably preparing for the inspection. Therefore, it was not surprising when Rick Herchenbach arrived at the F[redacted] facility on Monday morning, May 11, 2020, he found the conditions of the facility to be largely acceptable. The facility was clean and there was fresh water for the animals; however, Mr. Herchenbach observed that dogs and cats were not separated in the intake area, and there was also no record of an emergency veterinarian plan in place at the facility, not an insignificant issue due to questions about the facility's underreported euthanizations.

As most of the complaints against the facility related to the adequacy of its records, Mr. Herchenbach's main task in this inspection was to perform a targeted records' review based on the complaint received. Upon his request to review the facility's records, the facility's executive director initially refused to provide Mr. Herchenbach access to their records. However, after consulting with the president of the Board of Directors and legal counsel, the executive director agreed to allow the records' review to occur. Late Wednesday afternoon, May 13, 2020, Rick Herchenbach notified the Program Manager that he had not completed the investigation and requested more time to complete and file his report. Program Manager Dozler responded that there was a firm deadline requiring the full report to be submitted by the end of the day on Friday, May 15, 2020. Mr. Herchenbach completed the report as directed, finding that the facility's euthanization records had been underreported, as numbers from the D[redacted] C[redacted] H[redacted] S[redacted] were significantly lower than the records of the area veterinarian who performed the euthanization procedures. Similarly, disposition records of the numbers of animals adopted were also found to be inaccurate. On Thursday, May 14, 2020, the D[redacted] C[redacted] H[redacted] S[redacted] Executive Director signed Mr. Herchenbach's report from the inspection and the report was submitted to the Program Manager the following day, as had been requested. Finally, on May 27, 2020, Mr. Herchenbach conducted a re-inspection of the D[redacted] C[redacted] H[redacted] S[redacted] finding that the records from May 14th to May 27th were in order.

Though this information is unconfirmed, several persons in the F[redacted]-area have contacted the Office of Public Counsel about their joint concerns about both the D[redacted] C[redacted] H[redacted]S[redacted] and the Dept of Ag's oversight of the facility. Among the issues they have raised are concerns about whether the Program Manager could remain objective due to what has been called a personal relationship with the Director of the D[redacted] C[redacted] facility because they knew one another in each's previous work and that familiarity could lead to the inability to remain objective. While this is unconfirmed

information, the fact that it has been reported to our office by multiple sources merits mention.

Summary

The Ombudsman's Office is appreciative of the Dept of Ag's prompt attention to our inquiry on the Dept of Ag's handling of the complaints it received against the D[redacted] C[redacted] H[redacted] S[redacted]. However, in this instance there was no compelling reason necessitating an expedited report's completion within one week. Rather, the issues brought by the complainants required a thorough review of records of the facility's disposition of animals by adoption or euthanasia. As such, detailed investigations necessitate working inside facilities during business hours and that painstaking work takes time. Indeed, the facility's initial unwillingness to allow the records' review not only consumed time, but it heightened suspicion that the records were an area mandating scrutiny, leading the investigator to the question, what are they hiding? It was in the interest of the program, the Dept of Ag, the public, as well as the facility to identify all of the issues, leaving no stone unturned, yet the program manager insisted that the report be hastily completed and on his desk at the end of the day on Friday, May 15, 2020.

Approximately three weeks after Mr. Herchenbach submitted his report and one week after he completed his re-inspection of the D[redacted] C[redacted]facility, the Program Manager notified Rick Herchenbach that he was being disciplined by the Dept of Ag for alleged rude and disrespectful treatment of the Executive Director of the D[redacted] C[redacted] H[redacted] S[redacted] while performing his duty in seeking to review the facility's records. Though Mr. Herchenbach denies any inappropriate exchanges with the executive director, the strict timeline that the Program Manager imposed upon the investigator and the initial refusal of the facility's executive director to provide access to the records, added tension to a situation that otherwise would have been a routine inspection. Furthermore, the complaint against Mr. Herchenbach was brought by the executive director on Monday, May 18, 2020, one week after the alleged incident, but only four days after Mr. Herchenbach presented the results of his inspection to the Executive Director of the D[redacted] C[redacted] H[redacted] S[redacted]. The complaint appeared to be in retaliation for the results of the inspection of the D[redacted] C[redacted] H[redacted] S[redacted]. Oddly enough, when Mr. Herchenbach went to re-inspect the facility on May 27, 2020, and he found the facility's records were in order, there were no complaints made. In fact, at the time of the re-inspection Mr. Herchenbach was unaware that a complaint had been filed against him.

Finding

The mission of the Commercial Dog & Cat Inspection Program is to enforce the provisions of the Dog & Cat Inspection Act. In that regard the program is responsible for holding operators accountable for following the Act, ensuring that dogs and cats are being treated humanely. In this instance, by instructing the D[redacted] C[redacted] H[redacted] S[redacted] of an upcoming inspection in advance, the program director sought to provide time for the facility to get their house, which included their records, in order. Though Mr. Herchenbach only provided 30 minutes' notice, it appeared that the facility knew the inspection was coming days before the inspection occurred. Additionally, even though the complaints that motivated this inspection concerned the facility's

records, the Executive Director of the facility objected to the records' review. Furthermore, when Mr. Herchenbach requested more time to thoroughly explore the facility's records, Program Manager Dozler insisted that the report meet his deadline, suggesting that the Program Manager was seeking to protect the facility, an unusual tactic for the program manager of a regulatory agency directly charged with enforcing an administrative act. Lastly, the utilization of the retaliatory complaint from the Executive Director of the D[redacted] C[redacted] H[redacted] S[redacted] as sole grounds for discipline of an employee who is responsible for that entities' compliance requires careful consideration by Dept. of Ag administration.

c. In-Home Pet Services

An emerging issue in Nebraska and elsewhere across the nation is the question of licensure and oversight for the rapidly expanding numbers of in-home service providers affiliated with web-based ventures such as Care.com, Fetch, Rover.com, and PetSitters.org, among others, currently located in all fifty states, plus the District of Columbia, Canada, as well as eight European countries. There are currently hundreds of providers in the Lincoln and Omaha area offering boarding, doggy day care, house sitting, drop-in visits, and dog walking services. These operators are in direct competition with more traditional commercial facilities that maintain state licenses for their operations.

Licensed providers brought this discrepancy to the attention of the Office of Public Counsel, expressing their concerns that the Dept of Ag has shown no interest in figuring out what the proper licensure should be for affiliates of Rover.com and similar services located in the State of Nebraska. The commercial operators suggested that without licensure, there is no incentive for the on-line operations to provide quality care for animals. Another consequence is that licensed facilities are beginning to question the necessity of their own licensure. As discussed, facilities that meet the criteria for licensure, but are not licensed and are not routinely inspected, present possible dangers and risk for potential abuse and neglect of dogs and cats.

In light of today's expanding on-line economy and increasingly anti-regulatory climate, the continued growth of in-home service providers is to be expected. Indeed this trend is already evident. The 2019 Annual Report of the Dog and Cat Operator Inspection Program reported the total number of licensed facilities decreased from 684 in 2015, to 600 as of June 30, 2019, averaging a reduction of 21 licensed commercial facilities for each of the last four years. The 2020 report is due November 1, 2020, and the expectation is that the trend in decreased numbers of licensed facilities will continue.

SYNOPSIS

On March 30, 2000, when LB 825 came before the Legislature for its final reading, Lincoln Senator Marian Price spoke with great passion about the bill she had introduced. She stated that the puppy mills operating in Nebraska are "the worst violators of Nebraska's cruelty to animal laws." She also observed the impacts of puppy mills on unsuspecting consumers who purchase animals that are often "sick, inbred, and so abused that they make terrible and vicious pets and often have to be destroyed."

Senator Price's legislation sought to provide a necessary tool for the State of Nebraska to make certain that the days of horrible puppy mills had come to an end by providing a program for the inspection of licensed commercial facilities. The original bill, as introduced in 1999, required the Dept of Ag to conduct pre-licensing inspections; however, it was unable to move forward. Senator Price agreed to remove pre-licensing inspections in order to get the bill passed. At the time it appeared to be a prudent decision, as LB 825 passed without a single opposing vote.

In the 20 years since the Commercial Dog & Cat Inspection Program was established, the conditions of commercial dog and cat facilities have improved significantly. Today it is exceedingly rare to hear reports of those horrible puppy mills as were seen in the 1990's. However, as this report has shown and as several rescue operators can attest, the problems of animal abuse in commercial facilities are not a thing of the past. Serious incidents of neglect, abuse, and abandonment continue to occur, and, under the Dog & Cat Inspection Act, it is the Commercial Dog & Cat Inspection Program's duty to address them.

Indeed, the current troubling problems with unlicensed operators could be traced back to that legislative compromise reached twenty years ago, as well as a recent policy of the Dept of Ag whereby inspectors were not allowed to take applications for licensure. The T[redacted] B[redacted]' case illustrates the dangers of unlicensed commercial operators and the inhumane treatment of animals. Where such facilities exist but are not licensed, they appear to be out of the sight of Administrators of the Dept of Ag's Commercial Dog & Cat Inspection Program. As a result, innumerable dogs have suffered neglect and abuse, consumers have purchased damaged pets, and landlords and shelters are left to clean up the nasty messes that remain after these operators leave.

Unfortunately, the Dept of Ag's ineffectiveness is not limited to the worst cases. In each of the cases mentioned within this report the Dept of Ag appears to be hesitant in holding commercial operators accountable when complaints are made alleging the inhumane treatment of dogs and cats and evidence confirms it. Complainants have observed that when their complaints are brought to the Commercial Dog & Cat Inspection Program, they are typically treated as adversaries rather than allies who share in a common mission of preventing cruelty to animals. Even worse, the program's defensiveness has deteriorated relationships and has resulted in reports of dismissive and even hostile and retaliatory actions being taken against complainants.

INFORMATION AND ASSESSMENT FROM THE DEPT OF AG

During this investigation, the Dept of Ag was contacted concerning specific numbers of administrative hearings and compliance conferences conducted over the last five years. The Dept of Ag not only provided the information requested, but offered other helpful data as well.

Additionally, the Dept of Ag provided a positive assessment of work of the Commercial Dog & Cat Inspection Program over the last five years in five different areas:[18]

1) Increased Oversight

   The Dept of Ag stated that since the Dog & Cat Inspection Act was last amended in 2015, the Commercial Dog & Cat Inspection Program has increased inspections which has encouraged greater compliance by operators. The Office of Public Counsel agrees that inspections are crucial, particularly to operators with known histories of non-compliance.

2) Operators Ceasing to Operate

   As was mentioned above, there has been a reduction in the numbers of operators, though the Dept of Ag stated that they do not track the reasons why operators close their doors. This report has raised concerns about operators who may no longer be licensed but who may continue to operate, suggesting the need for closer scrutiny of those operators who say they are no longer in business to confirm that to be the case.

3) Administrative Hearing and Compliance Conferences

   The Dept of Ag reported that between 2015 and 2019 the program conducted only four administrative hearings and five compliance conferences in a five year period. The Dept of Ag explained that the low number of hearings was due to compliance conferences and settlement agreements, though the report gives examples of the lack of both.

   Taking administrative actions to enforce the Dog & Cat Inspection Act is the statutory duty of the Dept of Ag where warranted, it is also the case that administrative actions, which require proof by a preponderance of the evidence, is a lesser standard of proof than is required to successfully prosecute crimes in a court of law.

   Additionally, the Office of Public Counsel supports the use of alternative avenues to obtain operators' compliance. However, perpetually noncompliant operators, some of whom are unlicensed, are very concerning. We also observe that in such cases, a stop-movement order may be an effective means to inspect facilities; however, in the last five years the Dept of Ag has issued a total of four stop-movement orders, and in those

instances where stop-movement orders are issued and evidence exists of non-compliance, the Dept of Ag is hesitant to enforce them.

4) Nebraska Operators on the Humane Society of the United States Horrible Hundred List

   The Dept of Ag highlighted that according to the 2019 Humane Society of the U.S. Horrible Hundred List, Nebraska has three operators currently on the list; whereas, in 2015 there were 14 Nebraska operators on the Horrible Hundred List.

   The operators, the program's inspectors, and those advocates for the humane treatment of animals who have notified the Dept of Ag about inhumane practices of breeders should be commended. These citizens are important allies for the program and that relationship needs to be acknowledged and nurtured. Also, there is a problem with unlicensed breeding operations who would likely have made the list had they been licensed. Additionally, it is important to add that the list is only a list of breeders and does not consider rescues, shelters, pet stores, and boarding kennels.

5) Cruel Neglect, Cruel Mistreatment or Abandonment

   The Dept of Ag also cites that according to criminal statutes, it is the responsibility of county law enforcement to prosecute cases of cruel neglect, mistreatment, or abandonment of dogs and cats. The Dept of Ag merely reports them. While it is the duty of local authorities to prosecute all criminal cases, in 2015 the Legislature approved the designation of a special investigator as a deputy state sheriff to help facilitate the enforcement of animal cruelty and neglect cases with state and local officials. It is not clear to the Office of Public Counsel that this addition has resulted in more proactive measures being taken to protect the animals the program is intended to aid.

The Office of Public Counsel acknowledges receiving the Dept of Ag's positive assessment of the program, and, while we agree with the Dept of Ag's conclusion that the program has indeed made positive strides in improving the conditions for dogs and cats across Nebraska over the last two decades, there remain troubling areas that necessitate ongoing vigilance to its mission. For this reason, as the Commercial Dog & Cat Inspection Program enters its third decade of service, it is very important to address concerns that have been raised herein.

SUMMARY & RECOMMENDATIONS

The allegations of wrongdoing that were identified for investigation by the Ombudsman's Office were analyzed and the following was found:

- The Dept of Ag did not fulfill its responsibility under the Dog & Cat Inspection Act to provide administrative oversight and accountability of operators, or non-operators, who have been inspected and/or reported to be in violation of such Act by fully utilizing the methods available to them to hold bad actors accountable administratively.

- The Dept of Ag did not fulfill its responsibility under the Dog & Cat Inspection Act to, in every instance, refer complaints of abuse and neglect by commercial dog and cat operators to county authorities for possible criminal prosecution. (Neb. Rev. Stat. §54-629). Under 23 NAC 18-006.06 the Dept of Ag is required to refer complaints involving cruelly neglected or cruelly mistreated dogs and cats to law enforcement on the day the complaint is received. By statute, "cruelly neglect means to fail to provide any animal in one's care, whether an owner or a custodian, with food, water, or other care as is reasonably necessary for the animal's health." Neb. Rev. Stat. §28-1008(4) Similarly, "cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal." (Neb. Rev. Stat. §28-1008(3)).

Overall, there were several instances found where there was failure to adequately act on wrongdoing under the Dog & Cat Inspection Act.

Conclusion

For reasons discussed in this report, the Office of Public Counsel/Ombudsman has concluded that while the Dept of Ag may have failed to fully enforce the provisions of the Dog & Cat Inspection Act, there were no law violations by Director Wellman or other Dept of Ag employees that would involve criminal liability. For that reason, the Office of Public Counsel will not be referring these matters to the Attorney General under Neb. Rev. Stat. §81-2704(4)(e)(iii).

However, upon its investigation of these complaints, the Ombudsman has deep concerns about the Dept of Ag's apparent unwillingness to zealously enforce the provisions of the Dog & Cat Inspection Act. On the one hand, there is a reluctance to require licensure by those commercial dog and cat operators and facilities that are operating without licenses in violation of the Dog & Cat Inspection Act. (Neb, Rev. Stat. §54-628.02). Where these facilities are unlicensed, it is less likely that the Dept of Ag will conduct inspections and seek corrective actions. In those instances where complaints are brought against licensed operations, it is also unlikely that the

Dept of Ag will perform its duties in holding administrative hearings to assess and address the issues that have been identified. (Neb. Rev. Stat. §54-632).

Additionally, under Neb. Rev. Stat. §54-629, the Dog & Cat Inspection Act also directs the Dept of Ag to refer complaints of abuse and neglect by commercial dog and cat operators to county authorities for possible criminal prosecution. (Neb. Rev. Stat. §54-629). Indeed, under 23 NAC 18-006.06, the Dept of Ag is required to refer complaints involving cruelly neglected and cruelly mistreated dogs and cats to law enforcement on the day the complaint is received. While the Director arguably has discretion to conduct hearings on issues related to licensure, the Director must also immediately report to county authorities those complaints involving abuse and neglect. This investigation indicates that the Dept of Ag appears to be reluctant to report cases of suspected abuse, neglect, and abandonment to county authorities. The official reluctance is troubling, both for not utilizing all of the tools provided the Dept of Ag under the Dog & Cat Inspection Act to hold operators and facilities accountable, and for ignoring the potential harm to animals.

The Office of Public Counsel also recognizes that the Dept of Ag's unwillingness to fully enforce the Dog & Cat Inspection Act is not a recent phenomenon, but it has been alleged throughout most of its 20-year history, going back to when the program was newly established. As a result, those with a passion for dogs and cats have openly expressed their lack of confidence in the Dept of Ag's willingness and ability to effectively operate the program as was intended by the Legislature.

Historically, Nebraska has been one of the leading states in the numbers of commercial dog and cat operations. It is also the case that with 600 operators currently licensed by the State of Nebraska, the great majority of operators are following the law and are providing humane treatment of their animals. Those providers are to be commended for their compassionate treatment of the animals within their care. However, there are other operators, some of whom may be hoarders, as well as others who may be well-intentioned, but whose staffing is insufficient to care for the numbers of dogs and cats in their care, or to provide the specialized care certain dogs and cats require, that lead to bad results. It is the duty of the Dept of Ag to make certain that the Commercial Dog & Cat Inspection Program is performing its responsibilities as required by law; namely, protecting dogs and cats and those who own them.

Recommendations

The Office of Public Counsel offers the following recommendations to enhance the performance of the Dept of Ag's duties in the operation of the Commercial Dog & Cat Inspection Program.

1. Give special attention to the issues related to non-licensed facilities and operators by creating an effective strategy for inspection and licensure when such operations are found. This identified need should include giving consideration to requesting legislation

to amend the Dog & Cat Inspection Act, if needed, which may include mandating pre-license inspections.

2. Review, analyze, and fully utilize the administrative processes at the Dept of Ag's disposal in overseeing and holding accountable operations that are or should be licensed. This should include clearly establishing the appropriate circumstances compliance conferences should be utilized and the appropriate burden of proof needed to more readily pursue the use of administrative hearings.

   The Dept of Ag should be commended for exploring less formal procedures to promptly address immediate issues with particular operators, supporting efforts to improve access to government. However, it is important that the compliance conference process provides clear guidelines for all participants. Furthermore, compliance conferences should only serve to supplement administrative hearings in instances where owners acknowledge the willingness to make corrections; whereas, the administrative hearing process, as provided for in statute, is more appropriate for less compliant parties.

3. When more informal processes are utilized, like compliance conferences, when dealing with violations under the Dog & Cat Inspection Act and relative rules and regulations, develop requirements for subsequent inspections to verify that the agreed upon changes have been made and the animals are receiving humane care and treatment.

4. Develop a more effective strategy in working with local law enforcement and county attorneys in cases of suspected animal abuse, neglect, and abandonment.

   This should include the development protocols that outline best practices before and during working with local county officials pursuant to the Dog & Cat Inspection Act. This should include, but not be limited to, the review of documents, notification of facilities/operators ahead of visits, weighing evidence, and frequency of communication.

5. Improve integration of the Commercial Dog & Cat Inspection Program within the Dept of Ag, or in the alternative, identify a different agency in state government where the program could be better located and seek legislative changes.

6. Strengthen coordination with federal officials and representatives from comparable programs in neighboring states to establish best practices in commercial dog and cat operator licensing and accountability.

7. Utilize the passion and expertise of current providers, organizations and individuals by establishing an advisory group to the Dept of Ag for positive changes in the prevention of cruel and inhumane treatment of animals and the better operation of the Commercial Dog & Cat Inspection Program.

8. Review the intent of the Commercial Dog & Cat Inspection Program in light of the emerging trends towards more in-home service providers, especially through services such as Care.com, Fetch, Rover, and PetSitters.org, and identify changes needed to the

Dog & Cat Inspection Act and to the promulgated rules and regulations in order to ensure the safe operation of such services for animals.

9. Contract with an outside entity as soon as possible to review the operations of the Commercial Dog & Cat Inspection Program, making specific recommendations for needed improvements. Report the results of the external review and the Dept of Ag's response to the findings of the external review to the Office of Public Counsel/Ombudsman and the members of the Nebraska Legislature within 90 days of the Dept of Ag's receipt of the findings of the outside entity reviewing the operations of the program.

Nebraska Legislature

Upon review of this report and the subsequent response of the Dept of Ag, the Agriculture Committee of Nebraska Legislature with the Legislative Performance Audit Committee, should consider a performance audit of the Commercial Dog & Cat Inspection Program. Such an audit was conducted by the State of Kansas of the similar Kansas program in 2018.

NOTES AND EXHIBITS

1 Signed Statement from Rick Herchenbach received on March 26, 2019 providing his authorization to release his name as a whistleblower in any and all reports.

2 Introduction by Senator Marian Price of LB 825, "Commercial Dog and Cat Operator Inspection Act," Nebraska Legislature's Agriculture Committee Hearing, March 2, 1999, page 21 of transcript.

3 Testimony by Carol Wheeler, Founder and Director of Hearts United for Animals, Nebraska Legislature's Agriculture Committee Hearing on LB 825, March 2, 1999, p. 49.

4 Nicholas Bergin, "Animal Rescue Group Lobbying Against State Ag Director," Lincoln Journal Star, January 27, 2015.

5 Nebraska Department of Agriculture, "Nebraska Department of Agriculture Deputy State Sheriffs."

6 Martha Stoddard, "Dog Breeders Dwindling as Regulations Tighten," Omaha World Herald, December 29, 2019.

7 Nebraska Department of Agriculture, Commercial Cat and Dog Operator Inspection Program, State Fiscal Year Annual Report, July 1, 2018 – June 30, 2019.

8 Tim Carpenter, "Kansas Audit Points to Breakdown in State Oversight of Pet Animal Facilities," Topeka Capital Journal, December 13, 2018.

9 Josh Benson, "Commercial Dog Breeding in Missouri: What a Difference a Law Makes," Columbia Missourian, September 2, 2014.

10 2019 Whistleblower Case, Preliminary Report, August 15, 2019.

11 Acknowledgement Letter from Department of Agriculture Director Steve Wellman, August 21, 2019.

12 Commercial Dog and Cat Operator Inspection Act, Neb. Rev. Stat. §§54-625 to 54-643.

13 Commercial Dog and Cat Operator Inspection Regulations, Title 23, Nebraska Administrative Code, Chapter 18.

14 House and Garage Photos of T[redacted] B[redacted], Waverly, NE.

15 Photos of A[redacted] H[redacted] D[redacted], Walton, NE

16 Photos of H[redacted] B[redacted], Malcolm, NE.

17 Photos of H[redacted] H[redacted], Beaver Crossing, NE.

18 Department of Agriculture response to Ombudsman's request for information. "Commercial Dog and Cat Operator Inspection Act – Enforcement Actions," August 7, 2020.

19 Testimony by State Senator David Landis, Nebraska Legislature's Government, Military, and Veterans Affairs Committee Hearing on LB 44, "State Government Effectiveness Act," January 29, 1993.

EXHIBIT 1

March 26, 2019

I, Rick Herchenbach, give permission, for the Nebraska Ombudsman's Office, to use my name in any, and all reports.

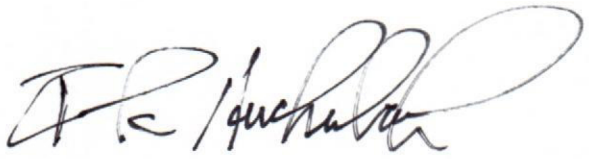

EXHIBIT 2

Ninety – Sixth Legislature – First Session – 1999

Introducer's Statement of Intent
LB 825

Chairperson: Senator Merton L. Dierks
Committee: Agriculture
Date of Hearing: 03/02/99

The following constitutes the reasons for this bill and the purposes, which are sought to be accomplished thereby:

LB 825 creates the Commercial Dog & Cat Operator Inspection Act. It establishes a licensing and inspection program for commercial breeders and dealers of dogs and cats as defined in the bill, to be administered by the Nebraska Department of Agriculture. Licensing fees are established, as are penalties for operating without a required license. Hobby breeders are defined in this bill and excluded from the licensing and inspection requirements.

This bill is a vehicle to develop quality standards for the breeding of dogs and cats; it provides a level playing field for the commercial breeders by setting breeding standards that will improve animal health and physical conditions. This bill would also put Nebraska back in good standings with our neighboring states. This bill protects the commercial breeders and it protects the consumer.

Principal Introducer: _____
Senator Marian Price

oppose these...this bill. We'll just circulate it around the room and when it's done we'll have it back up here. Okay, go ahead, Marian, whenever you're ready.

LB 825

SENATOR PRICE: (Exhibits 1 & 2) Senator Dierks and members of the Agricultural Committee, I am Marian Price. I represent District 26. I am here today to introduce LB 825. LB 825 creates the Commercial Dog and Cat Operator Inspection Act. It establish...it establishes a licensing and inspection program for commercial breeders and dealers of dogs and cats as defined in the bill to be administered by the Nebraska Department of Agriculture. Licensing fees are established as are penalties for operating without a required license. Hobby breeders are defined in this bill and excluded from the licensing and inspection requirements. LB 825 is similar to a bill introduced several years ago by Senator Cap Dierks with exception of the fee on pet food which has been eliminated. Concerned citizens including animal breeders, animal dealers, members of animal associations, health department officials, animal rescue groups, and concerned citizens from across this state entered...initiated the introduction of this bill. The breeding of dogs and cats is a commercial business and can be an outstanding field of commerce for our state. It can have a positive economical impact in rural and urban areas if done correctly and humanely. This bill is not just frivolous regulations and more government. It is not just another tax. It is not an animal rights bill. It is not a tax on puppies and it is definitely not an attempt to regulate the hobby breeders. This bill is a vehicle to develop quality standards for the breeding of dogs and cats. It provides a level playing field for the commercial breeders by setting breeding standards that will improve animal health and physical conditions. This bill would also put Nebraska back in good standings with our neighboring states. This bill protects the commercial breeders and it protects the consumer. Several years ago, a boycott was placed on seven states because of cruel and unhealthy breeding practices. At that time a national organization asked consumers to stop buying dogs from Nebraska, Kansas, Missouri, Iowa, Arkansas, Oklahoma and Pennsylvania. Since the initial boycott, four of the states have enacted

programs to license and inspect commercial breeding facilities of dogs and cats. The neighboring states of Kansas, Missouri, and Iowa are three of the four that have adopted inspection and licensure programs. Unfortunately because of Nebraska's lack of action we have become the dumping ground for animals of poor health and a haven for puppy mills. This situation has caused an unfair marketplace for our breeders. The majority of Nebraska's breeders are reputable and care about the health of their animals. This bill will protect their businesses and the market values of their products and in turn protect the consumer. The need for this bill has been compounded by the lack of manpower dedicated to the USDA licensing program. Because of the lack of inspections and the inconsistency of the inspections conducted the reputable breeders of the Nebraska pet...the pet production industry are experiencing a negative economic impact. The question has been asked, why do we need a state program if there is a federal animal care inspection program? And why do I need to be inspected twice? The answer is the same as reasons previously stated. A limited number of inspectors, a lack of inspections, and an inconsistency of the inspections conducted. Doctor Manley of the USDA animal care program in Fort Worth, Texas, has been the regional director of that program for over ten years. During a phone conversation yesterday, Dr. Manley stated that there were many duel inspection programs where states and the federal government work in collaboration to do joint inspections and share the results of all other inspections. Dr. Manley stated that he felt the states with duel inspection programs like Kansas and Missouri had improved the quality of breeding kennels and improved the quality of animals produced. Currently, there are more dogs and cats being produced in Nebraska than in the past. However, they are in poor health, physical condition and many are being kept in inhumane conditions. It is time for Nebraska to step up as our neighbors have and monitor our own breeders and maintain local control. There are others that will follow me and testify on the historic and technical aspects of this industry and this legislation. The challenges identified for this bill, the last time it was introduced, were the fees on pet food and the administration of the inspection program by the Nebraska Department of Agriculture and the potential related costs. The fees on pet food have been eliminated and as the legislative fiscal note indicates the cost of the program is

not an issue. As we talk about animal health and welfare whom is better qualified to determine compliance with standards applied to breeders and dealers than the state veterinarian. He has the credentials, experience, and respect needed to implement the Commercial Dog and Cat Operator Inspection Act. This would be in line with our neighboring states which have placed the administration and management of similar programs within their departments of agriculture. The Nebraska statutes indicate that the Department of Agriculture Bureau of Animal Industry shall be vested with the power and charged with the duties of protecting the health of livestock. However, the animal...the American Heritage Dictionary defines livestock as domestic animals raised for home use and/or for profit. The Department of Agriculture is already inspecting animal facilities. They have the trained staff, the administrative capabilities, and skilled veterinarians to manage the licensing and inspection programs of LB 825. To provide assistance with the implementation of this program, Dr. Manley from the USDA indicated that his office would be willing to write a memorandum of understanding with Nebraska as they have done with Missouri where they share inspection results and trained staff for them. As a brief update, the Bureau of Animal Industry made a ten-year commitment to have pseudorabies eradicated in the state of Nebraska by the year 2000. They indicated in their 1998-99 budget request that I will quote "By the end of year 1998 would mark the first time in 80 years that the Bureau has not had the responsibility of managing a major disease eradication" like pseudorabies. The state of Nebraska should be proud of this accomplishment as I am. The Bureau has indicated that they must now "take immediate steps to reevaluate past and current philosophies of animal health programs and take action to make necessary changes to meet the current emerging and future needs." The testimony to follow will show that there is a need for this bill and it is urgent. Testimony will also indicate that our neighboring states have taken legislative action to address the issues of poor breeding practices and puppy mills. Nebraska has fallen behind and there is still an embargo on the dogs and cats bred in our state. Now is the time to implement this program and I ask for your support. Mr. Chairman and members of the committee, I have one amendment I would like to introduce for your consideration. As you glance at this amendment, there is a change in it. As you will note and it

is very brief, it states I'm changing "three or less unaltered dogs or cats for breeding purposes" to "three or less breeding female dogs or cats for breeding purposes." The purpose of this amendment is to make the bill language and intent consistent with the federal guidelines and regulations. The original language referred to three male and/or female dogs or cats. The intent of this bill is the inspection and licensing of breeders therefore it change...this change clarifies the intent and helps define hobby breeders that are exempt. There are individuals here today to testify and to answer any technical questions you may have. There are also several veterinarians who have indicated a want to testify. Are there any questions of me at this time?

SENATOR DIERKS: Any questions for Senator Price? Senator Hilgert.

SENATOR PRICE: Yes.

SENATOR HILGERT: Senator Price, we talked about this earlier when you asked me to sign on to the bill. I certainly laud what you're trying to do here and I appreciate where you're coming from. And again I'm telegraphing my concerns fairly obviously. My concern with the bill deals with...with a quarter of million dollar price tag and basically putting a puppy tax on every dog that's sold or exchanged or even leased in the state. Can you comment on the price tag of that and are there any alternatives that you have considered or are thinking about regarding how to fund this program? Because that's my main concern is the quarter of a million dollar price tag.

SENATOR PRICE: As you're looking in the fiscal note, I have worked with the Department of Agriculture and they have the personnel and are able to find the funding in their...in their area.

SENATOR HILGERT: So, the department again...you know, I was just...I was looking at the numbers. The $261,635 is going to be absorbed by...in total then we don't have to put the 25 cents on the dogs and cats.

SENATOR PRICE: No, no there will be no tax on the puppies.

EXHIBIT 3

that this bill would not only locate and surface but also bring into a more humane compliance. We have met several breeders and retailers that welcome and support this bill's intent simply because they run their operations in a compassionate and caring manner looking at the financial line as a factor of business instead of the driving force of the business. On behalf of all the frustrated responsible pet owners in Nebraska, I urge you to pass LB 825. I might add though that an amendment be added to the bill requiring a yearly inspection of all breeders, retailers, kennelers, and shelters rather than the one time inspection required at...under the current bill and at the time of the original licensing. I might also add that the inspection and enforcement could be subcontracted to local animal control agencies where they exist to help alleviate the tight time constraints that this law might place on the existing Department of Ag. Thank you.

SENATOR DIERKS: Thanks, Ken. Questions for Mr. Svoboda? I guess not.

KEN SVOBODA: Thank you.

SENATOR DIERKS: Thanks for coming over, Ken. Next proponent, please.

CAROL WHEELER: I'm Carol Wheeler, C-a-r-o-l W-h-e-e-l-e-r, founder and director of Hearts United for Animals. Hearts United for Animals is a private, nonprofit, Auburn based, no killed shelter, sanctuary, and animal welfare organization founded ten years ago. In May of 1997, we began to rescue and rehabilitate the breeding dogs of mass producing establishments. To date these rescued dogs total 93. We have purchased their freedom at dispersal auctions and in breed lots as sold by breeders through ads in periodicals. And we have taken the dumpings of the mills on the kill shelters where they have been left to place or destroy. The rehabilitation of these dogs has given us extensive knowledge of their condition. They suffer from all types of afflictions, bulging inguinal hernias, tumors, infected anal glands, urinary tract infections, ovarian cysts, brittle reproductive organs, uterine infections, ear mites, itching painful skin disorders. Their teeth and gums are so rotten with infection that often their salivary glands swell into painful lumps. After their dental work is done many of them

have no teeth left. Bare bones, cost cutting greed restricts expenses for nutrition and health care and the mill dogs endure pain and suffering for life. The females fare the worse, of course, and due to public demand for small dogs many of the male breeding dogs are now tiny. Any they have the most difficulty giving birth. We have a six pound, four year old Maltese, who has had so many cesareans that her abdominal organs were all connected with scar tissue. She could not constrict her bladder to urinate. Yet, she was sold at auction for continued breeding. In the male breeding dogs, very serious problems of the reproductive organs are the rule not the exception and these little dogs produce litter after litter often in excruciating pain. I have brought me a picture that I took at a dispersal auction. This picture was taken from a parking area between two vehicles in an effort not to be seen with the camera. The picture is a limited view of the long rows of wooden boxes with wire fronts used to house the dogs. This auction was conducted on a very hot day in September. The dogs were roasting in their tiny, little sweat box housing out in the sun. The auctioneer frequently had to announce that a most recent litter of puppies had died out on the wires. Apparently, it is understood that extremes of temperature will kill litters born in this type of housing. All of the box housing was sold at the auction, loaded up into pickup trucks and taken away for future use. Of the 93 dogs rescued by HUA, seven remain with us as sanctuary dogs, 6 are newcomers, all the rest have traveled to homes in 26 states and Canada. They all live with people who have great sorrow in their hearts for them and everywhere they go the stories of the horrors of the Midwest mills are told. These little dogs have been granted a miracle through the power of the worldwide web and are owned unceasing dedication. I ask you in the name of mercy to approve LB 825.

SENATOR DIERKS: Thank you, Carol. Are there questions for Ms. Wheeler? Senator Hilgert.

CAROL WHEELER: And I would like to pass this. I realize it's big but I'd like you to see it.

SENATOR HILGERT: You say your organization is from Auburn, Nebraska?

EXHIBIT 4

https://journalstar.com/legislature/animal-rescue-group-lobbies-against-state-ag-director/article_1bedf1be-3334-5091-a019-f8862edba455.html

Animal rescue group lobbies against state ag director

By NICHOLAS BERGIN / Lincoln Journal Star
Jan 27, 2015

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Nebraska's titan agricultural interests on Tuesday rallied behind state Ag Director Greg Ibach in the face of a furious lobbying effort by an animal shelter to block his reappointment.

Auburn rescue group Hearts United For Animals, which has housed more than 10,000 dogs abandoned or taken from U.S. commercial breeders, says Nebraska puppy mills are among the worst in the nation. The state Department of Agriculture, under a decade of Ibach's leadership, hasn't done enough to punish abusers and improve inhumane conditions, the group said.

"Please vote to block his appointment in the hopes that someone with a little more compassion and a much better sense of right and wrong will take his place," volunteer Jason Paine of Lincoln said Tuesday during a hearing before the Legislature's Agriculture Committee, which will make a recommendation to the full Legislature on whether to affirm Ibach's reappointment.

Gov. Pete Ricketts said last month he wants to keep Ibach as head of the department that promotes, encourages and regulates Nebraska agriculture. Ibach's family runs a cow, calf and grain operation near Sumner.

During the hearing, Ibach admitted his department could do a better job overseeing chronically substandard cat and dog breeders and said he has spent the past 18 months working to do that by updating existing regulations and working with advocacy groups, including the Nebraska Humane Society, which is proposing legislation to improve the statutory toolbox available to the three inspectors responsible for overseeing facilities.

Judy Varner, president and CEO of the Omaha-based Nebraska Humane Society, said her organization, too, had been frustrated with the Ag Department's record of dealing with puppy mills.

"About a year ago, however, things changed," she said. "We have been having meaningful conversations with Director Ibach and others in the administration of the department. We are very pleased with changes that are taking place."

But Hearts United director Lori Hook called the recent changes smoke and mirrors.

"The Department of Ag appears to view themselves as there to protect the breeders and their own self-interests, not the dogs," she said in a prepared statement. "In my experience in over a decade of dealing with the Department, the problem is getting worse."

Hearts United showed committee members pictures taken by Ag Department inspectors of emaciated breeding dogs with urine-soaked fur kept in filthy conditions and in need of medical attention.

Hook accused department staff of being unwilling to work with law enforcement and county attorneys to bring legal charges against negligent and abusive breeders.

Ag Department spokeswoman Christin Kamm said many facilities have been reported to law enforcement since 2005, including two since the beginning of this year.

"Law enforcement is notified when there is an immediate threat to the health and safety of a dog or cat," she said.

The group started a petition Friday on **change.org** asking senators to block Ibach's appointment. By Tuesday evening, it had gathered 4,379 signatures.

The ag committee plans to vote on its recommendation next week.

On Tuesday, Omaha Sen. Ernie Chambers, one of the ag committee's eight members and an avowed supporter of Hearts United, said Ibach likely will be confirmed and called the Legislature's vote on it perfunctory.

He pledged to take future complaints about enforcement to the governor and to embarrass the administration into addressing the issue if it continues.

The commercial cat and dog inspections program has a budget of $400,561, or 2.2 percent of the department's overall $17.4 million budget, Kamm said.

“Collectively we are responsible for 92 statutes," Ibach said at Tuesday's hearing. "However the bulk of our budget, 85 percent, is tied to regulatory programming and preserves health safety and fairness for those in agriculture as well as the general public.”

Nebraska’s agricultural groups threw their support behind Ibach, including the corn, wheat, soybean, pork and cattlemen boards, as well as the Nebraska Farm Bureau and Farmers Union.

“Do we agree on all of the issues? No," said Farmers Union President John Hansen. "But what we do agree on is the need to be knowledgeable, involved and engaged and doing what you can to improve agriculture in our state and to have an open door policy.

"We have had a good working relationship with Greg Ibach and we appreciate that."

EXHIBIT 5

Nebraska Department of Agriculture (Department) Deputy State Sheriffs

Department special investigators (investigators) are required to be deputy state sheriffs and trained and certified as any other law enforcement officer in Nebraska including obtaining a Governor's Appointment certificate and certification of completed law enforcement training. The Department has one employee, Gary Cline (variable FTE 0.5 to 1.0), classified as an Agriculture Investigation Officer. The Department also utilizes Tom Dozler, formerly classified as an Agriculture Investigation Officer as both a deputy state sheriff and a program manager of the Dog and Cat Program. The Department also has a vacant Agriculture Investigation Officer which is being reserved due to budgetary matters.

Department investigators assist Department staff with investigating dead animal disposal violations; animal health violations and importation violations, including quarantines; serving and executing inspection warrants, or search warrants in conjunction with local law enforcement; training agency staff on Basic Investigatory Training every other year (2 to 2 ½ days); and assisting with enforcement of violations of a stop-movement order. Investigators write detailed investigation reports and obtain evidence necessary for potential court hearings as well as administrative hearings because the Department could pursue both criminal and civil at the same time. Department investigators have participated in "stings" for purposes of showing an individual is operating without a license, interviewed witnesses for purposes of gathering evidence, briefed local law enforcement (including county attorneys), conducted surveillance on alleged violators, and assisted local law enforcement when licensees are violating Department statutes or regulations.

Examples of Nebraska Statutory Citations of Interest:

1. §81-201: The Department of Agriculture shall have power (7) to employ special investigators who shall be appointed deputy state sheriffs by the Governor and who shall, upon qualifying for such office, possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the laws of the State of Nebraska within the jurisdiction of the Department of Agriculture.

   See also, §84-106. Superintendent of Law Enforcement and Public Safety; deputies; appointment by Governor; bond or insurance; powers; actions against, where brought. The Governor is authorized to call to his or her assistance and to appoint persons necessary to assist the Superintendent of Law Enforcement and Public Safety to enforce the criminal laws. The superintendent and his or her assistants, who shall be designated deputy state sheriffs, shall qualify by taking and filing an oath in writing. Such persons shall be bonded or insured as required by section 11-201. The premiums may be paid for out of appropriations made to the state offices, departments, commissions, or other agencies to which such deputy state sheriffs are assigned. No deputy state sheriffs shall be assigned to the Department of Correctional Services. The superintendent and his or her assistants shall have the same powers in each of the counties of the state as the sheriffs have in their respective counties, insofar as the enforcement of the criminal laws is concerned. An action against the superintendent or any of his or her assistants for an act done by them or either of them by virtue of or under color of their offices respectively, or for any neglect of their official duties, shall be brought in Lancaster County, Nebraska, or in the bounty where the cause of action or some part thereof arose.

2. Agriculture Investigation Officer, Class Code X62330. Examples of work – make arrests and obtain warrants for violators of animal health statutes and the commercial dog and

cat operator program; assists in investigations being conducted by other law enforcement agencies; advises other officers and law enforcement agencies on the proper procedures and techniques for conducting investigations in regards to animal health, import violations, commercial dog and cat program; prepares reports on investigations for presentation to county attorneys through the state for prosecution; plans, organizes and supervises selective law enforcement on all Nebraska borders, in regards to the movement of livestock into and leaving the State of Nebraska.

3. 81-1414(2): On and after January 1, 1972, no person shall receive appointment as a law enforcement officer unless he or she has been awarded a certificate or diploma by the commission [Nebraska Commission on Law Enforcement and Criminal Justice] attesting to satisfactory completion of the minimum curriculum of the training center as established by the council [Nebraska Police Standards Advisory Council] or has been awarded a certificate or diploma attesting to satisfactory completion of a training program which the council finds equivalent thereto. Any person who has not been awarded such a certificate or diploma may receive an appointment conditioned on satisfactory completion of such training if he or she immediately applies for admission to the training center or any training academy and enrolls in the next available basic training class. NDA investigators are required to qualify annually for handgun proficiency, and carry such handguns during investigations and border stops.

4. Nebraska Supreme Court Rules: §6-1455 Uniform Waiver System. Nebraska Department of Agriculture statutory sections included in the waiver & fine schedule for issuance of citations by Nebraska special investigators:

a.	54-788	54-796	No prior entry permit
b.	54-790	54-796	No health certificate
c.	54-791	54-796	Diverting animals from destination
d.	54-1906(7)	54-1913	Unlawful conveyances used by pet food manufacturers, renderers, & motor carriers.

   Citations are issued in lieu of arrest, so therefore, the individual can be arrested if they resist or otherwise do not comply.

5. Law Enforcement Officer is defined in the following statutes:
   §§ 81-1401(8)(a) & (8)(b); and §§28-1008; 28-1012 in conjunction with §54-633.

6. 54-633.01. Special investigator; powers; referral to another law enforcement officer. "...the director may direct a special investigator employed by the department as authorized pursuant to section 81-201 to exercise the authorities of a law enforcement officer pursuant to sections 28-1011 and 28-1012 with respect to the dogs or cats...to inspect, care for, or impound the dogs or cats pursuant to sections 28-1011 and 28-1012.

EXHIBIT 6

https://omaha.com/eedition/sunrise/articles/dog-breeders-dwindling-as-regulations-tighten/article_2a138347-2145-54ab-a99b-60ca1fd33233.html

Dog breeders dwindling as regulations tighten

'People are getting out, and no one is getting in,' one breeder says; social pressures also contribute

BY MARTHA STODDARD
WORLD-HERALD BUREAU
Dec 29, 2019

Only $5 for 5 months

LINCOLN — Clem Disterhaupt has been breeding dogs for half a century at his small creekside ranch near Stuart, Nebraska.

These days, he keeps around 70 adult dogs — dachshunds, Havanese and soft-coated Wheaten terriers — and sells their puppies as family pets. He's also been a dog show judge and a voice for Nebraska's commercial dog breeders.

But Disterhaupt is part of a dwindling number.

Nebraska Department of Agriculture records show that half of the state's commercial dog and cat breeders have left the business over the past seven years.

The decline was particularly sharp between June 30, 2018, when there were 216 state-licensed breeders, and the same date this year, when the number was down to 138. The state does not keep track of dog and cat operations separately, but almost all licensed breeders raise dogs.

"People are retiring and getting out, and nobody is getting in," Disterhaupt said.

State agriculture officials said they don't track why breeders quit the business. But they said one factor may be increased oversight by state inspectors.

In an email statement, they said the agency has seen breeders close up shop after being found in repeated violation of Nebraska animal health and welfare standards. By going out of business, the breeders avoid having to appear at administrative hearings and pay potential fines.

Those who closed include 18 of the 35 Nebraska dog breeders listed in the Humane Society of the United States "Horrible Hundred" reports back through 2013. More than half of the remaining breeders listed in the reports still struggle to meet state standards.

The group's reports detail conditions found during inspections of problematic "puppy mills" across the country. The reports define puppy mills as dog-breeding operations in which the physical, psychological or behavioral needs of the dogs are not fulfilled. This can be because of inadequate shelter, staffing, nutrition, veterinary care or other reasons.

Nebraska lawmakers tightened the state's inspection and enforcement laws in 2015, in the face of criticisms that state agriculture officials had allowed for the "cruel neglect" of animals at dog breeding operations.

Critics cited cases such as Julia Hudson's breeding operation near Malcolm. She failed four state inspections in a row but continued to operate until the county attorney filed criminal charges against her. In late 2013, a judge ordered her shut down for two years and called conditions at the operation "an animal Auschwitz."

The 2015 law provided better funding for the commercial dog and cat operator inspection program by increasing fees. It made the program director a deputized law enforcement official, who can work directly with local authorities on cases of animal cruelty and neglect.

The law provided for fines if breeders do not answer the door, are not available or otherwise try to avoid inspections. It also created a reinspection fee, charged if violations are found during an inspection and a follow-up trip is required.

Those penalties led to sharp drops in the number of attempted inspections and reinspections.

There were 134 attempted inspections in the fiscal year ended June 30, 2015, but only six in the fiscal year that just ended. Reinspection numbers dropped from 119 to 19 over the same period, which officials said was a reflection of better compliance with state standards.

Disterhaupt and Peg Shaw, who breeds miniature pinschers and Chinese cresteds near Wilber, Nebraska, say tighter state regulations are a factor in pushing people out of the business.

Disterhaupt said inspection laws and policies have gotten too strenuous. He particularly objected to the fees charged if breeders are not at home when inspectors arrive.

The two also blame rising overhead costs, laws limiting pet store sales and competition from animal rescue organizations. The cost of veterinary care, food and vaccines have quadrupled or more in recent years, Disterhaupt said.

Meanwhile, he said, Midwest breeders were hurt by a California law that banned pet stores from selling commercially bred puppies, kittens and rabbits. The law, which took effect in January, is similar to ordinances passed in close to 300 towns and cities at the urging of animal welfare groups. State Sen. Anna Wishart of Lincoln introduced a pet store bill in the 2018 Legislature, but it was unsuccessful.

Disterhaupt and Shaw argued that such laws have led to unethical practices as rescues try to meet public demand. They claimed that dogs are being produced to be sold as rescue animals and are being brought in from other countries, although neither said they know of such practices in Nebraska.

Shaw said responsible dog breeders get no support from the public or the state for their efforts to preserve dog breeds and their unique traits.

"It's such a thankless passion to have," she said. "Instead, it's, 'Oh, let's rescue because it feels all warm and fuzzy.' Why are we promoting mutts?"

John Goodwin, senior director of the Humane Society's Stop Puppy Mills Campaign, disputed the claims about importing dogs or passing off commercially bred dogs as rescue animals. He said there has been no evidence of any increase in imported dogs and that the few instances of puppy "laundering" have been tied to pet stores and puppy brokers.

Wishart said she would consider introducing a bill in the upcoming Legislature that, instead of banning sales of animals from breeders, would require pet stores to disclose the breeder's name, address and contact information to potential buyers.

She said she believes the situation has been improved in recent years by public awareness campaigns promoting the adoption of rescue dogs and informing people what to look for when buying puppies from breeders.

"We make it really hard to be a bad, irresponsible breeder in this state," she said.

martha.stoddard@owh.com, 402-473-9583 **twitter.com/stoddardOWH**

EXHIBIT 7

Department of Agriculture
Commercial Dog and Cat Operator Inspection Program
Cash Fund Fiscal Report
July 1, 2018 - June 30, 2019
Table 1

Description		FY 18/19 YTD
Beginning Cash Balance	$	111,747.54
Revenue		
License Fees	$	139,245.51
Reinspections/Attempted Inspections		1,699.44
Local License Fees		308,895.69
Late Fees		2,811.60
Investment Income		1,816.57
Donations		33.33
Reimbursements		209.88
Surplus Sales		5,416.44
Total Revenue	$	460,128.46
Total Available Cash	$	571,876.00
Expenditures		
Salary and Benefits	$	356,628.25
Postage and DAS Surcharge		1,584.15
Communications Expense		6,231.71
Data Processing Expense		32,164.24
Printing		122.98
Conference Registration		135.00
Office Rent and Surcharge		2,014.21
Office Supplies Expense		633.53
Agricultural, Educational, Medical, and Miscellaneous Supplies		1,048.36
Repair and Maintenance and Supplies-Motor Vehicle		3,761.74
Gas Expense		10,143.19
Miscellaneous Operating Expense		3,750.12
Accounting and Auditing Services		691.79
Board and Lodging		1,815.74
State-owned Transportation		4,416.26
Personal Vehicle Mileage		35.21
Misc Travel Expense		0.00
Capital Outlay-Vehicles		44,930.00
Total Expenditures	$	470,106.48
Accounts Payable/Accrued		332.48
Ending Cash Balance	$	102,102.00

Department of Agriculture
Commercial Dog and Cat Operator Inspection Program
Costs to Administer the Act Report
July 1, 2018 - June 30, 2019
Table 2

	General Fund	Cash Fund	Total Costs
Agency Overhead:			
Agency Administration	$ 11,564.47	$ 0.00	$ 11,564.47
Finance and Personnel	8,492.86	0.00	8,492.86
Building Overhead	1,917.74	0.00	1,917.74
Total	$ 21,975.07	$ 0.00	$ 21,975.07
Animal and Plant Health Protection Expenses:			
Investigations and Complaints	0.00	89,415.02	89,415.02
Inspections	0.00	107,763.07	107,763.07
Program Administration	0.00	111,254.54	111,254.54
Public Relations	0.00	48,380.21	48,380.21
Attempted Inspection	0.00	1,058.77	1,058.77
Licensing	0.00	56,627.38	56,627.38
Hearings, Compliance & Enforcement	0.00	55,607.48	55,607.48
Total	0.00	470,106.47	470,106.47
Grand Total	$ 21,975.07	$ 470,106.47	$ 492,081.54

Department of Agriculture

Commercial Dog and Cat Operator Inspection Program
State Fiscal Year Annual Activity Report - Licensees

July 1, 2018 - June 30, 2019

Table 3

Number of Licensed Facilities as of June 30, 2019

State Fiscal Year	July 1, 2014-June 30, 2015	July 1, 2015-June 30, 2016	July 1, 2016-June 30, 2017	July 1, 2017-June 30, 2018	July 1, 2018-June 30, 2019
Total Number of Licensed Facilities	**684**	**668**	**663**	**657**	**600**
Type of Facility					
Commercial Breeders	222	211	208	216	138
Boarding Kennels	104	108	117	110	126
Dealers	9	7	6	6	5
Total	**335**	**326**	**331**	**332**	**269**
Animal Shelters	38	37	34	36	31
Animal Control Facilities	127	102	120	115	119
Animal Rescues	88	85	86	83	90
Total	**253**	**242**	**240**	**234**	**240**
Pet Shops	96	100	92	91	91
Total	**96**	**100**	**92**	**91**	**91**

Department of Agriculture

Commercial Dog and Cat Operator Inspection Program
State Fiscal Year Annual Activity Report - Inspections

July 1, 2018 - June 30, 2019

Table 4

Complaints, Inspections and Public Relations Activity as of June 30, 2019

State Fiscal Year	July 1, 2014-June 30, 2015	July 1, 2015-June 30, 2016	July 1, 2016-June 30, 2017	July 1, 2017-June 30, 2018	July 1, 2018-June 30, 2019
Complaints					
Total Number of Complaints	**82**	**43**	**59**	**23**	**51**
Inspections					
Type of Inspection					
Attempted	134	59	17	6	6
Pre-Inspection	56	43	46	49	51
Routine	711	659	674	584	581
Re-Inspection	119	50	9	27	19
Complaint	38	16	21	23	17
Exit	28	24	28	20	28
Total Number of Attempted and Completed Inspections	**1086**	**851**	**795**	**709**	**702**
Total Number of Completed Inspections	**952**	**792**	**778**	**703**	**696**
Public Relations Hours	**202**	**235**	**369**	**354**	**336.5**
Total Number of Contacts	**407**	**475**	**590**	**544**	**470**

EXHIBIT 8

THE TOPEKA CAPITAL-JOURNAL
cjonline.com

Kansas audit points to breakdowns in state oversight of pet animal facilities

By Tim Carpenter

Posted Dec 13, 2018 at 3:04 PM
Updated Dec 13, 2018 at 5:53 PM

Auditors working for the Kansas Legislature reported Thursday a majority of problems with regulation of pet animal facilities outlined in a 2002 report had yet to be addressed and indicated the Kansas Department of Agriculture failed to conduct timely inspection of businesses and to consistently sanction repeat offenders.

The inquiry examined the Department of Agriculture's program of oversight at 940 animal facilities, including breeders, kennels, pet shops, animal shelters and research centers.

Matt Etzel, who works for the Legislative Division of Post Audit, told a joint House and Senate committee that four of five problems listed in the audit completed more than 15 years ago hadn't been resolved. The agriculture department did stop improper issuance of licenses, partially created policy to guide inspections and lack of timely inspections, but failed to document a system of tiered penalties for violators.

He said auditors identified department policy that adequately addressed only five of 16 requirements or best practices for regulating pet animal facilities. State inspectors were generally consistent in how they assessed compliance, but had insufficient agency guidance on inspection protocol, the audit said.

The report said the agriculture department didn't adequately address enforcement of laws and the application of penalties was "not always consistent, appropriate or progressive." From 2013 to 2017, state officials didn't pursue penalties in 21 of 33 cases where a facility failed three consecutive inspections and was in line for a monetary fine.

In addition, the audit said 13 percent of facilities in Kansas hadn't been inspected at the required frequency from 2013 to 2017.

The state's animal facility inspectors carried a heavier case load than peers in Missouri and Nebraska, the audit said. Kansas employees had an average of 270 inspections per inspector, while the other states averaged fewer than 236 each. Colorado, Iowa and Missouri employed an investigator to monitor the industry for unlicensed operators, but Kansas eliminated that position after 2011.

Agriculture Secretary Jackie McClaskey said in a letter to auditors that support of the pet animal industry was a priority at the agency. She said the 2018 Legislature blocked the department's ability to give advance notice to breeders of inspections and that reform "is expected to increase the number of no-contact inspections."

She said development of a complete policy manual to guide inspections "would not be practical" given differences in licensee types.

Sen. Elaine Bowers, a Concordia Republican and member of the Legislature's audit committee, said she was concerned with the new state law enabling surprise inspections of dog breeding facilities. She said some of her constituents had complained.

"Are we more strict in Kansas than federal inspections?" Bowers said.

Kelly Navinsky-Wenzl, an attorney with the Department of Agriculture, said she didn't know the answer. She attended the meeting because none of the agency's animal facility inspection staff or other department officials could be present.

"Where are they?" said Rep. John Barker, an Abilene Republican.

"It's my understanding they had an obligation," Navinsky-Wenzl said.

"I always worry when you send your attorney and you don't show up yourself," Barker said. "It just shocks me they won't show up. I have some direct questions."

Sen. Lynn Rogers, a Wichita Democrat who is lieutenant governor-elect, asked Navinsky-Wenzl whether the department had policy regarding state-ordered seizure of neglected animals. The attorney said she wasn't certain, but the audit report said the department had authority to immediately seize animals when health, safety or welfare was endangered, but "chose not to in recent years."

Navinsky-Wenzl said she would relay the committee's inquiries to colleagues for response.

"That's great, but I think they should probably come and answer. This is their everyday business, and they need to respond," said Sen. Rob Olson, an Olathe Republican and chairman of the audit committee.

Midge Grinstead, who represents the Humane Society of the United States, said the audit offered evidence of problems with effectiveness of the state's inspection system. She said opposition to robust inspections was based on fear it would interfere with commercial breeding of dogs.

"These animals live in our homes and with our kids," she said. "It's important the standards of care for these animals are the highest."

EXHIBIT 9

https://www.columbiamissourian.com/news/commercial-dog-breeding-in-missouri-part-1---what-a-difference-a-law-makes/article_befcce1e-b719-5e60-98f1-748bf7e761df.html

Commercial dog breeding in Missouri: Part 1 - What a difference a law makes

BY JOSH BENSON
Sep 2, 2014

COLUMBIA — More than three years after Missouri passed a law to crack down on the state's worst puppy mills, officials have seen a threefold increase in prosecutions.

Enforcement of the Canine Cruelty Prevention Act, initially known as "Prop B," has also resulted in a surge in the amount of civil fines levied against substandard breeders.

An analysis of legal documents, obtained from the Missouri Attorney General's Office through a series of Sunshine Law requests, illustrates the effectiveness of these regulatory changes:

- Since April 27, 2011, when the Canine Cruelty Prevention Act became law, more than 1,300 dogs have been rescued, said Sarah Alsager, public information officer for the Missouri Department of Agriculture.
- In the 27 months after the law was enacted, 37 businesses or individuals were referred to the Missouri Attorney General's Office for prosecution.
- As a result, more than $25,000 in civil fines were assessed and nine licenses revoked, ranging in length from three to 10 years.
- By contrast, in the 24 months before the law took effect, 10 businesses or individuals were referred to state officials for violating Missouri's animal welfare laws. No civil fines were assessed in those cases.

Before the Canine Cruelty Prevention Act was enacted in 2011, officials rarely punished anyone for breaking the state's animal welfare laws.

Graphic: Travis Hartman | Missourian

Breeders were subject to the Animal Care Facilities Act, a state-level animal welfare law that regulates a variety of animal-related organizations and businesses.

Under this law, breeders could be prosecuted for posing "a substantial ongoing risk to the health and welfare of animals" or for posing "a substantial ongoing risk that consumers will purchase diseased animals."

Violators were subject to fines, license revocations and even jail time. This rarely happened.

In 2000, the Oversight Division of the Committee on Legislative Research discovered that not a single license had been revoked since the inception of the Animal Care Facilities Act in 1992.

The Oversight Division also found that state officials had fined only two substandard breeders through administrative hearings in the previous year.

At the time, administrative hearings were expensive, time-consuming and nearly impossible to produce, said Jessica Blome, a former Missouri assistant attorney general.

Local county prosecutors were often unwilling to take their constituents to criminal court, she said, and the "substantial ongoing risk" standard was extremely high, making civil prosecutions a rare occurrence.

These hurdles made it difficult to regulate the Animal Care Facilities Act and to prosecute animal welfare violators.

Leading up to the November 2010 election, Missouri was gaining a reputation as one of the nation's worst states for puppy mills — a reference to commercial dog breeding facilities with substandard conditions.

In the election that fall, Proposition B passed with just over 51 percent of the vote. Nearly 1 million Missourians — and more than 22,000 Boone County residents — voted in favor of the effort to improve standards of care for animals confined in breeding facilities across the state.

Farmers and others in agriculture, however, expressed concern about Proposition B's definition of a pet: "any domesticated animal normally maintained in or near the household of the owner thereof."

They worried that this interpretation could be applied to more traditional forms of livestock. As a result, farmers and ranchers would become subject to the laws and regulations of the legislation.

Commercial breeders argued that a 50-dog limit would create dire financial consequences, potentially running many breeders out of business.

Graphic: Travis Hartman | Missourian

Over the next few months, the Missouri General Assembly acted to repeal many key provisions of Proposition B.

Eventually, a compromise was struck between state legislators and Gov. Jay Nixon, known as the "Missouri Solution," or the Canine Cruelty Prevention Act, which kept some of the initial standards of care and provided funding for inspections.

Concessions were made by all parties involved.

The 50-dog limit was removed, and "pet" was redefined as a "species of the domestic dog, Canis lupus familiaris, or resultant hybrids."

On the other hand, animal welfare activists won on a number of fronts: expanded space requirements for dogs and constant, unfettered access to outdoor exercise areas. Provisions covering food and water and breeding frequency regulations were also improved.

One of the biggest victories for animal welfare activists came in the form of veterinary care. Each breeding animal must be inspected at least once a year by a licensed veterinarian.

The provision also calls for "prompt" treatment of any serious illness or injury and more humane forms of euthanasia, which must be approved by the American Veterinary Medical Association and conducted by a licensed vet, according to the Missouri Alliance for Animal Legislation. The nonprofit alliance, founded in 1990 and based in St. Louis, lobbies for the passage of animal welfare laws that protect animals from abuse, neglect and inhumane treatment.

Additionally, the Missouri Department of Agriculture can now ask state prosecutors to sue breeders for past violations of the Animal Care Facilities Act and the Canine Cruelty Prevention Act.

State prosecutors can now assess civil penalties of $1,000 per violation and charge violators with the crime of canine cruelty, according to the alliance.

These changes provided state officials with more regulatory muscle and resulted in more legal action. They may also have led to a reduction in the number of licensed commercial breeders in Missouri.

Graphic: Travis Hartman | Missourian

Since 2010, the number of commercial breeders licensed with Missouri's Animal Care Program has dropped from about 1,400 to just over 800, a decline of more than 40 percent, according to data obtained from the Missouri Department of Agriculture.

Some tie it directly to the legislation.

"The main reason is the passage of the Canine Cruelty Prevention Act," said Bob Baker, executive director of the Missouri Alliance for Animal Legislation.

"Now that noncompliance is being prosecuted," he said, "hundreds of breeders have chosen to shut down their breeding operations rather than face stiff penalties."

Others cite additional factors, chiefly financial obstacles.

"I think the primary reason is the economic recession and very slow recovery. Most people get into the dog breeding business to make a quick buck, which is why violations are so numerous," Blome said.

"Most voluntarily go out of business simply because they cannot make money," she added.

Baker has been investigating commercial breeders since 1980. Since then, he has visited more than 1,000 facilities across the country.

"When I started investigating puppy mills," he said, "many were farmers' wives who were supplementing the farm income by raising dogs in their spare time."

Dogs were kept in chicken coops, rabbit hutches or even old refrigerators, washing machines or dryers that breeders had picked up from junkyards, Baker said.

As large corporate hog farms expanded production and cornered the market, small, family-owned hog farms were forced to evolve to ensure their survival. Many turned to dog breeding, Baker said.

They introduced a "factory farming system" to the world of commercial breeding, he said.

These dogs were often housed in hog stalls, in closed, cramped quarters, he said.

In 1992, after several national media exposés, a growing reputation as the "puppy mill" state and the urging of animal welfare activists, Missouri legislators passed the Animal Care Facilities Act.

The act established state laws concerning the housing, care and treatment of animals in breeding facilities, but as Baker pointed out, the "requirements only provided for 'survival' standards and not humane standards of care."

Spacing was minimal, wire flooring was permitted and there was no exercise requirement for animals housed together in a single unit. Food had to be available every 12 hours and water every eight hours.

The laws were regulated by the Missouri Department of Agriculture's Animal Care Program, but a variety of issues rendered the system largely ineffective.

A 2001 state audit report concluded that "(state) inspectors did not properly inspect animal care facilities and canines were left at risk. Program personnel chose to encourage breeders to comply with regulations rather than sanction them."

Inspections were sporadic. The system was overwhelmed, said Debbie Hill, vice president of operations for the Humane Society of Missouri.

"We continually saw animals coming out of facilities with multiple health issues," she said.

They found dogs with ear infections so severe their ear canals began to close, teeth so rotten they had to be pulled, and some animals so malnourished their bodies began absorbing their bones to survive, Hill said.

A 2004 state audit report "found the majority of findings noted in the first audit of the animal care inspection program were still occurring, four years later."

By providing state authorities with more legal options, the Canine Cruelty Prevention Act was able to improve the effectiveness of Missouri's animal welfare laws.

"The most important thing the Canine Cruelty Prevention Act did was give the Missouri Department of Agriculture the authority to refer a case to the Attorney General's Office for enforcement," Blome said.

The former state assistant attorney general was charged with the task of developing – and heading – the Canine Cruelty Prevention Unit, a group of attorneys and staff members responsible for enforcing Missouri's animal welfare laws.

Blome created a website, trained hotline operators and developed litigation protocols for dealing with cases.

After the Animal Care Program built a case against a noncompliant or substandard breeder, the information would be forwarded to Blome.

"Once I received the case file from MDA, which included all inspection reports, breeder and investigator statements, and photos, I would draft a petition for injunction within one week," she said.

"Usually, the breeder would consent to an order with a schedule of compliance and pay a fine so they could get back in business, or, alternatively, the breeder would simply consent to an order shutting them down," she said.

During her six-year tenure with the Attorney General's Office, Blome prosecuted more than 40 breeders, most of them after the Canine Cruelty Prevention Act was enacted.

"I had a 100 percent success rate," she said.

"She really did a remarkable job," Baker said.

Supervising editor is Jeanne Abbott.

Josh Benson

EXHIBIT 10

State of Nebraska

OFFICE OF THE PUBLIC COUNSEL/OMBUDSMAN
PO Box 94604, State Capitol
Lincoln, Nebraska 68509
(402) 471-2035
Toll free - 800-742-7690
Fax (402) 471-4277
ombud@leg.ne.gov

August 15, 2019

Steven R. Wellman, Director
Nebraska Department of Agriculture
P.O. Box 94947
Lincoln, NE 68509-4947

Dear Mr. Wellman:

Mr. Rick Herchenbach, Program Specialist for the Nebraska Department of Agriculture's Commercial Dog and Cat Operator Inspection Program, has filed a Whistleblower complaint with the Public Counsel under the State Government Effectiveness Act, *Neb. Rev. Stat. §§* 81-2701 through 81-2711. The Act serves two objectives, "to encourage public officials and employees to disclose information concerning possible violations of law, fiscal waste, or mismanagement in state government to elected officials or the Public Counsel and to prohibit reprisals for such disclosure by state employees." *Neb. Rev. Stat. §* 81-2702.

Rick Herchenbach, a long-tenured Department of Agriculture employee, provided a written allegation of wrongdoing to the Office of Public Counsel alleging the Department's failure to enforce certain provisions of the Commercial Dog and Cat Operator Inspection Act, *Neb. Rev. Stat. §§* 54-625 to 54-643. Upon receipt of Mr. Herchenbach's complaint to the Public Council, this office reviewed his concerns and has completed a preliminary investigation in order to "determine whether reasonable grounds exist to support the employee's allegation." The Public Council has informed Mr. Herchenbach of our intention to conduct a formal investigation and do hereby provide notice to you as Director of the Department of Agriculture of our intent. Under *Neb. Rev. Stat. §* 81-2704(3) "the director or chief operating officer which is the subject of the allegation shall cooperate in the investigation of the allegation and any related matters." Enclosed, please find the results of our preliminary investigation into the allegations of Mr. Herchenbach. While this document does not limit the scope of the formal investigation, it serves as notice of the general areas of inquiry that can be anticipated.

There are three possible outcomes that may result from the formal investigation. The formal investigation may be terminated, or it may result in a report which would be submitted to the agency director, or, in cases where the allegation and report are directed against a director, the report shall be transmitted to the Governor. *Neb. Rev. Stat. §* 81-2704(4).

The second objective of the Whistleblower Act is to protect any employee for disclosing information to the Public Council which the employee reasonably believes evidences wrongdoing. Any personnel action taken against a reporting employee as a reprisal for submitting an allegation of wrongdoing is prohibited. *Neb. Rev. Stat. §* 81-2705. The employee's protections and relief, should there be reprisals, are addressed in section 81-2707 of the Act. It is our understanding that Mr. Herchenbach, a 38-year employee of the Department with sixteen years in his current position, has a strong employment record with no disciplinary actions being taken against him.

In conclusion, we would ask that you acknowledge your receipt of this letter. Additionally, we request the name and contact information for the person within the Department who will serve as our direct contact during the course of this investigation. Should you have any questions about this matter, please contact me directly.

Sincerely,

Carl Eskridge
Acting State Ombudsman

cc. Rick Herchenbach

Enclosure – Preliminary Investigation

State of Nebraska
Office of Public Counsel/Ombudsman
P.O. Box 94604
Lincoln, NE 68509-4604

2019 Whistleblower Case

Preliminary Investigation

Background

Mr. Rick Herchenbach is a Program Specialist for the Nebraska Department of Agriculture's Commercial Dog and Cat Operator Inspection Program (Program). Employed by the Department of Agriculture for 38 years, the last 16 years in his current position within the Program, Mr. Herchenbach is highly dedicated to his work. He came to the Office of Public Counsel seeking protection as a whistleblower. Expressing significant frustration toward the Administration of the Department of Agriculture for prohibiting him from doing his job, he specifically indicated that when he investigates complaints of alleged animal mistreatment or neglect and reports his findings to administrators, rarely is action taken by the Department. Indeed, he has been instructed by supervisors that he is not to turn over cases of alleged animal mistreatment and neglect to law enforcement. Though Mr. Herchenbach has been forthcoming to his superiors and others about his concerns, he reports that his protestations have not only been ignored but he has been instructed to ignore the law requiring reporting. While he has no pending disciplinary issues, Mr. Herchenbach suspects that he may have been a victim of retaliation by Administration in the past. The first incident of suggested retaliation occurred in response to his investigations of operators in 2013. The second incident of alleged retaliation took place in early 2019 when he unsuccessfully applied for the position of Program Manager. In June of 2019 he filed a complaint with the Nebraska Equal Opportunities Commission alleging retaliation on the hiring issue.

Mr. Herchenbach indicated to the Office of Public Counsel that his primary concern is to make certain that the laws governing the Commercial Dog and Cat Operator Inspection Program are being followed, holding operators accountable for any neglect and mistreatment of animals. Additionally, suspecting that his superiors may have already targeted him by threatening disciplinary action and by denying him a promotion, he anticipates even further retaliatory actions against him when his whistleblower complaint is made known. For these reasons, Rick Herchenbach is seeking protection as a whistleblower under the State Government Effectiveness Act. *Neb. Rev. Stat. §§* 81-2701 to 81-2711

Applicable Laws

A. State Government Effectiveness Act (Whistleblower Act)

The purpose of the State Government Effectiveness Act is "to encourage public officials and employees to disclose information concerning possible violations of law and fiscal waste or mismanagement in

state government to elected officials or the Public Counsel and to prohibit reprisals for such disclosure by state employees." *Neb. Rev. Stat. §* 81-2702.

Rick Herchenbach, a thirty-eight year employee of the Nebraska Department of Agriculture in good standing, has reported to the Public Counsel wrongdoing by administrators of the Department of Agriculture in failing to apply the statutory provisions as set forth by the Legislature in the Commercial Dog and Cat Operator Inspection Act. Under the State Government Effectiveness Act, "wrongdoing shall include any action by an agency or employee which (a) is a violation of any law, (b) results in gross mismanagement or gross waste of funds, or (c) creates a substantial and specific danger to public health and safety. *Neb. Rev. Stat. §* 81-2703(5).

When state employees approach the Nebraska Public Counsel or State of Nebraska elected officials seeking protection under the Whistleblower Act, the respective office may conduct a preliminary investigation to determine whether there are reasonable grounds to support the employee's allegation. *Neb. Rev. Stat. §* 81-2704. This Report represents the preliminary investigation of the Office of Public Counsel into Mr. Hechenbach's allegations.

B. Commercial Dog and Cat Operator Inspection Act *Neb. Rev. Stat. §§* 54-625 to 54-643

Mr. Herchenbach has presented the Office of Public Counsel with examples of reports and photographs illustrating cases of the abuse and neglect of dogs and cats by licensed Commercial Dog and Cat Operators in apparent violation of the Inspection Act. The Act provides two main avenues for the Department to respond to alleged bad operators.

1. The first option is for the Department to order an administrative hearing related to the operator's license. Under *Neb. Rev. §* 54-628.02, "whenever the director has reason to believe that any person has violated any provision of the Commercial Dog and Cat Operator Inspection Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director, the director may issue a notice of a hearing as provided in section 54-632. "

Mr. Herchenbach indicated that there have been very few administrative hearings ordered by the current or previous directors of the Department, estimating that the Department has only held five or six such hearings in the last five years. However, he reported that a hearing was conducted by Hearing Officer Pat Mook on Monday, June 17, 2019.

2. The second option is to refer the matter to law enforcement for possible criminal prosecution. The Operator Inspection Act specifically includes direction that the department adopt and promulgate rules and regulations to facilitate carrying out the act. *Neb. Rev. Stat. §* 54-629. Under 23 NAC 18-006.06 the Department is required to refer complaints involving cruelly neglected or cruelly mistreated dogs and cats to law enforcement on the day the complaint is received. By statute "cruelly neglect means to fail to provide any animal in one's care, whether an owner or a custodian, with food, water, or other care as is reasonably necessary for the animal's health. *Neb. Rev. Stat. §* 28-1008(4). Similarly, "cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal." *Neb. Rev. Stat. §* 28-1008(3)

Mr. Herchenbach indicated that when he reported cases of cruel neglect and mistreatment to his superiors he has been ordered by the Administration to refrain from reporting such occurrences to law enforcement. However, he recently reported to his supervisor in the course of a follow-up to a neglect investigation the failure of the operator to provide water to the dogs as per the agreement, and he was authorized to proceed with contacting the Cass County Sheriff. It appears that this recent authorization is more the exception than the rule. Nonetheless, while it is too early to tell, the fact that the Department recently held an administrative hearing and also approved Mr. Herchenbach's recent request to contact law enforcement, may suggest a recent change of course by the Department. The change may have been motivated by the May 8, 2019 Mike McKnight Report concerning a Cass County operator, A[redacted] H[redacted] D[redacted], which resulted in multiple state senators contacting the Department about the problems with the Program. Upon being called by the reporter, Rick Herchenbach immediately notified Program Manager Tom Dozler of the contact. He indicated that Senator Wishart has expressed particularly strong interest in the Program's functioning.

Specific Cases of Reported Abuse and Neglect

1. **H[redacted] H[redacted] R[redacted], Beaver Crossing, Nebraska**

[redacted] H[redacted] H[redacted] is a rescue focused on the care of dachshunds. In a March 2019 investigation of H[redacted] H[redacted], Rich Herchenbach found numerous areas of concern; including the following:

a. Failure to seek veterinary medical care or to maintain a dog in a healthy condition as evidenced by any injury or illness to a dog which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment or the function of any bodily organ.

b. No vet care plan.

c. No intake or adoption record.

d. Two dogs with inadequate space.

e. Soiled blankets with urine stains in pens.

f. High ammonia levels of 7pp.

g. Evidence of self-mutilation.

h. Even dogs with emaciated ribs, spinal cord, and hip bones showing, extreme loss of muscle mass, causing dogs to drag the back half of the body across the floor, other dogs unable to walk.

i. Because of fecal incontinence and the loss of the ability to control bowel movements, [redacted] had to express the bowel (poop on demand) on 3 to 4 dogs during the inspection.

Mr. Herchenbach concluded that the dogs at H[redacted] H[redacted] R[redacted] were being neglected and/or cruelly mistreated. As a result, he sought approval to contact the Seward County Sheriff regarding [redacted]

[redacted] operation and her rescue license. On March 13, 2019, Rick Herchenbach stated that he received a phone call from Program Manager Tom Dozler that the Seward County Sheriff's Office had been contacted. However, the contact was made without review of Rick's report and accompanying photos. Additionally, it was reported by the Nebraska Humane Society that Tom Dozler and Seward County Sheriff officers visited H[redacted] H[redacted] finding no problems after they had already notified [redacted] in advance of the inspection.

The March 2019 case was not the first investigation of [redacted] facility. During an October 2016 inspection Rick Herchenbach interviewed two of the three veterinarians used by [redacted] regarding numerous violations he had observed. Both of the veterinarians corroborated their concerns about the care of dogs at H[redacted] H[redacted] R[redacted]. Mr. Herchenbach reported his findings to the Department, asking to contact the Seward County Sheriff as to the possible neglect. He was advised by Dr. Bredthauer that in her judgment there was "no evidence that neglect or abuse has occurred; therefore, we will not be contacting the Seward County Sheriff or other law enforcement personnel."

2. T[redacted] B[redacted], Waverly, Nebraska

[redacted] T[redacted] B[redacted] is an unlicensed operation that is a rescue, a boarding kennel, and is also engaged in breeding dogs and selling puppies. Following a complaint in January 2019, Rick Herchenbach inspected the premises and discovered conditions of concern, and also learned that the operator was unlicensed. Steps were taken to assist [redacted] with the specific concerns about the conditions and to successfully complete her application. However, the Administration advised Mr. Herchenbach that he could not inspect the operation until the licensure issue was resolved. In the meantime, on February 27, 2019, a second complaint on T[redacted] B[redacted] was received by the Department from the same complainant. A complaint was also made directly to the Lancaster County Sheriff about the conditions of the operation. The County Sheriff inspected the location and reported that they did not observe neglect, but as no one was home, they did not go inside the house or garage, where animals were located. On Friday, March 1, 2019, Department Chief Administrator Bob Storant ordered Program Manager Tom Dozler to arrange a site visit with Rick Herchenbach to inspect [redacted]'s operation within a week. Mr. Storant advised Mr. Dozler to encourage [redacted] "to downsize, as we have enough evidence to call for an administrative hearing and take legal action." On Monday, March 11, 2019, Tom Dozler emailed that [redacted] was not available and he would try to set up a meeting with her the following week.

As a result of her licensure issues the Department issued a stop movement order against [redacted] on April 4, 2019. Two weeks later, on April 18, 2019, Rick Herchenbach conducted an inventory of the dogs at T[redacted] B[redacted] and found there to be one dog unaccounted for. When he questioned [redacted] about the dog, she refused to answer him and became belligerent, accusing Rick of trespassing, standing behind his vehicle and preventing Rick from leaving. [redacted] indicated that she was calling the Lancaster County Sheriff, which Rick quietly agreed was a good idea given that [redacted] was quite angry as was her friend, [redacted], who was acting suspiciously by repeatedly going in and out of the house during the confrontation. Mr. Herchenbach notified State Veterinarian Dr. Dennis Hughes about the situation. Dr. Hughes advised Rick to "Hold tight. We will get back to you." Approximately 20 minutes later two Lancaster County Sheriff's cruisers arrived. The three officers intervened and advised Rick that [redacted] and [redacted] were not going to cooperate and suggested that they leave

and meet offsite. While [redacted] was operating without a license and also violated the Director's stop movement order, the Department has not scheduled an Administrative Hearing on this case. Additionally, a new complaint was filed on T[redacted] B[redacted] on June 7, 2019 and to date no action has been taken on the most recent complaint or prosecuting the charges.

3. **H[redacted] B[redacted], Malcolm, Nebraska**

[redacted], H[redacted] B[redacted] is a licensed dog kennel. There have been concerns about [redacted] operations since 2012. In 2013 a complaint against [redacted] resulted in criminal prosecution by the Lancaster County Attorney. [redacted] pleaded No Contest. This case received considerable publicity in the local media which included questioning the leadership of the Department's upper level management for their reluctance to prosecute allegations of neglect and mistreatment by operators. In an email sent on September 6, 2013, John Boucher, former Program Manager of the Dog and Cat Operator Inspection Program, commended Rick Herchenbach as he "demonstrated courage and determination in dealing with not only this breeder but also extreme resistance from the Department and law enforcement and I admire you for it. Good job, Rick." However, prior to the court action, the Lancaster County Sheriff brought a complaint against [redacted] to the Department which apparently resulted in the Department placing [redacted] license on probation. At that point Rick Herchenbach was ordered not to have contact with law enforcement without the Administration's approval. However, there was never any final administrative action taken against [redacted] as she apparently communicated to the Department that she was no longer breeding dogs. It was subsequently shown that her assertion was inaccurate and that she was indeed breeding dogs and selling puppies. Nonetheless, still there was no administrative action taken against her. Additionally, on October 28, 2013, [redacted] Legal Counsel, indicated by email that [redacted] spoke to her at church about her problems with the Program. In the email [redacted] stated that the publicity against [redacted] was "grossly unfair, especially since public opinion seems to want her out of business." Coincidentally, it was during the 2013 investigations of the complaints against [redacted] that the Department brought in Rick Herchenbach for an employment pre-disciplinary hearing; however, no charges were brought against him at that time, nor have there any other disciplinary issues involving Mr. Herchenbach's employment at the Department of Agriculture.

In September 2018 a new complaint was brought against [redacted] concerning reports that she was breeding dogs and selling puppies without a license. Rick Herchenbach sought to inspect the facility but was denied entrance by [redacted]. He contacted the Lancaster County Attorney who obtained an inspection warrant from the Lancaster County Court. The Director issued a stop movement order. Upon subsequent inspection it was determined that the order was violated. Here again [redacted] protested Rick's work by contacting the State Veterinarian, indicating that she has a "personality conflict" with Rick Herchenbach. As a result Dr. Hughes removed Rick from this case. An administrative hearing was set for February 21, 2019, but was subsequently canceled by Director Steve Wellman, even though it was established that [redacted] violated the stop movement order.

4. A H D , Walton, NE

A H D was a licensed dog rescue kennel until voluntarily surrendered her license on or about May 16, 2019. Complaints were received on April 10, 2019 indicating that the kennel was housing heartworm positive dogs but not providing veterinary care of these or other serious medical conditions. Rick Herchenbach conducted an inspection of the facility on April 17, 2018 which had 27 dogs and resulted in a four identified violations with two dogs needing immediate veterinary care. Mr. Herchenbach conducted a follow-up inspection and the facility was still out of compliance for failure to provide veterinary care for sick dogs and the failure to provide sufficient staff to adequately care for the animals. As the dogs from A H D were placed with other rescues, the receiving rescues reported to Rick Herchenbach that the dogs they received needed immediate veterinary care. As a result Mr. Herchenbach immediately contacted Tom Dozler and Dennis Hughes seeking to report his findings to the Lancaster County Sheriff. Mr. Herchenbach also indicated that the callers asked why the Department had not called 's A H D in for an administrative hearing.

On May 1, 2019 Rick Herchenbach conducted another inspection of A H D with a finding of the facility's being out of compliance as to the adequate number of staff and the lack of cleanliness. He also reported that the facility needed to continue to downsize the number of animals it housed. Rick Herchenbach notified Tom Dozler and Department Administration of a call from the Lancaster County Sheriff's Office requesting reports and other information on A H D. Deputy wished to interview Rick Herchenbach, who sought authorization to cooperate with the investigation. The following day Mr. Herchenbach was advised that, as he is out of hours for the week, he should indicate that he will talk to the deputy the following week.

The first half of May reports came in from three veterinary clinics that were treating dogs with serious medical conditions that had been housed at A H D. Candace Lohman of Vintage Heights Veterinary Hospital described the conditions of the dogs they treated as follows. "In my opinion these dogs were neglected and so were all of the others there. They were put at risk of disease, pregnancies leading to complications, aggression due to being intact and leading to fighting. Heartworm positive dogs being untreated is extremely neglectful. It is torture. These dogs were supposed to be rescued. This isn't a rescue, it seems to be more of a hoarding situation." Additionally, on or about May 8, 2019, Rick Herchenbach informed Tom Dozler that he had been contacted by Mike McKnight seeking information about A H D for an investigative story.

Om May 16, 2019 Deputy Lancaster County Attorney requested a meeting with Rich Herchenbach about A H D. Mr. Herchenbach contacted Tom Dozler about the request and later advised Rick that Director Wellman and Administrator Bob Storant ordered him not to have contact with the Lancaster County Attorney's Office. On the same day Tom Dozler indicated informed Mr. Herchenbach that voluntarily surrendered her license. Rick Herchenbach conducted an exit inspection of A H D on Mary 22, 2019.

Preliminary Findings

The problems of neglect and mistreatment of dogs in commercial facilities in the State of Nebraska has been well-documented. In response to this important public policy issue, the Nebraska Legislature has given the Department of Agriculture authority over the licensing and regulation of those engaged as commercial breeders, rescues, sellers, and kennels of dogs and cats within the State of Nebraska. Under the Commercial Dog and Cat Operator Inspection Act, the Director may order a public hearing on concerns related to the license. *Neb. Rev. Stat. §* 54-628.02. Additionally, by promulgated regulation, which carries the effect of law, the Department is required to refer complaints indicating cruelly neglected and mistreated dogs and cats to local law enforcement on the day the complaint is received. 23 NAC 18-006.06.

Rick Herchenbach has served as a Program Specialist in the Dog and Cat Operator Inspection Program for the last 16 years of his 38-year career with the Nebraska Department of Agriculture. He is at the point in his work life where many may choose not to rock the boat approaching the end of their life-long career. However, Rick's dedication to the mission of the Program and his personal and professional ethical code demand more. As a result of his due diligence, Mr. Herchenbach has simply sought to do his job by regularly reporting his concerns about bad operators to a number of different supervisors and administrators. Rather than actively pursuing the identified problems, administrators have failed to pursue the administrative processes and also prohibited him from contacting law enforcement. As a result, he is exceedingly frustrated by the inability to perform his duties.

He is also fearful that by being outspoken about his concerns he will experience retaliation. Indeed, he maintains that his sole disciplinary issue in thirty-eight years, the 2013 pre-disciplinary hearing, was retaliatory for his efforts in diligently investigating bad operators. Similarly, he believes that when he was not selected for the position of Program Manager earlier this year, that decision was retaliatory. While those personnel issues are not within the scope of this case, both incidents suggest the potential for retaliation and the need to provide protection during the Office of Public Counsel's investigation of the issues raised by Mr. Herchenbach.

Based upon a preliminary investigation of the issues raised by Rick Herchenbach concerning the Department's Commercial Dog and Cat Operator Inspection Program, it is the conclusion of the Acting Public Counsel that there are reasonable grounds to support these allegations of wrongdoing. As a result, the Office of Public Counsel will proceed to inform Mr. Herchenbach of our intent to conduct a formal investigation. Additionally, the Office of Public Counsel will notify Director Steve Wellman of the pending investigation and the responsibilities of the Department during and following the investigation.

Carl Eskridge, Acting Public Counsel

EXHIBIT 11

NEBRASKA
Good Life. Great Roots.
DEPARTMENT OF AGRICULTURE

Pete Ricketts, Governor

RECEIVED BY

AUG 26 2019

OMBUDSMAN'S OFFICE

August 21, 2019

Mr. Carl Eskridge
Office of the Public Counsel/Ombudsman
PO Box 94604, State Capitol
Lincoln, NE 68509

Dear Mr. Eskridge:

Please let this letter serve as my and the Nebraska Department of Agriculture's (NDA) acknowledgement that we received your letter in regard to Mr. Rick Herchenbach's whistleblower complaint filed with your office.

I have directed my staff to work with you and your staff to address these allegations as expediently as possible. We look forward to the opportunity to provide your office with factual documentation regarding the misleading nature of Mr. Herchenbach's allegations. Procedures have been in place for the last five years to ensure that animal cruelty and neglect situations are appropriately reported to local law enforcement. Written enforcement procedures state that the inspector is required to first determine if a dog or cat is being cruelly neglected or mistreated or there is a significant threat to the health or safely of any dog or cat and if so, the inspector is directed to immediately notify the Focus Area (Program Manager or State Veterinarian). The enforcement procedures also clearly state that reporting to law enforcement is to be approved through the chain of command and to be done at the Focus Area level.

I ask that you work with NDA Chief Administrator Bob Storant during this investigation. Mr. Storant can be reached via email at bob.storant@nebraska.gov or via phone at 402-499-4774.

Again we look forward to working with your office to get these allegations cleared.

Sincerely,
DEPARTMENT OF AGRICULTURE

Steve Wellman

Steve Wellman
Director

Department of Agriculture
301 Centennial Mall South, PO Box 94947
Lincoln, NE 68509-4947

nda.nebraska.gov

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Mr. Carl Eskridge
Office of the Public Counsel/Ombudsman
PO Box 94604, State Capitol
Lincoln, NE 68509

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EXHIBIT 12

Revised December, 2017

COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT AND RELATED STATUTES

Administration: The Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2351. The Department also administers limited portions of the related statutes. Section 54-603 is included for informational purposes only.

Revised: The Act was last revised during the 2016 session of the Nebraska Legislature.

Rules: A regulation has been promulgated under the Act, known as Title 23, Chapter 18, Nebraska Administrative Code - Commercial Dog and Cat Operator Inspection Regulations.

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54-625. Act, how cited.

Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1; Laws 2012, LB427, § 1; Laws 2015, LB360, § 13.

54-626. Terms, defined.

For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

(3) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, an animal welfare society, a society for the prevention of cruelty to animals, or another nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

(4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed

at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(5) Breeding dog means any sexually intact male or female dog six months of age or older owned or harbored by a commercial dog breeder;

(6) Cat means any animal which is wholly or in part of the species Felis domesticus;

(7) Commercial cat breeder means a person engaged in the business of breeding cats:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more cats in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose cats produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases cats for later retail sale or brokered trading;

(8) Commercial dog breeder means a person engaged in the business of breeding dogs:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more dogs, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose dogs produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases dogs for later retail sale or brokered trading;

(9) Dealer means any person who is not a commercial dog or cat breeder or a pet shop but is engaged in the business of buying for resale or selling or exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

(10) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

(11) Director means the Director of Agriculture or his or her designated employee;

(12) Dog means any animal which is wholly or in part of the species Canis familiaris;

(13) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty

dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

(14) Harbor means:

(a) Providing shelter or housing for a dog or cat regulated under the act; or

(b) Maintaining the care, supervision, or control of a dog or cat regulated under the act;

(15) Housing facility means any room, building, or areas used to contain a primary enclosure;

(16) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

(17) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

(18) Normal business hours means daily between 7 a.m. and 7 p.m. unless an applicant, a licensee, or any other person the department has reasonable cause to believe is required by the act to be licensed provides in writing to the department a description of his or her own normal business hours which reasonably allows the department to make inspections;

(19) Operator means a person performing the activities of an animal control facility, an animal rescue, an animal shelter, a boarding kennel, a commercial cat breeder, a commercial dog breeder, a dealer, or a pet shop;

(20) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

(21) Pet shop means a retail establishment which sells pet animals and related supplies;

(22) Premises means all public or private buildings, vehicles, equipment, containers, kennels, pens, and cages used by an operator and the public or private ground upon which an operator's facility is located if such buildings, vehicles, equipment, containers, kennels, pens, cages, or ground are used by the owner or operator in the usual course of business;

(23) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

(24) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

(25) Significant threat to the health or safety of dogs or cats means:

(a) Not providing shelter or protection from extreme weather resulting in life-threatening conditions predisposing to hyperthermia or hypothermia in dogs or cats that are not acclimated to the temperature;

(b) Acute injuries involving potentially life-threatening medical emergencies in which the owner refuses to seek immediate veterinary care;

(c) Not providing food or water resulting in conditions of potential starvation or severe dehydration;

(d) Egregious human abuse such as trauma from beating, torturing, mutilating, burning, or scalding; or

(e) Failing to maintain sanitation resulting in egregious situations where a dog or cat cannot avoid walking, lying, or standing in feces;

(26) Stop-movement order means a directive preventing the movement of any dog or cat onto or from the premises; and

(27) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Source: Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2; Laws 2010, LB910, § 5; Laws 2012, LB427, § 2; Laws 2015, LB360, § 14.

54-627. License requirements; fees; premises available for inspection.

(1) A person shall not operate as a commercial dog or cat breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, an animal rescue, or a pet shop unless the person obtains the appropriate license. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with a one-time license fee of one hundred twenty-five dollars. Such fee is nonreturnable. Any license issued on or before November 30, 2015, shall remain valid after expiration unless it lapses pursuant to this section, is revoked pursuant to section 54-631, or is voluntarily surrendered. Upon receipt of an application and the license fee and upon completion of a qualifying inspection, the appropriate license may be issued by the department. The department may enter the premises of any applicant for a license to determine if the applicant meets the requirements for licensure under the act. If an applicant does not at the time of inspection harbor any dogs or cats, the inspection shall be of the applicant's records and the planned housing facilities. Such license shall not be transferable to another person or location and shall lapse automatically upon a change of ownership or location.

(3)(a) In addition to the license fee required in subsection (2) of this section, an annual fee shall also be charged. Except as otherwise provided in this subsection, the annual fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats harbored by the licensee over the previous twelve-month period:

(i) Ten or fewer dogs or cats, one hundred seventy-five dollars;

(ii) Eleven to fifty dogs or cats, two hundred twenty-five dollars;

(iii) Fifty-one to one hundred dogs or cats, two hundred seventy-five dollars;

(iv) One hundred one to one hundred fifty dogs or cats, three hundred twenty-five dollars;

(v) One hundred fifty-one to two hundred dogs or cats, three hundred seventy-five dollars;

(vi) Two hundred one to two hundred fifty dogs or cats, four hundred twenty-five dollars;

(vii) Two hundred fifty-one to three hundred dogs or cats, four hundred seventy-five dollars;

(viii) Three hundred one to three hundred fifty dogs or cats, five hundred twenty-five dollars;

(ix) Three hundred fifty-one to four hundred dogs or cats, five hundred seventy-five dollars;

(x) Four hundred one to four hundred fifty dogs or cats, six hundred twenty-five dollars;

(xi) Four hundred fifty-one to five hundred dogs or cats, six hundred seventy-five dollars; and

(xii) More than five hundred dogs or cats, two thousand one hundred dollars.

(b) If a person operates with more than one type of license at the same location, the person shall pay only one annual fee based on the primary licensed activity occurring at that location as determined by the number of dogs or cats affected by the licensed activity.

(c) The annual fee for a licensee that does not own or harbor dogs or cats shall be one hundred fifty dollars.

(d) The annual fee for an animal rescue shall be one hundred fifty dollars.

(e) The annual fee for a commercial dog or cat breeder shall be determined according to the fee schedule set forth in subdivision (a) of this subsection based upon the total number of breeding dogs or cats owned or harbored by the commercial breeder over the previous twelve-month period.

(f) In addition to the fee as prescribed in the fee schedule set forth in subdivision (a) of this subsection, the annual fee for a commercial dog or cat breeder, pet shop, dealer, or boarding kennel shall include a fee of two dollars times the daily average number of dogs or cats owned or harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats subject to subdivision (g) of this subsection.

(g) The fees charged under subdivision (a) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but the maximum fee that may be charged shall not result in a fee for any license category that exceeds the annual fee set forth in subdivision (a) of this subsection by more than one hundred dollars. The fee charged under subdivision (f) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but such fee shall not exceed three dollars times

the number of dogs or cats harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats.

(4) A commercial dog or cat breeder, dealer, boarding kennel, or pet shop shall pay the annual fee to the department on or before April 1 of each year. An animal control facility, animal rescue, or animal shelter shall pay the annual fee to the department on or before October 1 of each year. Failure to pay the annual fee by the due date shall result in a late fee equal to twenty percent of the annual fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the annual fee. The purpose of the late fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late fee shall not prohibit the director from taking any other action as provided in the act.

(5) An applicant, a licensee, or a person the department has reason to believe is an operator and required to obtain a license under this section shall make any applicable premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3; Laws 2010, LB910, § 6; Laws 2012, LB427, § 3; Laws 2015, LB360, § 15.

54-627.01. Licensees; maintain written veterinary care plan or written emergency veterinary care plan.

A dealer or pet shop licensed under section 54-627 shall maintain a written veterinary care plan developed in conjunction with the attending veterinarian for the dealer or pet shop. An animal control facility, an animal rescue, an animal shelter, or a boarding kennel licensed under section 54-627 shall maintain a written emergency veterinary care plan.

Source: Laws 2009, LB241, § 4; Laws 2010, LB910, § 7.

54-628. Inspection program; department; powers; reinspection fee; prohibited acts; penalty.

(1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act.

(2) Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the department shall be available for temporary reassignment as needed to other activities and functions of the department in the event of a livestock disease emergency or any other threat to livestock or public health.

(3) When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant, licensee, or person the department has reason to believe is an operator, together with written notice to comply within the time limit established by the department and set out in such notice. If the department performs a reinspection for the purpose of determining if an operator has complied within the time limit for compliance established pursuant to this subsection or has complied with section 54-628.01 or if the inspector must return to the operator's location because the operator was not available within a reasonable time as required by subsection (4) of this section, the applicant, licensee, or person the department has reason to believe is an operator shall pay a reinspection fee of one hundred fifty dollars together with the mileage of the inspector at the rate provided in section 81-1176. The purpose of the reinspection fee is to pay for the administrative costs associated with the additional inspection. Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. The assessment of the reinspection fee shall not prohibit the director from taking any other action as provided in the act.

(4) The department, at its discretion, may make unannounced inspections of any applicant, licensee, or person the department has reason to believe is an operator during normal business hours. An applicant, a licensee, and any person the department has reason to believe is an operator shall provide the department, in writing, and keep updated if there is any change, a telephone number where the operator can be reached during normal business hours. The applicant, licensee, or person the department has reason to believe is an operator shall provide a person over the age of nineteen to be available at the operation for the purpose of allowing the department to perform an inspection.

(5) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter, without being subject to any action for trespass or damages, the premises of any applicant, licensee, or person the department has reason to believe is an operator, during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, harbored, sold, exchanged, or leased or are suspected of being housed, harbored, sold, exchanged, or leased.

(6) Pursuant to an inspection under the act, the department may:

(a) Enter and have full access to all premises where dogs or cats regulated under the act are harbored or housed or are suspected of being harbored or housed;

(b) Access all records pertaining to dogs or cats regulated under the act or suspected of pertaining to such dogs or cats and examine and copy all records pertaining to compliance with the act and the rules or regulations adopted and promulgated under the act. The department shall have authority to gather evidence, including, but not limited to, photographs;

(c) Inspect or reinspect any vehicle or carrier transporting or holding dogs or cats that is in the state to determine compliance with the act or any rules or regulations adopted and promulgated under the act;

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department to conduct an inspection pursuant to the act; or

(e) Issue and enforce a written stop-movement order pursuant to section 54-628.01.

(7) For purposes of this section, the private residence of any applicant, licensee, or person the department has reason to believe is an operator shall be available for purposes of inspection only if dogs or cats are housed in a primary enclosure within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

(8) An applicant, licensee, or person the department has reason to believe is an operator shall not seek to avoid inspection by hiding dogs or cats regulated under the act in a private residence, on someone else's property, or at any other location. An applicant, licensee, or person the department has reason to believe is an operator shall provide full and accurate information to the department regarding the location of all dogs or cats harbored by the operator.

(9) Any applicant, licensee, or person the department has reason to believe is an operator who intentionally refuses to answer the door, fails to be available as provided in subsection (4) of this section, fails to comply with subsection (8) of this section, or otherwise obstructs the department's attempt to perform an inspection shall be in violation of section 54-634 and subject to an administrative fine or other proceedings as provided in section 54-633 or 54-634.

Source: Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3; Laws 2009, LB241, § 5; Laws 2015, LB360, § 16.

54-628.01. Director; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.

(1) The director may issue a stop-movement order if he or she has reasonable cause to believe that there exists (a) noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, unreasonable sanitation or housing conditions, failure to comply with standards for handling, care, treatment, or transportation for dogs or cats, operating without a license, or interfering with the department in the performance of its duties, or (b) any condition that, without medical attention, provision of shelter, facility maintenance or improvement, relocation of animals, or other management intervention, poses a significant threat to the health or safety of the dogs or cats owned or harbored by a violator.

(2) Such stop-movement order may require the violator to maintain the dogs or cats subject to the order at the existing location or other department-approved premises until such time as the director has issued a written release from the stop-movement order. The stop-movement order shall clearly advise the violator that he or she may request in writing a hearing before the director pursuant to section 54-632. The order issued pursuant to this section shall be final unless modified or rescinded by the director pursuant to section 54-632 at a hearing requested under this subsection.

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act or if any management intervention imposed by the stop-movement order is being implemented to mitigate conditions posing a significant threat to the health or safety of dogs or cats harbored or owned by a violator. The department shall not be liable for any costs incurred

by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

(a) A description of the nature of the violations of the act or any rule or regulation adopted and promulgated pursuant to the act;

(b) If applicable, a description of conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator;

(c) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act or, if applicable, to mitigate conditions posing a significant threat to the health and safety of the dogs or cats harbored or owned by the violator;

(d) Notice that if violations of the act or any rule or regulation or any conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator persist, the department may refer the matter to appropriate law enforcement for investigation and potential prosecution pursuant to Chapter 28, article 10; and

(e) The name, address, and telephone number of the violator who owns or harbors the dogs or cats subject to the order.

(5) Before receipt of a written release, the person to whom the stop-movement order was issued shall:

(a) Provide the department with an inventory of all dogs or cats on the premises at the time of the issuance of the order;

(b) Provide the department with the identification tag number, the tattoo number, the microchip number, or any other approved method of identification for each individual dog or cat;

(c) Notify the department within forty-eight hours of the death or euthanasia of any dog or cat subject to the order. Such notification shall include the dog's or cat's individual identification tag number, tattoo number, microchip number, or other approved identification;

(d) Notify the department within forty-eight hours of any dog or cat giving birth after the issuance of the order, including the size of the litter; and

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

(6) The department shall reinspect the premises to determine compliance within ten business days after the initial inspection that resulted in the stop-movement order. At the time of reinspection pursuant to this subsection, if conditions that pose a significant threat to the health or safety of the dogs or cats harbored or owned by the violator or noncompliant conditions continue to exist, further reinspections shall be at the discretion of the department. The violator may request an immediate hearing with the director pursuant to any findings under this subsection.

Source: Laws 2009, LB241, § 6; Laws 2015, LB360, § 17.

54-628.02. Violation of act, rule or regulation, or order of director; proceedings authorized.

Whenever the director has reason to believe that any person has violated any provision of the Commercial Dog and Cat Operator Inspection Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director, the director may issue a notice of hearing as provided in section 54-632 requiring the person to appear before the director to (1) show cause why an order should not be entered requiring such person to cease and desist from the violation charged, (2) determine whether an administrative fine should be imposed or levied against the person pursuant to subsection (2) of section 54-633, or (3) determine whether the person fails to qualify for a license pursuant to section 54-630. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions according to law.

Source: Laws 2015, LB360, § 18.

54-629. Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping, veterinary care plans, emergency veterinary care plans, and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Source: Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4; Laws 2009, LB241, § 7.

54-630. Application; denial; grounds; appeal.

(1) Before the department approves an application for a license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. Except as provided in subsection (2) of this section, an applicant who qualifies shall be issued a license.

(2) The department may deny an application for a license as a commercial dog or cat breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, an animal rescue, or a pet shop upon a finding that the applicant is unsuited to perform the obligations of a

licensee. The applicant shall be determined unsuited to perform the obligations of a licensee if the department finds that the applicant has deliberately misrepresented or concealed any information provided on or with the application or any other information provided to the department under this section or that within the previous five years the applicant:

(a) Has been convicted of any law regarding the disposition or treatment of dogs or cats in any jurisdiction; or

(b) Has operated a breeder facility under a license or permit issued by any jurisdiction that has been revoked, suspended, or otherwise subject to a disciplinary proceeding brought by the licensing authority in that jurisdiction if such proceeding resulted in the applicant having voluntarily surrendered a license or permit to avoid disciplinary sanctions.

(3) In addition to the application, the department may require the applicant to provide additional documentation pertinent to the department's determination of the applicant's suitability to perform the duties of a licensee under the act.

(4) An applicant who is denied a license under this section shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license pursuant to the act and the rules and regulations adopted and promulgated by the department and should be issued a license. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5; Laws 2012, LB427, § 4; Laws 2015, LB360, § 19.

Cross References

- **Administrative Procedure Act,** see section 84-920.

54-631. Licensee; duties; disciplinary actions.

(1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and

(c) The director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

Source: Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.

54-632. Notice or order; service requirements; hearing; appeal.

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the applicant, licensee, or violator or on the person authorized by the applicant or licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the applicant, licensee, or violator or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the act or the rules and regulations adopted and promulgated pursuant to the act shall set forth the acts or omissions with which the applicant, licensee, or violator is charged.

(3) A notice of the right to a hearing shall set forth the time and place of the hearing except as otherwise provided in subsection (4) of this section and section 54-631. A notice of the right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) A request for a hearing under subsection (2) of section 54-628.01 shall request that the director set forth the time and place of the hearing. The director shall consider the interests of the violator in establishing the time and place of the hearing. Within three business days after receipt by the director of the hearing request, the director shall set forth the time and place of the hearing on the stop-movement order. A notice of the violator's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section.

(5) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(6) An applicant, a licensee, or a violator waives the right to a hearing if such applicant, licensee, or violator does not attend the hearing at the time and place set forth in the notice described in subsection (3) or (4) of this section, without requesting that the director, at least two days before the designated time, change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the applicant, licensee, or violator shows the director that the applicant, licensee, or violator had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the applicant, licensee, or violator waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing.

(7) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7; Laws 2009, LB241, § 8; Laws 2015, LB360, § 20.

Cross References

- **Administrative Procedure Act,** see section 84-920.

54-633. Enforcement powers; administrative fine.

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

Source: Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8; Laws 2015, LB360, § 21.

54-633.01. Special investigator; powers; referral to another law enforcement officer.

If the director has reason to believe that any alleged violation of the Commercial Dog and Cat Operator Inspection Act, any alleged violation of the rules and regulations of the department, any alleged violation of an order of the director, or any other existing condition posing a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or a licensee constitutes cruel neglect, abandonment, or cruel mistreatment pursuant to section 28-1009, the director may direct a special investigator employed by the department as authorized pursuant to section 81-201 to exercise the authorities of a law enforcement officer pursuant to sections 28-1011 and 28-1012 with respect to the dogs or cats or may request any other law enforcement officer as defined in section 28-1008 to inspect, care for, or impound the dogs or cats pursuant to sections 28-1011 and 28-1012. Any assignment of a special investigator by the director or referral to another law enforcement officer pursuant to this section shall be in cooperation and coordination with appropriate law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded pursuant to this section.

Source: Laws 2015, LB360, § 22.

54-634. Violation; penalty.

(1) It is unlawful for a person to operate without a valid license or operate while a license is revoked or suspended if a license is required by the Commercial Dog and Cat Operator Inspection Act. A licensee shall not operate in any manner which is not in conformity with the act or the rules and regulations adopted and promulgated pursuant thereto or interfere with the duties of the department or any final order of the director pursuant to the act.

(2) Any person who violates any provision of the act is guilty of a Class I misdemeanor.

Source: Laws 2000, LB 825, § 10.

54-634.01. Prohibited acts.

It shall be a violation of the Commercial Dog and Cat Operator Inspection Act for any person to (1) deny access to any officer, agent, employee, or appointee of the department or offer any resistance to, thwart, or hinder such persons by misrepresentation or concealment, (2) violate a stop-movement order issued under section 54-628.01, (3) fail to disclose all locations housing dogs or cats owned or controlled by such person, or (4) fail to pay any administrative fine levied pursuant to section 54-633.

Source: Laws 2009, LB241, § 9.

54-635. Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.

The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, fees, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 825, § 11; Laws 2016, LB909, § 3.

Cross References

- **Nebraska Capital Expansion Act,** see section 72-1269.
- **Nebraska State Funds Investment Act,** see section 72-1260.

54-636. Department; enforcement powers.

The department may cooperate with the Secretary of Agriculture in carrying out applicable federal law and the regulations issued by the Secretary of Agriculture under such law. The department may enter into contracts with any person to implement any or all of the provisions of the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 12.

54-637. Information on spaying and neutering; requirements.

(1) Every dealer, commercial dog or cat breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

Source: Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8; Laws 2012, LB427, § 5.

54-638. Provision for spaying or neutering; when.

Provision shall be made for spaying or neutering all dogs and cats released for adoption or purchase from any public or private animal shelter, animal rescue, or animal control facility operated by a humane society, a county, a city, or another political subdivision. Such provision may be made by:

(1) Causing the dog or cat to be spayed or neutered by a licensed veterinarian before releasing the dog or cat for adoption or purchase; or

(2) Entering into a written agreement with the adopter or purchaser of the dog or cat, guaranteeing that spaying or neutering will be performed by a licensed veterinarian in compliance with an agreement which shall contain the following information:

(a) The date of the agreement;

(b) The name, address, and signature of the releasing entity and the adopter or purchaser;

(c) A description of the dog or cat to be adopted or purchased;

(d) A statement, in conspicuous bold print, that spaying or neutering of the dog or cat is required pursuant to this section; and

(e) The date by which the spaying or neutering will be completed, which date shall be (i) in the case of an adult dog or cat, the thirtieth day after the date of adoption or purchase or (ii) in the case of a pup or kitten, either (A) the thirtieth day after a specified date estimated to be the date the pup or kitten will reach six months of age or (B) if the releasing entity has a written policy recommending spaying or neutering of certain pups or kittens at an earlier date, the thirtieth day after such date.

Source: Laws 2003, LB 274, § 5; Laws 2010, LB910, § 9.

54-639. Adopter or purchaser; agreement; requirements.

An adopter or purchaser who signs an agreement under section 54-638 shall cause the adopted or purchased dog or cat to be spayed or neutered on or before the date stated in the agreement. If such date falls on a Saturday, Sunday, or legal holiday, the date may be extended to the first business day following such date. The releasing entity may extend the date for thirty days upon presentation of a letter or telephone report from a licensed veterinarian, stating that the life or health of the adopted or purchased dog or cat would be jeopardized by spaying or neutering, and such extensions may continue to be granted until such veterinarian determines that spaying or neutering would no longer jeopardize the life or health of the adopted or purchased dog or cat.

Source: Laws 2003, LB 274, § 6.

54-640. Commercial dog or cat breeder; duties.

A commercial dog or cat breeder shall:

(1) Maintain housing facilities and primary enclosures in a sanitary condition;

(2) Enable all dogs and cats to remain dry and clean;

(3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide dogs with adequate socialization. For purposes of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed;

(7) Assure that a handler's hands are washed before and after handling each infectious or contagious cat;

(8) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and

(9) Provide veterinary care without delay when necessary.

Source: Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10; Laws 2012, LB427, § 6.

54-641. Licensees; primary enclosures; requirements.

The primary enclosures of all licensees shall meet the following requirements:

(1) A primary enclosure shall provide adequate space appropriate to the age, size, weight, and breed of each dog or cat. For purposes of this subdivision, adequate space means sufficient

room to allow each dog or cat to turn around without touching another animal, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the enclosure, which shall be at least six inches above the head of the tallest animal when the animal is standing;

(2) A primary enclosure shall have solid surface flooring or a flooring material that protects the dogs' and cats' feet and legs from injury and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(3) If a primary enclosure has a suspended floor constructed of metal strands, the strands shall either be greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass; and

(4) The suspended floor of any primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports.

Source: Laws 2003, LB 274, § 8; Laws 2012, LB427, § 7.

54-641.01. Commercial dog breeder; dogs; opportunity for exercise.

(1) A commercial dog breeder shall provide dogs with the opportunity for exercise as follows:

(a) A primary enclosure shall have an entry that allows each dog unfettered access to an exercise area that is at least three times the size of the requirements for a primary enclosure. The entry may be closed during cleaning, under direction of a licensed veterinarian, or in the case of inclement weather. The exercise area shall have solid surface flooring or a flooring material that if of mesh or slatted construction does not allow the dog's feet to pass through any openings in the floor. Any exercise area suspended floor constructed of metal strands shall be required to have strands that are greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass. All suspended flooring shall be strong enough so as not to sag or bend between any structural supports and be of a surface that is easily cleaned and disinfected. The exercise area shall have protection available from wind, rain, and snow if access to the primary enclosure is unavailable; and

(b) Any dog not housed in a primary enclosure that meets the exercise area requirements of subdivision (a) of this subsection shall be provided with the opportunity for exercise according to a plan approved by the attending veterinarian, in writing. The opportunity for exercise shall be accomplished by:

(i) Providing access to a run or open area at a frequency and duration prescribed by the attending veterinarian; or

(ii) Removal of the dogs from the primary enclosure at least twice daily to be walked, allowed to move about freely in an open area, or placed in an exercise area that meets the requirements of subdivision (a) of this subsection.

(2) Subsection (1) of this section shall not apply to:

(a) Any dog that is less than six months of age;

(b) The primary enclosure of a nursing facility that houses any female dog that is due to give birth within the following two weeks or a nursing dog and her puppies;

(c) Any dog that is injured or displays any clinical signs of disease. In such case, any injury or clinical signs of disease shall be noted in the dog's health records and the dog shall be returned to exercise upon recovery from such injury or disease; or

(d) Any dog that is excluded from the exercise requirements of subsection (1) of this section pursuant to a written directive of a licensed veterinarian.

(3) Any primary enclosure newly constructed after October 1, 2012, shall comply with subdivision (1)(a) of this section. A primary enclosure in existence on October 1, 2012, shall not be required to comply with subdivision (1)(a) of this section for the life of such facility.

Source: Laws 2012, LB427, § 8.

54-641.02. Commercial dog breeder; veterinary care; review of health records; duties of breeder.

(1) A commercial dog breeder shall ensure that each dog under his or her care, supervision, or control receives adequate veterinary care. A commercial dog breeder's written veterinary care plan shall provide for, in addition to requirements prescribed by rule and regulation of the department:

(a) The maintenance of individual health records for each dog bought, raised, or otherwise obtained, held, kept, maintained, sold, donated, or otherwise disposed of, including by death or euthanasia, except that litter health records may be kept on litters when litter mates are treated with the same medication or procedure;

(b) Establishment of a program of disease control and prevention, pest and parasite control, before and after procedure care, nutrition, and euthanasia supervised by the attending veterinarian. Such program shall provide for regularly scheduled onsite visits to the facility by the veterinarian and shall be annually reviewed and updated by the veterinarian at the time of an onsite visit that includes the veterinarian's walk-through of the facility and observation by the veterinarian of dogs under the commercial dog breeder's care, supervision, or control; and

(c) A wellness examination by a licensed veterinarian of each breeding dog at least once every three years, to include a basic physical and dental examination and corresponding notations entered into the dog's health records. Such examination shall not require laboratory analysis unless directed by the veterinarian.

(2) During regularly scheduled inspections of a commercial dog breeder's facility conducted by the department, the health records of a random sample of at least five percent of the breeding dogs shall be reviewed to verify that such records correspond to the dog's permanent identification and verify that the health records are properly maintained.

(3) For each dog under the commercial dog breeder's care, supervision, or control, the breeder shall:

(a) Ensure that all breeding dogs receive regular grooming. Coat matting shall not exceed ten percent, and nails shall be trimmed short enough to ensure the comfort of the dog;

(b) Contact a licensed veterinarian without delay after an occurrence of a serious or life-threatening injury or medical condition of such dog. The dog shall be treated as prescribed by the veterinarian;

(c) Ensure that all surgical births or other surgical procedures shall be performed by a licensed veterinarian using anesthesia. Commercial dog breeders may remove dew claws and perform tail docking under sterile conditions within the first seven days of the dog's life. Wounds shall be treated and monitored by the breeder; and

(d) Ensure that, if euthanasia is necessary, it shall be performed by a licensed veterinarian in accordance with recommendations for the humane euthanization of dogs as published by the American Veterinary Medical Association.

Source: Laws 2012, LB427, § 9.

54-641.03. Breeding dog; microchip; identification.

Each breeding dog shall be identified by the implantation of a microchip, and each dog's health records shall accurately record the appropriate identification. The department may by rule or regulation require identification of any dog by tag, tattoo, or other method if the microchip system is determined to be ineffective. A commercial dog breeder licensed prior to October 1, 2012, who utilizes a method or methods of identification other than microchipping as authorized by rule and regulation of the department prior to October 1, 2012, may continue to utilize such method or methods.

Source: Laws 2012, LB427, § 10.

54-642. Department; submit report of costs and revenue.

On or before November 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

Source: Laws 2006, LB 856, § 16; Laws 2012, LB782, § 82.

54-643. Administrative fines; disposition; lien; collection.

(1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the

name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2007, LB12, § 9.

28-1008. Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes a special investigator appointed as a deputy state sheriff as authorized pursuant to section 81-201 while acting within the authority of the Director of Agriculture under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person;

(9) Police animal means a horse or dog owned or controlled by the State of Nebraska or any county, city, or village for the purpose of assisting a law enforcement officer in the performance of his or her official enforcement duties;

(10) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(11) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(12) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13; Laws 2012, LB721, § 2; Laws 2015, LB360, § 2.

Cross References

- **Commercial Dog and Cat Operator Inspection Act,** see section 54-625.
- **28-1012. Law enforcement officer; powers; immunity; seizure; court powers.**
- (1) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.
- (2) A law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.
- (3) Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 28-1012.01 as the court may direct.
- (4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.
- **Source:** Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12; Laws 2015, LB360, § 4.

29-820. Seized property; disposition.

(1) Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of by the law enforcement agency on such showing as the law enforcement agency may deem adequate, as follows:

(a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(b) Money shall be restored to the owner unless it was used in unlawful gambling or lotteries or it was used or intended to be used to facilitate a violation of Chapter 28, article 4, in which case the money shall be forfeited and disposed of as required by Article VII, section 7, of the Constitution of Nebraska;

(c) Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in subdivision (b) of this subsection, as shall any money which is unclaimed or the ownership of which is unknown;

(d) Except as provided in subsection (2) of this section, articles of contraband shall be destroyed;

(e) Firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be destroyed; and

(f) Firearms which have come into the law enforcement agency's possession through a seizure or otherwise and (i) have not been used in the commission of crime, (ii) have not been defaced or altered in any manner that violates any state or federal law, (iii) may have a lawful use and be lawfully possessed, and (iv) are not subject to section 29-440 shall be restored to the owner.

(2) When the following property is seized or held and is no longer required as evidence, such property shall be disposed of on order of the court as the court may deem adequate:

Goods which are declared to be contraband but may reasonably be returned to a condition or state in which such goods may be lawfully used, possessed, or distributed by the public.

(3) When any animal as defined by section 28-1008 is seized or held and is no longer required as evidence, such animal may be disposed of in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

- Laws 1963, c. 161, § 9, p. 574;
- Laws 1986, LB 543, § 1;
- Laws 2002, LB 82, § 12;
- Laws 2012, LB807, § 1.

Cross References

- **Commercial Dog and Cat Operator Inspection Act,** see section 54-625.

54-603. Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.

(1) Any county, city, or village shall have authority by ordinance or resolution to impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harborer of any dog or dogs, to be paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harborer of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar and twenty-five cents. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each fee of one dollar and twenty-five cents collected, such person shall retain three cents and remit the balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash

Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the State Treasurer shall be made at least annually at the conclusion of the licensing jurisdiction's fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

Source

- Laws 1877, § 3, p. 156;
- R.S.1913, § 174;
- C.S.1922, § 171;
- C.S.1929, § 54-603;
- R.S.1943, § 54-603;
- Laws 1976, LB 515, § 2;
- Laws 1997, LB 814, § 7;
- Laws 2008, LB806, § 13;
- Laws 2010, LB910, § 3;
- Laws 2015, LB360, § 12.

Cross References

- **For other provisions authorizing municipalities to impose license tax on dogs,** see sections 14-102, 15-220, 16-206, and 17-526.

Annotations

- In action against county for loss of sheep killed by dogs, based on statute giving new remedy and prescribing prerequisite conditions, plaintiff must allege that conditions have been performed. McCullough v. Colfax County, 4 Neb. Unof. 543, 95 N.W. 29 (1903).

EXHIBIT 13

NEBRASKA ADMINISTRATIVE CODE

TITLE 23, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 18

NEBRASKA DEPARTMENT OF AGRICULTURE

COMMERCIAL DOG AND CAT OPERATOR INSPECTION REGULATIONS

December, 2015

NEBRASKA ADMINISTRATIVE CODE

TITLE 23 - NEBRASKA DEPARTMENT OF AGRICULTURE

CHAPTER 18 - COMMERCIAL DOG AND CAT OPERATOR INSPECTION REGULATIONS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 23 - DEPARTMENT OF AGRICULTURE

CHAPTER 18 - COMMERCIAL DOG AND CAT OPERATOR INSPECTION REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Commercial Dog and Cat Operator Inspection Act, Neb. Rev. Stat. §§54-625 to 54-643.

002 Administration. These regulations shall be administered by the Department of Agriculture located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94787, Lincoln, Nebraska 68509-4787. The telephone number is (402) 471-2351; Fax number (402) 471-6893.

003 Definitions. The definition of terms found in the Commercial Dog and Cat Operator Inspection Act §§54-625 to 54-643 and below shall apply to such terms when found in these regulations.

003.01 ACT means the Commercial Dog and Cat Operator Inspection Act, §§54-625 to 54-643.

003.02 ANIMAL means dogs, cats, and pet animals.

003.03 CAGE CARD means a card that is at least 3 inches by 5 inches in size, made of a durable material or enclosed in a transparent, protective cover, and contains information identifying each dog or cat.

003.04 COMPLETE DESCRIPTION of a dog or cat shall include the breed or type; the sex; the date of birth or approximate age; the weight or approximate size; color; and any distinctive markings.

003.05 DISPOSED OF AND DISPOSITION means the sale, lease, exchange, barter, or any other transfer of a dog or cat, including death or euthanasia.

003.06 EMPLOYEE means any paid or unpaid individual or individuals assisting an operator in the handling and care of the operator's dogs or cats.

003.07 HANDLING means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working or moving, walking or exercising, or any similar activity with respect to any dog or cat.

003.08 HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION means the minimum requirements necessary for a dog's or cat's handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, transport in commerce, adequate veterinary care, and exercise for dogs pursuant to the Act, these regulations, and 9 C.F.R. §§3.1 to 3.19.

003.09 MEDICAL PROCEDURE means vaccinations, worming treatments, x-rays, surgery, medications administered, individual physical and dental examinations, or other similar veterinary medical treatment.

003.10 PERSON means any individual, partnership, limited liability company, association, corporation, joint-stock company, political body, society, community, the public generally or organized group of persons, whether incorporated or not.

003.11 STATEMENT OF INFERTILITY means a statement signed by a veterinarian licensed to practice in Nebraska expressing the opinion that a specific dog or cat is infertile, or is not capable of initiating, sustaining, or supporting reproduction. An example of the Statement of Infertility form is attached as Appendix G.

003.12 TUFTS ANIMAL CARE AND CONDITION SCALES FOR ASSESSING BODY CONDITION, WEATHER AND ENVIRONMENTAL SAFETY, AND PHYSICAL CARE IN DOGS: SECTION II, Weather Safety Scale (Tufts Weather Safety Scale), SECTION III, Environmental Health Scale (Tufts Environmental Health Scale), SECTION IV, Physical Care Scale (Tufts Physical Care Scale) means the guidelines used to objectively assess the health or safety risk of a dog. A copy of these guidelines, as they existed on July 1, 2014, is attached as Appendix F, and incorporated herein by reference.

004 Application For License. All persons operating a boarding kennel, pet shop, animal control facility, animal rescue, animal shelter, or acting as a dealer or commercial dog or cat breeder shall have a valid license issued by the Department in accordance with the Act and these regulations.

004.01 Any person applying for a license under the provisions of the Act and these regulations shall apply on an application form furnished by the Department. The applicant shall provide all information requested on the application form, including a valid mailing address through which the licensee or applicant can always be reached, and a valid premises address where dogs, cats, pet animals, dog and cat facilities, equipment, and records may be inspected for compliance. The applicant shall list on the application form or on a separate sheet attached to it, the premises, facilities or sites where a person operates, houses, has an interest in or keeps dogs, cats, and pet animals. The applicant shall file the completed

application form with the Department. Application forms may be obtained by contacting the Department.

004.02 An applicant shall obtain a separate license for each separate physical facility requiring a license according to the Act and these regulations. For purposes of licensure, a separate physical facility is one which is not located on the same or adjacent parcels of land.

004.03 Any person exempt from the license requirements may voluntarily apply for a license, but shall agree in writing to comply with the requirements set forth in the Act and these regulations. The voluntary licensee is subject to the same inspection and enforcement actions as any other licensee.

004.04 Before the Department issues a license, the application form and required fee must be received and an inspector of the Department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Act, these regulations and the standards set out in 9 C.F.R. §§3.1 to 3.19.

004.05 A license shall be issued to specific persons for specific premises, facilities and operations, and does not transfer upon change of ownership or any other change of business or operation nor is it valid at a different location.

004.06 There shall be no refund of fees if an applicant does not pass the qualifying inspection, or if a license is terminated for any reason before its expiration.

004.07 Licensees shall accept delivery of registered mail or certified mail sent by the Department.

004.08 No activity for which a license is required by the Act and these regulations shall be conducted by any person until the requirements for issuing the license have been met and a valid license has been duly issued.

004.09 A license which has been revoked, lapsed, or voluntarily surrendered under the Act and these regulations shall be returned to the Department. The licensee shall provide a written statement to the Director, if the license has been lost or misplaced.

004.10 Each applicant shall make, keep, and maintain:

004.10A Records as required under 23 NAC 18-010; and

004.10B Any other information requested by the Department on the application or renewal form.

004.11 A licensee shall notify the Department in writing of any change in the name, address, management, control or ownership of the business or operation, any change in the type of license activities occurring at the licensed location, or of additional sites, within ten (10) days of the change.

005 License Enforcement Actions.

005.01 The Director may deny issuing or may revoke or suspend a license, or place on probation a licensee on any one (1) or more of the following grounds:

005.01A Deliberate misrepresentation or concealment, including failure to disclose all locations housing dogs or cats made to employees or agents of the Department or reported on the application;

005.01B Conviction of any violation of any law, in any jurisdiction, on the disposition or treatment of dogs or cats;

005.01C The failure of any person to comply with any provision of the Act and these regulations;

005.01D The refusal to allow the Department access to any records for the purpose of examining and copying such records required to be kept under the Act and these regulations;

005.01E The refusal of a licensee to allow Department employees or agents to enter and inspect all premises in or upon which dogs or cats are housed, sold, exchanged, or leased or are suspected of being housed, sold, exchanged, or leased;

005.01F The refusal of any applicant to allow Department employees or agents access to the premises to be licensed to determine if such applicant meets licensure requirements pursuant to the Act and these regulations;

005.01G Failure to pay any required fees under the Act and these regulations. Any returned check will be deemed nonpayment of fees;

005.01H Failure to pay any administrative fine levied pursuant to §54-633;

005.01I Failure to comply with a stop-movement order pursuant to §54-628.01; or

005.01J Having had a license revoked, suspended, or otherwise having been subject to a disciplinary proceeding under any jurisdiction resulting in the applicant having voluntarily surrendered a license or permit to avoid disciplinary sanctions.

005.02 Licensees whose licenses have been suspended or revoked.

005.02A Any person whose license has been suspended or revoked for any reason shall not be licensed under such licensee's name within the period during which the suspension or revocation is in effect. No partnership, firm, corporation or other legal entity in which any such person has an interest, financial or otherwise, will be licensed during that period.

005.02B Any person who has been an officer, agent, or employee of a licensee whose license has been suspended or revoked and who was responsible for or participated in the violation upon which the license was suspended or revoked will not be licensed within the same period during which the suspension or revocation is in effect.

005.03 Any person whose license has been suspended may apply in writing to the Director for reinstatement of the licensee's license. Any person whose license has been revoked may apply in writing to the Director for issuance of a new license.

006 Inspections and Complaints.

006.01 In addition to the definitions set forth in 23 NAC 18-003, the following shall apply to 23 NAC 18-006:

006.01A Abandoned shall mean the term as defined in Neb. Rev. Stat. §28-1008(1).

006.01B Cruelly mistreat shall mean the term as defined in Neb. Rev. Stat. §28-1008(3).

006.01C Cruelly neglect shall mean the term as defined in Neb. Rev. Stat. §28-1008(4).

006.01D Direct violations shall mean violations of the Act, these regulations or 9 C.F.R. §§3.1 to 3.19 that have a high potential to adversely affect the health, well-being or safety of the dogs or cats but do not meet the definitions of abandoned, cruelly mistreated, cruelly neglected or significant threat to the health or safety of the dogs or cats.

006.01E Flagged violations shall mean violations of the Act, these regulations or 9 C.F.R. §§3.1 to 3.19 that the Department reasonably suspects may involve dogs or cats being abandoned, cruelly mistreated, cruelly neglected or subject to conditions which may pose a significant threat to the health or safety of the dogs or cats.

006.01F Indirect violations shall mean violations of the Act, these regulations or 9 C.F.R. §§3.1 to 3.19 that do not have a high potential to adversely affect the health, well-being or safety of the dogs or cats.

006.01G Representative of the operator means a person over the age of nineteen an operator has expressly authorized, verbally or in writing, to the Department, to allow entry on the premises of the licensee operator for the purpose of inspection under the Act. If the operator decides to revoke an authorization, the operator must inform the Department, in writing.

006.02 Any inspection conducted under the Act will be performed in accordance with the Act and these regulations.

006.02A Inspections shall be documented and the written report shall specify a compliance date for any violation of the Act, these regulations or 9 C.F.R. §§3.1 to 3.19. Compliance dates shall be set for violations based on the potential effect of the violation on the dogs or cats as follows:

006.02A(1) Flagged violations shall be set with a compliance date ranging between immediately and up to 24 hours, taking into account the seriousness of the violation and the actual harm to the dogs or cats.

006.02A(2) Direct violations shall be set with a compliance date ranging between immediately and up to 45 days, taking into account the seriousness of the violation

and the potential harm to the dogs or cats. Compliance dates shall allow the violator to come into compliance while safeguarding the health or safety of the dogs or cats.

006.02A(3) Indirect violations may be given a longer time frame for correction.

006.02B If during any inspection the Department reasonably suspects a person has committed a flagged violation, the following provisions are applicable:

006.02B(1) If the Department reasonably suspects any dog or cat is abandoned or being cruelly mistreated or cruelly neglected, the Department shall, the same day, notify the law enforcement agency of the county in which the alleged violation is occurring.

006.02B(2) If the Director has reason to believe that any alleged violation of the Act or these regulations or an order of the Director or any other existing condition posing a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or a licensee constitutes cruel neglect, abandonment, or cruel mistreatment, a special investigator appointed as a deputy state sheriff authorized pursuant to Neb. Rev. Stat. §81-201 of the Department may inspect, care for or impound the dogs or cats or the Director may request any other law enforcement officer as defined in Neb. Rev. Stat. §28-1008 to inspect, care for or impound the dogs or cats.

006.02B(3) The Department may enter into agreements with any appropriate public or private entity to provide for the care, shelter and disposition of the impounded dogs or cats.

006.02C The Department, at it's discretion, will attempt to make unannounced inspections during normal business hours.

006.03 All premises of operators shall be inspected as often as set out in §54-628, or as often as determined necessary by the Department to carry out its duties under the Act and these regulations.

006.04 If an operator, or a representative of the operator, applicant or any other person the Department has reason to believe is an operator does not make the premises available to the Department for inspection, the following procedures shall be implemented:

006.04A If an operator, or a representative of the operator, applicant or other person the Department has reason to believe is an operator is not present or does not respond to notification of the Department's presence at the premises, the Department will attempt to contact by telephone the operator. If telephone contact is made, the operator will be notified of the intended inspection and that a representative over the age of nineteen must be onsite within a reasonable amount of time, not to exceed two hours, to allow the inspection.

006.04A(1) If the Department cannot make contact with the operator by telephone, or the inspection is not allowed within the set timeframe, a notice of the attempted inspection such as the example Attempted Inspection Notice form, attached as Appendix H, will be posted in a prominent location on the premises, such as the front door of the facility or residence; and

006.04A(2) The failure to allow the Department to have full and complete access for inspections as set forth in subsections (1), (3), (4), (5), (6), (7), (8) and (9) of §54-628 of the Act may be considered by the Department as a refusal by the operator to allow an inspection pursuant to the Act and the Department may seek to obtain an inspection warrant for purposes of inspecting the premises for compliance with the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19.

006.04B If the operator expressly refuses to make premises upon which dogs or cats are present available for inspection, the Department may immediately seek to obtain an inspection warrant or a search warrant for purposes of inspecting the premises for compliance with the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19.

006.04C Any operator not allowing the Department to make an attempted inspection shall be subject to the reinspection fees set forth in §54-628(3) and subject to the provisions of §54-628 (9) of the Act and the Department may pursue one or any combination of enforcement actions provided.

006.05 All complaints alleging a violation of the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19, shall be reviewed and evaluated, after which the Department may assign priorities to the complaints and initiate an inspection. The priorities and inspections shall be conducted in the following descending order when determined by the Department to be reasonable and logical:

006.05A Any written or signed complaint, including those submitted by facsimile or electronic transmission, indicating that a person is in violation or is suspected to be in violation of the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19;

006.05B Any complaint from an identified source indicating that a person is in violation or is suspected to be in violation of the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19; or

006.05C Any complaint from an anonymous source indicating a person is in violation, or is suspected to be in violation of the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19.

006.06 Any complaint indicating a dog or cat is abandoned or being cruelly neglected or cruelly mistreated, shall, the day it is received, be referred to the law enforcement agency of the county in which the alleged violation is occurring. The Department may investigate such complaints for the purpose of determining if there are any violations of the Act, these regulations, or 9 C.F.R. §§3.1 to 3.19.

007 Humane Handling, Care, Treatment, and Transportation of Dogs and Cats.
Operators shall comply with the requirements of the Act and these regulations regarding the humane handling, care, treatment, and transportation of dogs and cats. For the purposes of enforcement of the Act and these regulations, the Department adopts the specifications for the humane handling, care, treatment, and transportation of dogs and cats, the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA), as published in 9 C.F.R. §§3.1 to 3.19 (2015) (a copy of which is attached to these regulations as Appendix A and incorporated herein by reference) so long as these standards do not conflict with the Act or these regulations. If there is an inconsistency between the Act and

9 C.F.R. §§3.1 to 3.19, the Act shall control. If there is an inconsistency between 9 C.F.R. §§3.1 to 3.19, and these regulations, the regulations shall control. Humane handling, care, treatment, and transportation shall include but not be limited to, the following:

007.01 Adequate Food and Water.

007.01A All dogs and cats shall be provided with food at least one time per day, except as otherwise directed by the attending veterinarian. Such food shall be fresh, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of dogs and cats.

007.01B Water shall be continually available to each dog and cat or it must be offered to the dogs and cats as often as necessary to ensure their health or safety, but never less than twice per day for at least one hour each time, unless restricted by the attending veterinarian.

007.01B(1) Factors in determining if a dog or cat is receiving an adequate amount of water from appropriate receptacles and watering systems as set forth in 23 NAC 18-007.10 include, but are not limited to:

007.01B(1)(a) Ambient temperature;

007.01B(1)(b) A dog's or cat's body condition, such as sunken eyes and skin tenting; or

007.01B(1)(c) A dog's or cat's behavior, such as excessive nosing at an empty water bowl.

007.01B(2) Excessive thirst may indicate a disease condition to be addressed by the attending veterinarian.

007.02 Compatible Grouping. All dogs and cats housed in the same primary enclosure must be compatible, with the following restrictions:

007.02A Females in heat (estrus) may not be in the same primary enclosure with males, except for breeding purposes;

007.02B Any dog or cat exhibiting a vicious or overly aggressive disposition must be housed separately;

007.02C Puppies or kittens four months of age or less may not be in the same primary enclosure with adult dogs or cats other than their dams or foster dams;

007.02D Dogs or cats may not be in the same primary enclosure with any other species of animals, unless they are compatible; and

007.02E Dogs or cats that have, or are suspected of having, a contagious disease must be isolated from healthy animals.

007.03 Veterinary Care Requirements for Commercial Dog or Cat Breeders, Pet Shops or Dealers. Attending veterinarian and adequate veterinary care are required for animals under the care, supervision, or control of a commercial dog or cat breeder, pet shop, or dealer.

007.03A Each commercial dog or cat breeder, pet shop, and dealer licensed under the Act and these regulations shall have a written veterinary care plan with an attending veterinarian who is licensed to practice in Nebraska. The formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises upon which the dogs or cats are harbored. The form entitled, Veterinary Care Plan, incorporated herein by reference, is attached as Appendix I and may be used to satisfy the requirements for a written veterinary care plan.

007.03B Each commercial dog or cat breeder, pet shop, and dealer licensed under the Act and these regulations shall establish, maintain, and follow programs of adequate veterinary care that include:

007.03B(1) The availability of appropriate facilities, employees, equipment, and services to comply with the provisions in the Act and these regulations;

007.03B(2) The use of appropriate methods to prevent, control, diagnose and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

007.03B(3) The maintenance of individual health records shall be kept pursuant to 23 NAC 18-010.06, for:

007.03B(3)(a) All dogs and cats which are sixteen (16) weeks of age or older;

007.03B(3)(b) All dogs or cats younger than sixteen (16) weeks of age when permanently transferred from the litter; or

007.03B(3)(c) Any dog or cat younger than sixteen (16) weeks of age if it received any individual medical procedure, separate from the litter.

007.03B(4) Daily observation of all dogs and cats to assess their health or safety. Provided, however, that daily observation of dogs and cats may be accomplished by someone other than the attending veterinarian; and provided further, that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of dog or cat health, behavior, and well-being is conveyed to the attending veterinarian; and

007.03B(5) Adequate grooming to avoid matted hair which significantly impairs a dog's health or safety or provides a nesting area for disease carrying pests or parasites and to ensure that nails are not impairing the comfort of the dog.

007.04 Additional Veterinary Care Requirements for Commercial Dog Breeders.

007.04A Commercial dog breeders shall have the attending veterinarian annually review and update the veterinary care plan required in 23 NAC 18-007.03A at the time of the onsite visit.

007.04B Commercial dog breeders shall comply with §54-641.02(3)(a) which requires that breeding dogs receive regular grooming. The Tufts Physical Care Scale may be used as a guideline to assist the Department in making a determination as to a dog's adequate regular grooming. Evidence that a dog is receiving adequate regular grooming is shown by:

007.04B(1) The matting of a dog's coat does not exceed ten percent.

007.04B(2) A dog's nails are trimmed short enough to ensure the comfort of the dog.

007.04C All commercial dog breeders shall provide each breeding dog a wellness examination at least once every three years which shall include a basic physical and dental examination pursuant to §54-641.02(1)(c).

007.05 Veterinary Care Requirements for Boarding Kennels, Animal Control Facilities, Animal Rescues and Animal Shelters. Each boarding kennel, animal control facility, animal rescue, and animal shelter shall establish, maintain, and follow a written emergency veterinary care plan. The form entitled, Emergency Veterinary Care Plan, incorporated herein by reference, is attached as Appendix J, and may be used to satisfy the requirements for a written emergency veterinary care plan. The written emergency veterinary care plan shall include:

007.05A The veterinarian of choice by the owner of the dog or cat that is being boarded, in the event veterinary care is needed; or

007.05B A formal arrangement with a veterinarian licensed to practice in Nebraska to provide veterinary services as needed.

007.05C The provision of veterinary care for dogs or cats which are sick, diseased, injured or lame.

007.06 Exercise for Dogs. All operators shall establish and follow an appropriate exercise plan for each dog housed on the premises. All dogs greater than twelve weeks of age, or age specified by the attending veterinarian, shall be provided opportunity for exercise.

007.06A The exercise plan shall be in writing and available to the Department at the time of inspection. Such plan shall:

007.06A(1) Be approved and signed by the attending veterinarian, or incorporated into the veterinary care plan or emergency veterinary care plan; and

007.06A(2) State that the dog has the required exercise space listed in 23 NAC 18-007.06C(1) and 007.06C(2); or

007.06A(3) Identify the frequency, method, and duration of additional exercise if the exercise requirements are not otherwise met.

007.06B Exemptions to the exercise requirement of any dog shall be determined only by the attending veterinarian and shall be recorded in the veterinary care plan or emergency veterinary care plan.

007.06C Animal control facilities, animal shelters, animal rescues, boarding kennels, dealers, and pet shops shall provide exercise to dogs by using the following methods, including, but not limited to:

007.06C(1) An individually housed dog with at least 200% of its minimum required floor space;

007.06C(2) Group housed dogs with at least 100% of the minimum required floor space for each animal;

007.06C(3) Access to a run or open area at the frequency and duration prescribed by the attending veterinarian; or

007.06C(4) Positive interaction with humans, such as walking, playing ball, or grooming.

007.06D Commercial Dog Breeders. Commercial dog breeders shall comply with the requirements set forth in §54-641.01, regarding exercise for dogs owned or harbored by such commercial dog breeders.

007.07 Employee Requirements. All operators shall be responsible for ensuring that:

007.07A Adequate training and guidance are provided to employees involved in the handling, care, and treatment of the dogs and cats on the licensed premises;

007.07B A sufficient number of trained employees are available to perform general husbandry tasks; and

007.07C Employees involved in the handling, care, and treatment of a operator's dogs and cats can, and do, perform at the level required by the Act and these regulations.

007.07D Factors to be considered in determining the adequacy and appropriate number of employees:

007.07D(1) Number of dogs and cats maintained on the premises;

007.07D(2) Maintenance requirements of the individual dogs or cats based on, but not limited to, size, breed, and age;

007.07D(3) Design and construction of the facility; and

007.07D(4) General condition of facility. A facility that is routinely noncompliant in general husbandry areas may indicate too few employees on site, or employees who are not trained in the appropriate humane handling, care, and treatment of dogs and cats.

007.07E Factors indicating inadequately trained, or insufficient number of, employees:

007.07E(1) High incidence of injury to the dogs and cats in the operator's care which are subject to the Act;

007.07E(2) Inadequate cleanliness of facility due to accumulations of litter, food waste, feces, trash, junk, or weeds; or

007.07E(3) Multiple substantiated complaints against the licensed facility by the general public.

007.08 Pest Control. All operators shall establish, maintain, and follow an effective pest control program for the control of insects or external parasites affecting dogs and cats. Signs of an ineffective pest control program may include, but shall not be limited to:

007.08A Sighting of the pest or pests;

007.08B Dog or cat scratching excessively;

007.08C Open sores or sores due to flies and other insects; or

007.08D Areas of hair loss on the dog or cat.

007.09 Primary Enclosures.

007.09A All operators shall maintain primary enclosures for dogs and cats which provide adequate space and flooring in accordance with §54-641. Primary enclosures shall also be maintained in a clean and sanitary manner as follows:

007.09A(1) Be cleaned as often as necessary, but at least one time per day, to:

007.09A(1)(a) Prevent contamination of the animal;

007.09A(1)(b) Minimize disease hazards; and

007.09A(1)(c) Reduce odors.

007.09A(2) Be cleaned daily to remove any excreta and food waste so that no more than twenty-four (24) hours of feces and urine accumulates by:

007.09A(2)(a) Cleaning the entire primary enclosure;

007.09A(2)(b) Cleaning soiled areas only (spot-clean); or

007.09A(2)(c) Any other Department approved method.

007.09A(3) Be cleaned in a manner that does not:

007.09A(3)(a) Harm the dog or cat by the use of direct exposure to steam or harsh or toxic chemicals;

007.09A(3)(b) Contaminate the dog, cat, or its bedding;

007.09A(3)(c) Wet the dog, cat or its bedding; or

007.09A(3)(d) Distress the dog or cat, evidenced by, but not limited to, shivering, shaking, cowering, excessive howling, or whining.

007.09A(4) Have all excreta and food waste removed daily from under the primary enclosure to prevent or reduce:

007.09A(4)(a) Soiling of the dog or cat;

007.09A(4)(b) Disease hazard;

007.09A(4)(c) Pests, insects, and vermin; and

007.09A(4)(d) Odors.

007.09A(5) Be sanitized as set forth in 23 NAC 18-007.10D as often as necessary, but at least one time every two weeks, to minimize disease hazards.

007.09B Tethering. Permanent tethering is prohibited for use as a primary enclosure by any operator. The Department may approve temporary tethering of a dog for up to three (3) days, if the operator: (1) makes the request in writing to the Department; (2) includes the reason or justification for tethering the dog; and (3) includes the length of time the dog will be tethered. Factors to consider when approving or disapproving temporary tethering of a dog may include, but are not limited to:

007.09B(1) Routine cleaning or maintenance;

007.09B(2) The availability of shelter;

007.09B(3) Length of the tether;

007.09B(4) Type and strength of the tether;

007.09B(5) Method of attachment of tether to the dog;

007.09B(6) Possible entanglements with other animals or objects;

007.09B(7) Access to food and water;

007.09B(8) Access to shade at all times during the day;

007.09B(9) Breed and behavior characteristics of the dog or dogs; and

007.09B(10) Protection from predators.

007.09C Commercial dog or cat breeders shall provide sufficient shade to shelter all the dogs or cats housed in the primary enclosure at one time.

007.10 General Requirements for All Housing Facilities. All housing facilities shall:

007.10A Allow the dogs or cats easy and convenient access to clean food and water which shall be non-toxic and free from algae growth.

007.10A(1) Food and water receptacles and watering systems shall be constructed of hard surfaces which are sanitized as set forth in 23 NAC 18-007.10D(1).

007.10B Be designed, constructed, and maintained in such a manner as to:

007.10B(1) Be structurally sound;

007.10B(2) Be kept in good repair, having no sharp or jagged edges which could injure a dog or cat;

007.10B(3) Be free of excessive rust which prevents the required cleaning and sanitation;

007.10B(4) Securely contain the dogs or cats; and

007.10B(5) Protect the dogs or cats from predators.

007.10C Be kept clean and be easy to clean. All housing facilities shall have waste properly disposed. All operators shall maintain waste disposal procedures for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris on all premises where housing facilities are located, including buildings, pens, and surrounding grounds. Weeds, grasses and bushes shall be controlled so as to facilitate cleaning and pest control. The Tufts Environmental Health Scale may be used as a guideline to assist the Department in making a determination as to whether a dog or cat's environment is acceptable.

007.10C(1) Waste disposal procedures shall minimize:

007.10C(1)(a) Pest infestation;

007.10C(1)(b) Vermin infestation;

007.10C(1)(c) Harmful odors; and

007.10C(1)(d) Disease hazards.

007.10C(2) Trash containers in housing facilities, food storage areas, and food preparation areas shall be leak proof and have tightly fitted lids on them at all times.

007.10C(3) The surfaces of housing facilities, including 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.

007.10D Be properly sanitized.

007.10D(1) Hard surfaces which include, but are not limited to, sealed concrete, sealed wood, ceramic tile, stainless steel or other metals, glass board, or strong plastic laminate sheeting, shall be impervious to moisture and sanitized as follows:

007.10D(1)(a) Washing with hot water of at least 180°F and soap or detergent;

007.10D(1)(b) Washing with a detergent solution, followed by a safe and effective disinfectant; or

007.10D(1)(c) Live steam or pressurized live steam.

007.10D(2) For outside non-hard or porous surfaces which include, but are not limited to dirt, sand, gravel and grass, acceptable methods of sanitation include, but are not limited to:

007.10D(2)(a) Removal of feces; and

007.10D(2)(b) Exposure to direct sunlight or use of a safe and effective disinfectant.

007.10E Have proper pest control. All operators shall establish, maintain, and follow an effective pest control program for the control of insects and birds and mammals that are pests, such as starlings and small rodents. Signs of an ineffective pest control program may include, but shall not be limited to:

007.10E(1) Sighting of the pest or pests;

007.10E(2) Droppings;

007.10E(3) Rodent holes;

007.10E(4) Chewed insulation on floors, walls, ceilings and other surfaces; or

007.10E(5) Nests.

007.10F Have proper drainage. All licensed facilities shall have a method to:

007.10F(1) Prevent excess or standing water and other fluids;

007.10F(2) Keep the dog, cat, and its bedding dry; and

007.10F(3) Minimize pest infestation, harmful odors, vermin infestation and disease hazards.

007.10G Provide adequate shelter and protection.

007.10 G(1) Each dog and cat shall be provided with adequate shelter from the elements at all times. The Tufts Weather Safety Scale may be used as a guideline to assist the Department in making a determination as to a dog's health or safety risk in adverse weather conditions. Weather conditions may be established by either a

reliable weather website or a hand held weather meter which measures weather data. Adequate shelter shall:

007.10G(1)(a) Protect the dogs' and cats' health and safety;

007.10G(1)(b) Allow all the dogs and cats in the enclosure to have access to the shelter at the same time;

007.10G(1)(c) Protect the dogs and cats from adverse weather conditions;

007.10G(1)(d) Be large enough to allow each dog or cat to sit, stand, lie down, and turn around freely; and

007.10G(1)(e) Not include barrels, cars, refrigerators, freezers, washing machines, dryers, and the like.

007.10G(2) Dogs and cats shall be protected from extreme temperatures and weather conditions. The following indicate such shelter and protection is not being provided:

007.10G(2)(a) Dogs or cats have symptoms of hypothermia;

007.10G(2)(b) Dogs or cats have symptoms of hyperthermia;

007.10G(2)(c) Dogs or cats are of a breed not acclimated to the temperature of the primary enclosure;

007.10G(2)(d) Sick, infirmed, aged or young dogs or cats are in conditions which increase their vulnerability;

007.10G(2)(e) Dogs or cats are housed in a way that does not completely protect them from heavy rains; or

007.10G(2)(f) Dogs or cats are housed in such manner that snow blocks access or prevents walking or movement.

007.10H Properly store food, bedding, toxic substances and other items as follows:

007.10H(1) Food storage methods shall protect food from:

007.10H(1)(a) Spoilage;

007.10H(1)(b) Contamination;

007.10H(1)(c) Deterioration of nutritive value; and

007.10H(1)(d) Vermin infestation.

007.10H(2) Food storage areas shall be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials.

007.10H(3) Toxic substances shall not be stored in food storage areas, food preparation areas, or animal living areas unless such substances are stored in a secured cabinet; and

007.10H(4) Bedding shall be stored and maintained in a clean, dry environment to protect from contamination, water damage, and vermin infestation.

007.10I Maintain proper ventilation.

007.10I(1) Ventilation in enclosed areas shall be maintained to provide for the health and safety of the dogs or cats being housed.

007.10I(1)(a) Proper ventilation shall minimize the following:

007.10I(1)(a)(i) Harmful odors;

007.10I(1)(a)(ii) Drafts;

007.10I(1)(a)(iii) Noxious fumes or toxic gases, including ammonia; and

007.10I(1)(a)(iv) Moisture condensation, indicative of excessive humidity, which could cause wet bedding or wetting of the dog or cat.

007.10I(1)(b) If upon inspection, an ammonia odor is detected, an ammonia meter may be used to verify the presence of ammonia and may indicate the enclosed area is not ventilated to minimize the ammonia present.

007.10I(1)(c) The presence of dogs or cats exhibiting signs of illness or stress associated with poor or improper ventilation may indicate the enclosed area is not ventilated to minimize the conditions listed in 23 NAC 18-007.10I(1)(a).

007.10I(2) Methods of ventilation may include, but are not limited to:

007.10I(2)(a) Windows;

007.10I(2)(b) Vents sufficient to allow an adequate exchange of air flow throughout the facility;

007.10I(2)(c) Fans, exhaust fans, or blowers;

007.10I(2)(d) Air conditioning; and

007.10I(2)(e) Doors.

007.11 Indoor and Sheltered Housing Lighting. Indoor and sheltered housing facilities shall have:

007.11A Sufficient light to permit routine inspection and cleaning of the housing facility;

007.11B Sufficient light, uniformly diffused, to allow the operator, or his or her employees, to observe the dogs and cats housed therein; and

007.11C A regular diurnal lighting cycle of either natural or artificial light shall be provided to all dogs or cats housed in an indoor housing or sheltered housing facility.

007.12 Outdoor Housing. All operators who maintain outdoor housing facilities which contain one or more sheltered structures, shall ensure such structures be constructed so that each shelter:

007.12A Be accessible to each dog or cat;

007.12B Have a roof, floor, and sides;

007.12C Provide adequate protection or shelter from extreme cold or heat;

007.12D Provide protection from direct rays of the sun;

007.12E Provide protection from the direct effects of wind, rain, or snow;

007.12F Have a wind break and rain break at the entrance; and

007.12G Provide a way for the dogs or cats to keep warm, including the availability of clean, dry bedding.

007.13 Transportation. Operators shall only transport dogs or cats in a manner which complies with the following:

007.13A Dogs or cats being transported shall be provided adequate shelter as set forth in 23 NAC 18-007.10G; and

007.13B Proper ventilation shall be maintained as set forth in 23 NAC 18-007.10I.

008 Identification. All licensees, except boarding kennels, shall individually identify each dog and cat housed, purchased, sold, leased, exchanged, or otherwise transferred, acquired or disposed.

008.01 For purposes of the Act and these regulations, all licensees with a United States Department of Agriculture license may identify their animals as prescribed in 9 C.F.R. §§2.50 to 2.55, (2015), a copy of which is attached to these regulations as Appendix B and incorporated herein by reference. If there is any inconsistency between these regulations and the federal regulations under 9 C.F.R. §§2.50 to 2.55 (2015), these regulations shall control.

008.02 Individual identification shall be done by one (1) or more of the following methods:

008.02A An individual identification tag;

008.02B A cage card;

008.02C A distinctive and legible tattoo marking approved by the Department; or

008.02D A microchip implant. Pursuant to §54-641.03, all commercial dog breeders initially licensed on or after October 1, 2012, shall microchip each breeding dog.

008.02E Live puppies or kittens, which are maintained as a litter in the same primary enclosure with their dam, are not required to be individually identified provided the dam has been individually identified in accordance with 23 NAC 18-008;

008.02F Boarding kennels, in lieu of individual identification, shall maintain records as required by 23 NAC 18-010.03.

008.03 All puppies and kittens shall be individually identified by the licensee in possession of the puppies and kittens after separation from their litter.

008.04 If, at the time of acquisition, a dog or cat is already individually identified by a tag, tattoo, or microchip which has been applied by another entity, the acquiring licensee shall continue identifying the dog or cat by such identification, except for breeding dogs belonging to a licensee who was initially licensed on or after October 1, 2012. If the dog or cat is identified with more than one method of identification, all identifying names or numbers shall be maintained in the licensee's records.

008.05 Tags, when used as a method of individual identification, shall meet the following requirements:

008.05A Tags may be made of a durable alloy such as brass, bronze, steel or a durable plastic. Aluminum of a sufficient thickness to assure the tag is durable and legible may also be used; and

008.05B Tags shall be embossed or stamped on one (1) side that is easily readable and shall include the individual number or name identifying the dog or cat.

008.06 Licensees shall obtain, at their own expense, tags, tattoos, microchips, cage cards, or any other individual identification method approved by the Department.

008.07 The individual identification number or name from a tag, microchip, tattoo, cage card, or other individual identification shall be recorded and maintained in records for a period of at least three (3) years following a dog's or cat's disposition. For licensees using a microchip, the licensee shall:

008.07A Record the manufacturer of the microchip;

008.07B Record the approximate location of the microchip in the dog or cat; and

008.07C Use an alternative method of individual identification at any time if the microchip system is determined to be ineffective, or if no scanner is available at the time of inspection.

009 Prohibitions for Stolen Dogs or Cats. No person shall buy, sell, exhibit, transport or offer for transportation, any stolen dog or cat.

010 Record Keeping. All records, except records for boarding kennels, shall be kept and maintained for a period of three (3) years, unless the Director requests, in writing, that they be maintained for a longer period, for the purpose of investigation. The three-year time period shall begin from the date a dog or cat was acquired and from the date a dog or cat was disposed. Such records shall include the Certificate of Veterinary Inspection if required by §54-788 for the dogs or cats, and shall be physically maintained on the premises, or be readily available for review at the time of inspection. Records shall contain information sufficient to completely and accurately identify each dog and cat being housed or contained by the operator.

010.01 Acquisition Records for Commercial Dog or Cat Breeders, Pet Shops, Dealers, and Voluntary Licensees.

010.01A Each commercial dog or cat breeder, pet shop, dealer, and voluntary licensee shall make, keep and maintain records or forms based on information obtained from a seller or other source of dogs or cats which fully and correctly document information concerning each dog or cat purchased or otherwise acquired, owned, or held in the licensee's possession or control, including any offspring born of any dog or cat while in the licensee's possession or control. A commercial dog or cat breeder, pet shop, dealer or voluntary licensee may use the form referred to as Record of Acquisition and Dogs and Cats on Hand, Animal and Plant Health Inspection Service Form 7005 or similar Department approved form to record acquisition of dogs or cats. A copy of Form 7005 is attached to these regulations as Appendix C, and incorporated herein by reference. Records shall be completed within 48 hours of acquiring a dog or cat. Such completed records and forms required to be kept pursuant to this section, shall include:

010.01A(1) The date a dog or cat was purchased, held, owned, received, controlled, or otherwise acquired, including births;

010.01A(2) The name and complete mailing address of the person from whom the dog or cat was purchased, received, or otherwise acquired. Such information is required, regardless of whether or not the person selling, transporting, or otherwise transferring ownership of the dog or cat is required to be licensed under the Act and these regulations;

010.01A(3) The United States Department of Agriculture license number, the license number issued under the Act and these regulations, or the license number from any other state, whichever is applicable. If the license number is not available, one of the following shall be acceptable:

010.01A(3)(a) The vehicle license number and state; or

010.01A(3)(b) The driver's license number and state.

010.01A(4) The method of transportation, including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle;

010.01A(5) The individual identification number or name from the tag, tattoo, microchip, or cage card.

010.01A(6) The form referred to as the USDA's United States Interstate and International Certificate of Health Examination for Small Animals, APHIS Form 7001 (also known as health certificate), or similar state form, a copy of which is attached as Appendix D and incorporated herein by reference, to make, keep and maintain the information required by 23 NAC 18-010 of these regulations, shall accompany all dogs and cats imported into Nebraska. A health certificate shall be signed by a veterinarian who is licensed and accredited in the state of origin of such dogs or cats imported into Nebraska.

010.02 Disposition Records for Commercial Dog or Cat Breeders, Dealers, Pet Shops and Voluntary Licensees.

010.02A Each commercial dog or cat breeder, dealer, pet shop and voluntary licensee shall make, keep, and maintain records and forms for each dog or cat transported, sold, exchanged, leased, deceased, delivered, euthanized or otherwise disposed. Records shall be completed within 48 hours of the disposition of a dog or cat. Such records and forms shall include:

010.02A(1) The form referred to as the Record of Disposition of Dogs and Cats, Animal and Plant Health Inspection Form 7006, a copy of which is attached to these regulations as Appendix E, and incorporated herein by reference. Commercial dog or cat breeders, dealers, pet shops and voluntary licensees may use Form 7006 or a similar Department approved form to record disposition of dogs and cats. Such completed form shall include:

010.02A(1)(a) The date of disposition of each dog and cat;

010.02A(1)(b) The name and complete mailing address of the person to whom a dog or cat was transferred, except when disposition is by death or euthanasia;

010.02A(1)(c) The United States Department of Agriculture license number, the license number issued under the Act and these regulations, or the license number issued by another state, whichever is applicable. If this subpart does not apply, one of the following shall be required:

010.02A(1)(c)(i) The vehicle license number and state; or

010.02A(1)(c)(ii) The driver's license number and state.

010.02A(2) The individual identification number or name from the tag, tattoo, microchip, or cage card;

010.02A(3) A complete description of the dog or cat; and

010.02A(4) If the dog or cat dies or is euthanized, a record of how the animal was disposed, including a description of the circumstances surrounding the death. If euthanized, the name of the person performing the euthanasia and the method of euthanasia shall be recorded in the dog's or cat's health records; or may be recorded generally, in the veterinary care plan.

010.03 Records for Boarding Kennels.

010.03A Every operator of a boarding kennel shall upon the arrival of a dog or cat make, keep, and maintain records or forms which fully and correctly documents the following information concerning each dog or cat boarded, or otherwise kept or maintained:

010.03A(1) Name, address and phone number of dog or cat owner;

010.03A(2) Emergency contact number;

010.03A(3) Dog's or cat's name, age, sex and breed;

010.03A(4) Rabies vaccination information;

010.03A(5) Pre-existing physical problems;

010.03A(6) Medication information and instructions;

010.03A(7) Veterinarian of choice;

010.03A(8) Special feeding instructions, if needed;

010.03A(9) Special boarding instructions, if needed;

010.03A(10) Any additional services to be performed;

010.03A(11) Date received; and

010.03A(12) Date released.

010.03B Every operator of a boarding kennel shall record daily health observations, including any medications, treatments given, and exercise periods shall be maintained.

010.03C All records shall be maintained for a period of sixty (60) days except on those dogs or cats on which a complaint was made by the owner of the kenneled dogs or cats, or if some other problem occurred during boarding, those records shall be kept for one (1) year, unless the Director requests in writing that they be maintained for a longer period, for the purpose of investigation.

010.04 Acquisition Records for Animal Control Facilities, Animal Rescues, and Animal Shelters.

010.04A Each animal control facility, animal rescue, and animal shelter shall make, keep, and maintain records which fully and correctly disclose the following information concerning each dog and cat housed, purchased, leased, exchanged or otherwise acquired, including births. Records shall be completed within 48 hours of acquiring a dog or cat. Such records shall include:

010.04A(1) The form referred to as Record of Acquisition and Dogs and Cats on Hand, Animal and Plant Health Inspection Service Form 7005, or other Department approved form;

010.04A(2) The date a dog or cat was received or acquired;

010.04A(3) The name and complete mailing address of the person from whom a dog or cat was received or acquired, including the driver's license number; or, the name, official title, and mailing address of any state or political subdivision of a state, or its representative, from whom a dog or cat was received or acquired;

010.04A(4) The individual identification, if available. Dogs or cats having no individual identification at time of entry into the animal control facility, animal rescue, or animal shelter shall be identified in accordance with 23 NAC 18-008;

010.04A(5) The form referred to as the USDA's United States Interstate and International Certificate of Health Examination for Small Animals, APHIS Form 7001 (also known as health certificate), or similar state form, shall accompany all dogs and cats imported into Nebraska. A health certificate shall be signed by a veterinarian who is licensed and accredited in the state of origin of such dogs or cats imported into Nebraska.

010.05 Disposition Records for Animal Control Facilities, Animal Rescues, and Animal Shelters.

010.05A Each animal control facility, animal rescue, or animal shelter shall make, keep, and maintain records which fully and correctly documents information concerning each dog and cat sold, exchanged, leased, transferred or otherwise disposed. Records shall be completed within 48 hours of the disposition of a dog or cat. Such records shall include:

010.05A(1) The form referred to as Record of Disposition of Dogs and Cats on Hand, Animal and Plant Health Inspection Service Form 7006 or other Department approved form;

010.05A(2) The date a dog or cat was sold, exchanged, leased, transferred or otherwise disposed;

010.05A(3) The name and complete mailing address of the person to whom a dog or cat was sold, exchanged, leased, transferred or otherwise disposed;

010.05A(4) The individual identification number or name of the dog or cat; and

010.05A(5) The method of disposition. If the dog or cat dies or is euthanized, a record of how the animal was disposed, including a description of the circumstances surrounding the death. If euthanized, the name of the person performing the euthanasia and the method of euthanasia shall be recorded in the dog's or cat's health records;

010.05B A state or political subdivision of a state which contracts out its animal control duties shall submit information to the Department identifying which licensed animal control facility, animal rescue, or animal shelter is housing or containing the dogs or cats under its animal control authority.

010.06 Health Records. Individual health records of dogs and cats shall be kept and maintained by all operators except boarding kennels. Individual health records, or a copy, shall be prepared within 48 hours. The information for individual health records shall be taken from the person from whom a dog or cat was purchased or otherwise transferred or acquired. Commercial dog breeders shall also comply with any additional requirements set forth in §54-641.02. Health records, or a copy, shall accompany all dogs and cats upon the transfer of ownership, and shall include the following:

010.06A Vaccination records, including rabies vaccination certificate, and any other treatments and medications given;

010.06B All medical procedures performed;

010.06C The reasons for or the condition requiring treatment, medication, or medical procedure, including the results of such treatment, medication or medical procedure; and

010.06D Record of all offspring produced, including the number of litters produced and litter size for each dog and cat.

010.06E If a dog or cat is no longer capable of breeding, or is infertile, and the commercial dog or cat breeder wants to exempt said dog or cat from being counted as part of its breeding stock, a commercial dog or cat breeder may have the dog or cat surgically sterilized by a licensed veterinarian; or may obtain a statement of infertility from a veterinarian licensed to practice in Nebraska verifying that such dog or cat is no longer capable of breeding. The attending veterinarian may use the Statement of Infertility Form, attached herein as Appendix G.

010.06F If a dog or cat dies, the health records shall include:

010.06F(1) An explanation of how the death occurred (euthanasia, natural causes or other);

010.06F(2) The date of death;

010.06F(3) If euthanasia was performed, the name of the person performing the euthanasia and the method of euthanasia.

011 Procurement of Dogs and Cats By Dealers and Pet Shops.

011.01 A dealer or pet shop which obtains dogs and cats from within this state shall only obtain such dogs and cats from other licensees who are licensed under the Act and in accordance with these regulations.

011.02 No person shall obtain live dogs or cats by use of false pretenses, misrepresentation or deception.

012 Licensees Restricted in Sales to Dealers. Licensees shall not sell to dealers operating within the state who are not licensed under the Act and in accordance with these regulations.

013 Spaying and Neutering. Licensees and any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall comply with the spaying and neutering requirements of the Act.

014 Assessment of Administrative Fines. The Department may impose an administrative fine pursuant to §54-633(3) and this section.

014.01 In addition to the definitions set forth in 23 NAC 18-003, the following shall apply to 23 NAC 18-014:

014.01A LEVEL OF VIOLATION shall mean the alleged violation is a first or subsequent violation.

014.01B FIRST VIOLATION shall mean the alleged violator has not been found by an order of the Director or any court, or by the violator's own admission in a settlement agreement, to have committed a violation of the Act or these regulations in the three years immediately preceding the date of the alleged violation.

014.01C SUBSEQUENT VIOLATION shall mean the alleged violator has committed the same violation of the Act or these regulations one or more times within the three years immediately preceding the date of committing the current alleged violation as determined by an order of the Director or any court, or the alleged violator has entered into a settlement agreement admitting to the facts establishing the previous violation.

014.01D BASE FINE shall mean the amount of the administrative fine set by regulation for a particular violation of the Act or these regulations prior to any adjustments for gravity or size of the operation.

014.02 When it is determined that an administrative fine is an appropriate penalty for a violation of the Act or these regulations, the actual amount of such administrative fine shall be calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. An alleged violator shall be subject to the assessment of a fine for each violation, but may not be fined for lesser included violations arising out of the same act, if the alleged violator has been fined for the greater violation. The Department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations are as follows:

014.02A Failing to provide a dog or cat with necessary food or water.

014.02A(1) Base fine for a first violation is $2,500.

014.02A(2) Base fine for a subsequent violation is $5,000.

014.02B Threatening a dog's or cat's health or safety by egregiously failing to maintain sanitary premises, pens, enclosures, or structures. Such violations may include: (i) filthy premises containing an accumulation of feces, urine, or both, from which the dog or cat cannot extricate itself such that the premises would be rated as filthy or very unsanitary on the Tufts Environmental Health Scale; (ii) overwhelming odor creating poor air quality which makes breathing difficult for the dogs and cats due to insufficient ventilation, insufficient cleaning of animal waste, or both; (iii) large amounts of litter, food waste, trash, junk, or weeds are present, which inhibits comfortable rest, normal postures or movement, or poses an immediate danger to dogs and cats; (iv) dogs and cats having no means to escape contact with feces, urine, mud, or standing water; (v) animals provided with contaminated food, drinking water, or both; (vi) dogs and cats being handled in a manner that causes a significant threat to health or safety, or (vii) exposes the dogs or cats to sharp, jagged objects in or on parts of the primary enclosures; or (viii) excessive rust that prevents the required cleaning and sanitation, or which affects the structural strength of the surface or (ix) infestation of insects, parasites, or rodents.

014.02B(1) Base fine for a first violation is $2,500.

014.02B(2) Base fine for a subsequent violation is $5,000.

014.02C Failing to provide shelter or protection from extreme temperatures or humidity and weather conditions suitable for the age, species, breed or type, and physical condition of the animal so as to provide for the dog's and cat's health or safety. Such violations may include dogs and cats which are subjected to temperature extremes resulting in hypothermia, hyperthermia, or any condition related thereto.

014.02C(1) Base fine for a first violation is $2,500.

014.02C(2) Base fine for a subsequent violation is $5,000.

014.02D Failing to provide dogs and cats with adequate space required for the species or breed whereby such animal has no room to stand, sit, lie down in a comfortable, normal position, or turn about freely, and to walk in a normal manner.

014.02D(1) Base fine for a first violation is $2,500.

014.02D(2) Base fine for a subsequent violation is $5,000.

014.02E Failing to maintain a dog in a healthy condition as an indicator of the overall health or safety of such dog. For example, a matted dog with significant underlying lesions, other health impairments, or both, resulting from the mats, is a failure to maintain a dog in a healthy condition.

014.02E(1) Base fine for a first violation is $2,500.

014.02E(2) Base fine for a subsequent violation is $5,000.

014.02F Failing to provide veterinary care for a dog or cat when such veterinary care appears to be necessary, and is later determined by a veterinarian that such care was necessary for the health or safety of such dog or cat.

014.02F(1) Base fine for a first violation is $2,500.

014.02F(2) Base fine for a subsequent violation is $5,000.

014.02G Violating 54-628(4) or otherwise refusing to allow the Department to enter the premises during normal business hours for the purposes of inspection under the Act and these regulations, or otherwise denying access to any officer, agent, employee, or appointee of the Department.

014.02G(1) Base fine for a first violation is $2,500.

014.02G(2) Base fine for a subsequent violation is $5,000.

014.02H Interfering with the Department in the performance of its duties. Such interference includes offering any resistance to, thwarting, or hindering any officer, agent, employee, or appointee of the Department and any misrepresentation or concealment, or hiding dogs or cats or failing to disclose all locations housing dogs or cats harbored by the alleged violator.

014.02H(1) Base fine for a first violation is $2,500.

014.02H(2) Base fine for a subsequent violation is $5,000.

014.02I Failing to comply with an order of the Director.

014.02I(1) Base fine for a first violation is $2,500.

014.02I(2) Base fine for a subsequent violation is $5,000.

014.02J Using any license issued by the Department while the license is under suspension; or, for purposes other than those authorized by the Act.

014.02J(1) Base fine for a first violation is $2,500.

014.02J(2) Base fine for a subsequent violation is $5,000.

014.02K Failing to make available to the Department, for purposes of inspection or to copy, all records, papers, and other information necessary for the enforcement of the Act and these regulations, or both.

014.02K(1) Base fine for a first violation is $2,500.

014.02K(2) Base fine for a subsequent violation is $5,000.

014.02L For commercial dog breeders: (1) failing to have euthanasia performed by a licensed veterinarian; (2) failing to have surgical births or other surgical procedures performed by a licensed veterinarian using anesthesia; or (3) failing to contact a licensed veterinarian without delay after an occurrence of a serious or life-threatening injury or medical condition of a dog under such dog breeder's care, supervision or control.

014.02L(1) Base fine for a first violation is $2,500.

014.02L(2) Base fine for a subsequent violation is $5,000.

014.02M Failing to comply with the wellness examination for each breeding dog at least once every three years, including a basic physical and dental examination.

014.02M(1) Base fine for a first violation is $2,500.

014.02M(2) Base fine for a subsequent violation is $5,000.

014.02N Failing to accept delivery of registered mail or certified mail after being verified by the United States Postal Service as not being picked up by the licensee or his or her representative.

014.02N(1) Base fine for a first violation is $1,500.

014.02N(2) Base fine for a subsequent violation is $3,000.

014.02O Impairing a dog's or cat's health or safety by failing to maintain sanitary premises, pens, enclosures or structures. Such violations may include, but shall not be limited to: (i) an accumulation of waste matter making it difficult for a dog or cat to avoid such that the premises would be rated as unsanitary on the Tufts Environmental Health Scale; (ii) moderate amounts of litter, food waste, trash, junk or weeds are present which may inhibit comfortable rest, normal movement, or both; (iii) potential injury to a dog or cat from sharp edges or glass; or (iv) standing water or mud making it difficult for a dog or cat to avoid.

014.02O(1) Base fine for a first violation is $1,500.

014.02O(2) Base fine for a subsequent violation is $3,000.

014.02P Failing to inform the Department of any convictions of any violation of any local ordinance, county resolution, state or federal law on the disposition or treatment of dogs or cats.

014.02P(1) Base fine for a first violation is $1,500.

014.02P(2) Base fine for a subsequent violation is $3,000.

014.02Q Failing to comply with any provisions of the Act and these regulations which may impair the health or safety of a dog or cat including, but not limited to, failing to effectively control insects or external parasites affecting dogs or cats.

014.02Q(1) Base fine for a first violation is $1,500.

014.02Q(2) Base fine for a subsequent violation is $3,000.

014.02R Failing to notify the Department of any change in the name, address, management, control or ownership of the business or operation, or of additional sites.

014.02R(1) Base fine for a first violation is $1,500.

014.02R(2) Base fine for a subsequent violation is $3,000.

014.02S Failing to keep all records required by the Department.

014.02S(1) Base fine for a first violation is $1,500.

014.02S(2) Base fine for a subsequent violation is $3,000.

014.02T Failing to maintain a written veterinary care plan or a written emergency veterinary care plan.

014.02T(1) Base fine for a first violation is $500.

014.02T(2) Base fine for a subsequent violation is $1,000.

014.02U Failing to develop, maintain or follow the exercise plan for dogs.

014.02U(1) Base fine for a first violation is $500.

014.02U(2) Base fine for a subsequent violation is $1,000.

014.02V Failing to maintain sanitary premises such that the premises would be rated as marginal on the Tufts Environmental Health Scale, or otherwise failing to maintain premises, structures, enclosures or pens in accordance with the standards set forth in the Act, these regulations and 9 C.F.R. §§3.1 to 3.19.

014.02V(1) Base fine for a first violation is $500.

014.02V(2) Base fine for a subsequent violation is $1,000.

014.02W Failing to pay any required fees under the Act and these regulations. A check with insufficient funds will be deemed nonpayment of fees.

014.02W(1) Base fine for a first violation is $500.

014.02W(2) Base fine for a subsequent violation is $1,000.

014.02X Failing to properly identify dogs and cats.

014.02X(1) Base fine for a first violation is $500.

014.02X(2) Base fine for a subsequent violation is $1,000.

014.02Y Any other violation of the Act, these regulations and 9 C.F.R. §§3.1 to 3.19 not otherwise set out in 23 NAC 18-014.

014.02Y(1) Base fine for a first violation is $500.

014.02Y(2) Base fine for a subsequent violation is $1,000.

014.03 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

014.03A Gravity of harm.

Violation	Circumstances	Value
Department's Ability to Enforce the Act	Violation significantly interfered with Department's ability to enforce the Act	5
	Violation moderately interfered with Department's ability to enforce the Act	3
	Violation slightly interfered with Department's ability to enforce the Act	1
	Violation did not interfere with Department's ability to enforce the Act	0
Harm to Dog or Cat Health	Actual life threatening harm to dog or cat health or safety.	5
	Actual serious harm to dog or cat health or safety.	4
	Potential serious harm to dog or cat health or safety.	3
	Minor actual harm to dog or cat health or safety.	2
	Minor potential harm to dog or cat health or safety.	1
	No potential harm to dog or cat health or safety.	0
Extent of Violations At Operations	Violations at operation so widespread and pervasive the quality of care at the entire operation is affected	5
	Numerous and widespread violations greatly affecting the quality of care at operation	4
	Moderately widespread violations moderately affecting the quality of care at operation	3
	Less widespread violations, slightly affecting the quality of care at the operation	2
	Only a few minor violations, not affecting the quality of care at the operation	1
	No violations at operation	0

014.03B Gravity of misconduct. For the purposes of this subsection prior violation means a violation which was committed within the last three years.

Violation	Circumstances	Value
Compliance History	Two or more prior violations, either similar or unrelated to current violation	3
	One prior violation similar to current violation	2
	One prior violation unrelated to current violation	1
	No prior violations	0
Culpability	Knowing or willful violation.	5
	Violation resulting from faulty, careless, or negligent action	3
	Violation was neither knowing or willful and did not result from faulty, careless, nor negligent action	0
Remedial Efforts	Violator voluntarily notified the Department of incident or violation	-1
	Violator instituted steps to correct the violation immediately after discovery of the violation	-2
	Violator notified the Department of incident and took reasonable and timely steps to correct the violation	-3
Financial Gain	Violation has or would have resulted in significant financial gain for violator.	3
	No financial gain to violator as a result of violation	0

014.03C To determine the adjusted fine, the base fine shall be adjusted based on the total number of points calculated from 23 NAC 18-014.03A and 014.03B and multiplying the base fine by the gravity adjustment percentage of base value set forth below.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

014.04 To determine the actual administrative fine, the adjusted fine as determined in 23 NAC 18-014.03C shall be multiplied by the appropriate value corresponding with the size of operation criteria set forth below.

Size of Operation Criteria

Number of Dogs or Cats at Operation	Multiplier Value
0 to 5	0.2
6 to 15	0.4
16 to 30	0.6
31 to 50	0.8
over 51	1.0

014.05 Nothing in these regulations shall prevent the Department from entering into a settlement agreement with any person violating the Act or these regulations which specifies a different fine or other compliance action.

015 Publications Adopted. See Appendix.

016 Annotation. Neb. Rev. Stat. §§54-625 to 54-643.

APPENDIX

A. Code of Federal Regulations, 9 C.F.R., Part 3 - Standards, Subpart A - Humane Handling, Care, Treatment, and Transportation of Dogs and Cats, §§3.1 to 3.19 (2015).

B. Code of Federal Regulations, 9 C.F.R., Part 2 - Regulations, Subpart E - Identification of Animals, §§2.50 to 2.55 (2015).

C. Record of Acquisition and Dogs and Cats on Hand, APHIS FORM 7005.

D. United States Interstate and International Certificate of Health Examination for Small Animals, APHIS FORM 7001.

E. Record of Disposition of Dogs and Cats, APHIS FORM 7006.

F. Tufts Animal Care and Condition Scales for Assessing Body Condition, Weather and Environmental Safety, and Physical Care in Dogs: SECTION II. Weather Safety Scale, SECTION III, Environmental Health Scale, and SECTION IV, Physical Care Scale.

G. Statement of Infertility.

H. Attempted Inspection Notice.

I. Veterinary Care Plan.

J. Emergency Veterinary Care Plan.

EXHIBIT 14

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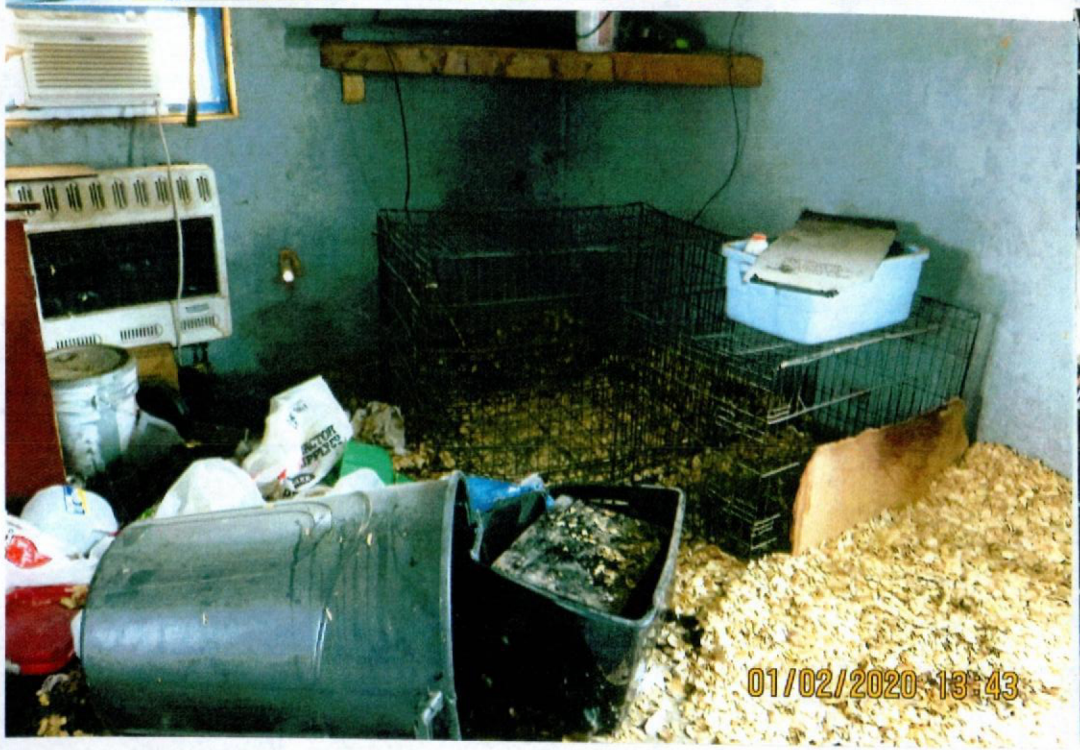
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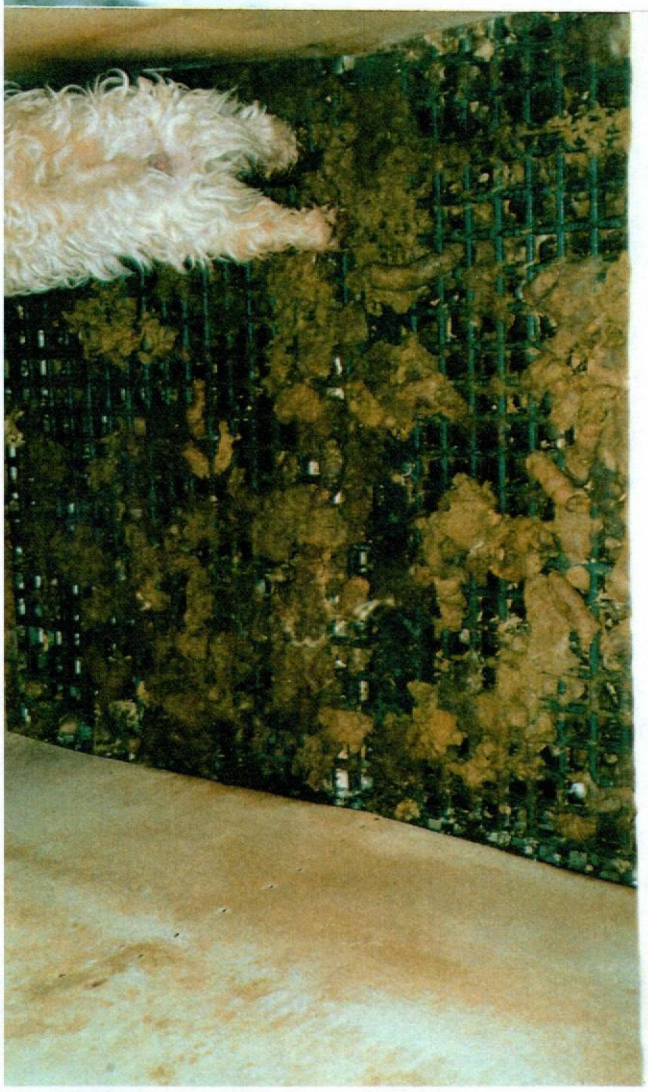

EXHIBIT 17

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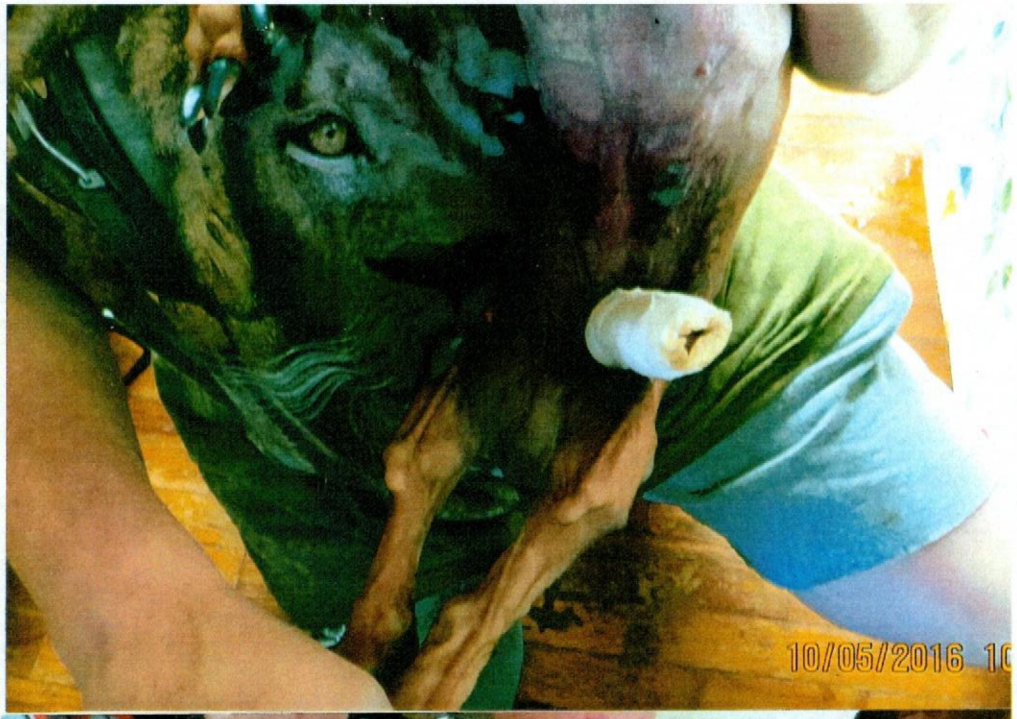
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EXHIBIT 18

NEBRASKA
Good Life. Great Roots.
DEPARTMENT OF AGRICULTURE

Pete Ricketts, Governor

Nebraska Department of Agriculture (NDA)
Commercial Dog and Cat Operator Inspection Act Enforcement Actions – 2015 to 2020

Increased oversight. The Commercial Dog and Cat Operator Inspection Program has increased its oversight of noncompliant operators since 2015 when the Commercial Dog and Cat Operator Inspection Act (Act) was last amended. Beginning in 2015, licensees with compliance issues have been inspected more often to encourage compliance. The Act was also updated to allow NDA to charge reinspection fees which are an incentive for operators to be in compliance on the first inspection so that they do not need a reinspection. Unfortunately, the Covid-19 pandemic has seriously impacted inspection and enforcement by NDA in 2020.

Operators ceasing to operate. Although there are operators who choose to stop activities regulated by the Act in order to avoid NDA enforcement, NDA does not track the reasons an operator ceases to operate. The Annual Report to the Legislature does show the number of exit inspections conducted by NDA for licensees no longer operating, but even that number may be low due to the licensees who fail to notify NDA that they are going out of business.

Administrative hearings and compliance conferences. The chart below lists administrative hearings and compliance conferences which were held and those that were terminated because the operator came into compliance or entered into a settlement agreement. NDA plans to schedule compliance conferences instead of sending warning letters for operators who are unacceptable or repeat violators. NDA has determined warning letters have not been as successful in correcting issues as intended because many violators failed to maintain consistent compliance. During a compliance conference, an operator must enter into an agreement with NDA to take steps to achieve compliance. If they do not comply with the agreement, NDA will use the agreement at an administrative hearing to show that the operator knew what was required for compliance.

Horrible Hundred List Nebraska operators. In 2015, the Humane Society of the United States (HSUS) Horrible Hundred List showed 14 Nebraska operators. Seven of the noncompliant licensees on the 2015 HSUS list have since gone out of business. Increased oversight and inspections of noncompliant operators, including the assessment of reinspection fees, has resulted in there only being three Nebraska operators on the 2019 HSUS Horrible Hundred List.
https://blog.humanesociety.org/wp-content/uploads/2015/05/horrible-hundred-2015.pdf
https://www.humanesociety.org/sites/default/files/docs/2020-Horrible-Hundred.pdf

Cruel Neglect, Cruel Mistreatment or Abandonment.
Under Neb. Rev. Stat. §§28-1008 to 28-1012, NDA reports cruelly neglected or mistreated, or abandoned dogs or cats to the local law enforcement agency in the county where the dogs or cats are located. These sections are not under the authority of NDA, however, NDA's Deputy State Sheriff will assist local law enforcement if requested. NDA regulations specify that local law enforcement will be notified the same day. Specific records of referrals to law enforcement have not been kept by NDA, however, NDA plans to maintain that information with inspections and complaints.

YEAR	COMPLAINTS Preceding Fiscal year	OUT OF BUSINESS Calendar year	WARNING LETTERS Calendar year	HEARINGS Calendar year	EXIT INSPECTIONS Preceding Fiscal year	COMPLIANCE CONFERENCES Calendar year	REINSPECTIONS Preceding Fiscal year	STOP-MOVEMENT ORDERS Calendar year	NOTICES sent but hearings or conferences cancelled due to compliance or settlement Calendar year
2015	82	44	44	1	28	0	119	1	1
2016	43	37	11	2	24	0	50	1	0
2017	59	28	8	0	28	2	9		1
2018	23	20	15	0	20	1	27	1	2
2019	51	59	21	1	28	2	19	1	4
2020 as of 8/3/20	30	14	N/A	0	0	1	3	0	0

EXHIBIT 19

COMMITTEE RECORDS

LB 249 YEAR 1993

NINETY-SECOND LEGISLATURE, SECOND SESSION

INTRODUCER'S STATEMENT OF INTENT

LB 249

Senator DiAnna R. Schimek, Chairperson

Committee on Government, Military and Veterans Affairs

The following constitute the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 249 proposes the adoption of the State Government Effectiveness Act.

The State Government Effectiveness Act consists of two parts. The first part creates a mechanism and procedure for the reporting and investigation of a state employee's allegations of illegal activities or gross mismanagement in state government. It also provides protections to employees to prevent reprisals against the employee for reporting such activities.

The second portion of the bill re-activates the employee suggestion system and amends statutes concerning the Suggestion Award Board to include employee representation on the Board.

Date: January 29, 1993

Senator David Landis
Principal Introducer

(laughter)

BOB LUTH: Thank you.

SENATOR PIRSCH: Are there any others in support of LB 44? Any in opposition? Any neutral? Senator Schimek, would you like to close, or did you waive...

SENATOR SCHIMEK: No, I waived closing. Thank you.

SENATOR PIRSCH: Okay. That'll be the end of LB 44.

LB 249

SENATOR SCHIMEK: Thank you, Senator Pirsch. We will now open testimony on LB 249, and Senator Landis has been waiting very patiently. Thank you, Senator Landis. (laughter)

SENATOR LANDIS: And quietly, too. Very quietly.

SENATOR ROBINSON: I like that tie, don't you, of Senator Landis's?

SENATOR SCHIMEK: Yes.

SENATOR ROBINSON: Reminds me of my old friend senator Paul Simon, when I see him with that (inaudible)...

SENATOR SCHIMEK: Right. I think Senator Landis actually started wearing bow ties before Senator Paul Simon did though. Is that correct? (laughter)

SENATOR WITEK: Did he? I...

SENATOR ROBINSON: What?

SENATOR SCHIMEK: I think he started wearing them before Paul Simon did maybe. Or...be...before we came aware of Paul Simon.

SENATOR WITEK: He's got a mind of his own.

SENATOR ROBINSON: (inaudible)...I don't know. He's not that old.

SENATOR WITEK: Oh yeah, he's younger than Simon.

SENATOR SCHIMEK: Yes.

SENATOR LANDIS: Members of the Government, Military and Veterans Affairs Committee, my name is David Landis, State Senator for the 46th District, the "garden" district, and principal introducer of LB 249, along with Senator Wesely, who will b here to close. This bill contains two ideas and one theory. The one theory is that the people who are best able to improve the productivity and performance of an organization are the front line people--the employees. And they can improve the performance of an organization in two ways. First, they can invent ideas or suggestions to make incremental improvements, and the second thing is that they know, oftentimes, where inefficiencies or inappropriate expenditures may be occurring. For the latter, inappropriate expenditures, frayed, fraud, waste, those kinds of questions, the first part of the bill exists, and that's the whistle blower sections of the bill. This bill says that, if you are an employee of the state, you may take a complaint or a perception that there's been a violation of a law, a public health violation or a...a matter of fraud or waste to the Ombudsman's Office. Now that is outside the chain of command. We all know what an employee is supposed to do. They're supposed to follow the chain of command. That's the normal route. The difficulty is, what if your superior is performing an act which you regard as being some form of fraud or waste? It's hard to find a way to appropriately deal with that. What employees that I know of have done, one of two things. They've kept their mouth shut, or they've found some way to circumvent the chain of command. If you've been here long enough, you know that state employees will come to you sometimes. This happened to me and my guess is this has happened to Senator Pirsch. State employees will call you and say, look I don't know how to do this, but my boss is driving the car home. And, the reason why the car was checked out was over at 4:30 and, I don't know why, but it's gone. I can't say anything, and I'm in a very small shop out here, everybody will know if a complaint goes up through my office, but I don't think it's right. So these kinds of allegations go to the Ombudsman's Office for, first, a preliminary review to see whether there's a substance to the complaint, and then a more formal review in which they bring in people to see whether or not there was a basis for the wrong, in which case they make a report back to the agency head and they advise the Legislature. Now, an employee that makes this kind of allegation is taking their professional well-being in hand

to make that kind of a complaint. So, the bill also says that the employee who makes such a complaint, if they do it in good faith, not as a misuse of the system, should not be retaliated against by a superior or the organization, and it says that if there is a personnel change in their status, like a demotion or transfer, that presumptively we will consider those to be related to the fact that a complaint was made and the fact that there was this personnel change. And that the Ombudsman's in a position to advise the State Personnel Board that appropriate action should be taken to reinstate the employee and to return them as if they had not been injured by the retaliation. That system, that portion of the bill, is devised at making a way in which employees may make a complaint about wrongdoing outside the normal chain of command and protected from the retaliation of the organization. On the side of getting their employees' suggestions, there's an attempt to reactivate the Suggestion Award Board, something that we did in this state for about four years under a recommendation by a group of businessmen to the Thone Administration. The Thone Administration created the Suggestion Award Board and actively pursued it by spending money, and meeting, and taking suggestions, and actively making awards. Over the course of the several years in which the Thone Administration did this, there was an out...a capital outlay from the state of about seven and a half thousand dollars. And, the Thone Administration estimated that the three year savings totaled, well roughly, about $590,000: $145,000 of first savings, $434,000 by the end of the three years of the program. Now, the program exists on the books. There is a board. Its activity is pretty quiet from what I can tell, if it is, in fact, doing work. But one of the things that the State Association of Public Employees have asked me is to inject the notion that employees be part of the award creating mechanism, so that it's not just simply management, but that there be employee representatives on the board; that the award range between $25, or 10 percent of the amount of savings, but not to excen...exceed the limitations, and that there will be an annual report detailing any savings that might come from the idea. I will tell you that, in private enterprise, the use of the suggestion box is common. There is a National Association of Suggestion Systems. There's a national association for everything. This is their private enterprise suggestion system, and the companies that have them get together and suggest to each other how can they...they can improve them. In their most recent national meeting, the private employers estimated that the savings to American businesses that utilize this system, over a

thousand businesses that were member, was $2.3 billion last year. Suggestion systems have been effective. I will submit, by the way, for the counsel or for the clerk, this capitulation of the association's findings. (Exhibit C) This last year found a new voice of support for both the whistle blower legislation, LB 249, and I...I think the suggestion box, though I know the...the whistle blower idea, and that comes from the Silver-Haired Legislature. The Silver-Haired Legislature made the whistle blower legislation a priority for them in the last year, as they reviewed legislation and made recommendations to all of us. I'll be happy to answer questions, although Marshall Lux from the Public Counsel or the Ombudsman's Office, is here, as are representatives of the Nebraska Association of Public Employees to answer questions.

SENATOR SCHIMEK: David, this was your bill last year also? And, if...if I'm recalling correctly, there was some discussion on the floor about who is actually included under this definition of...

SENATOR LANDIS: I think the question was whether the university was included.

SENATOR SCHIMEK: Right. Could...would you answer that question for us?

SENATOR LANDIS: Yes. I think the university's included. It is an agency, department, board, commission, or governmental...government...or other governmental unit of the State of Nebraska. It is not a court, it is not a...the Legislature. It's not the Governor's personal staff, and it's not a political subdivision or entity thereof. I regard it as an agency of the...of Nebraska, and under subsection 1, it's covered by the definition. If the committee would like to make that clearer, I will be happy to have that be made clearer.

SENATOR SCHIMEK: Yeah, and I think I would agree with your interpretation, but I just thought maybe it might behoove us to clarify it. I didn't know, I just wondered what you thought about it?

SENATOR LANDIS: That'd be fine. I'd accept a clarification along those lines.

SENATOR SCHIMEK: Also, I have another question about the investigation of wrongdoing and the investigation of

reprisals, basically, goes through the Ombudsman's Office first, but, in the case of wrongdoing then, the contents of the report goes to the Exec Board, but in the case of reprisals it goes to the Personnel Board, and I'm wondering if it should not go to both in each instance, or at least in a second instance, should it not go to the Exec Board also?

SENATOR LANDIS: If you'd like to make that change, that would be appropriate to...or acceptable in my eyes. The Personnel Board is the one who can undo a reprisal...

SENATOR SCHIMEK: Right.

SENATOR LANDIS: ...which is why we send the reprisal to them.

SENATOR SCHIMEK: And I understand why that would go there.

SENATOR LANDIS: In the case of wrongdoing, what you want is, you want to get, first, the agency to find out about it and to take appropriate measures to see to it that it doesn't happen again and also, in our oversight capacity as the Legislature, in reaction to executive branches or whatever, we want our Executive Board, our continuing, year-long, meeting twelve months a year administrative body, to be apprised of...of mismanagement and fraud that we find in state government. It is not a personnel matter. It's a policy matter if somebody is misusing monies or subverting legislative appropriated monies for other than the appropriated purposes. And so, that's why I thought that the wrongdoing should come to us in our...our corporate capacities, overseers of a branch of government, but that the reprisals goes to the Personnel Board, because they undo personnel actions that would be reprisals. I don't mind if you...if you send us information on the reprisals as well.

SENATOR SCHIMEK: I guess that's, in a sense, a misuse of personnel, and maybe the Exec Board should know about it. Maybe that's...I mean, that was what triggered the question, so. Thank you.

SENATOR LANDIS: In that case, I think, it would be the case that in the case of reprisals, the...the report could go to both.

SENATOR SCHIMEK: Yes.

SENATOR LANDIS: I don't think that in the case of...

SENATOR SCHIMEK: I agree.

SENATOR LANDIS: ...wrongdoing that you would send it to both, 'cause the personnel...

SENATOR SCHIMEK: Wouldn't be necessary.

SENATOR LANDIS: ...system wouldn't have them. Yeah.

SENATOR SCHIMEK: Senator Cudaback.

SENATOR CUDABACK: Senator Landis, currently can much in this bill...is it a possibility for much of that should be done currently, but that's...is not done because people are afraid of retaliation or whatever.

SENATOR LANDIS: Uh-huh. There is no personnel rule against retaliation. There's no standard of how you're going to handle that situation. Now, every employee's entitled to be judged on their merits and the like, and those rules are relatively standard, but there is no specific description of any rights with respect to the situation of reprisal.

SENATOR CUDABACK: But most people now have capability of doing such...

SENATOR LANDIS: Oh, you bet. Look, if...if an employee wanted to take their heart in their hands and turn in there boss, they could do it. It's not done easily. It's not done lightly and it's done, inside any hierarchical organization, with the whole force of the decision making process of...of the hierarchy available for the possibility of squelching the squeaky wheel.

SENATOR CUDABACK: Thank you.

SENATOR SCHIMEK: Senator Witek.

SENATOR WITEK: Will the Legislature then receive a copy of the...the annual report that...on page 13, line 7 through 11? It says the Director of Personnel shall prepare an annually transmitted report detailing the operations of the Employee Suggestion System, including an accounting of all awards granted, and any other information.

SENATOR LANDIS: That's the second idea and, no, there is not a specific statutory requirement that the Legislature be

provided with that. I wouldn't mind at all if you'd like to make that a suggestion in the bill, and to add it. Generally, the second idea is the administration of the executive branch's departments and how to gain greater efficiencies from them. But being apprised of those results might well be a good idea.

SENATOR WITEK: The only reason I asked is, first, I would like to ensure that...that, if the program begins, that it's being used, first; that if there are suggestions that we could all be apprised of them. Possibly, one person's merit may not be another's, and that's why I...I would suggest that.

SENATOR LANDIS: I understand. An amendment suggestion that would be a...certainly acceptable in my point of view. If you wish to add that in the committee, I'd be happy to continue to carry the bill with those kinds of changes in them.

SENATOR SCHIMEK: Wait till Senator Witek sees all the year-end reports that we get already. (laughter)

SENATOR WITEK: Yeah, but this one might do some real good. You never know. This is along my line of thinking.

SENATOR SCHIMEK: Okay. Senator Robinson.

SENATOR ROBINSON: Senator Landis, after we get all the...I know we'll slide this one through, and we get all of our accumulation of A bills, and then we have to dig deep down into our heart and say, you know, I like that bill Dave Landis put in there, so...and that's what you want us to do when we get...we get down to the final week and we have to cast our votes. I think I saw something that might be between one hundred...or a hundred...one million and two million for A bills. Have you seen that?

SENATOR LANDIS: I haven't.

SENATOR ROBINSON: I saw that someplace, I think. So, you want to...you want to put this bill up there to compete, is what you're saying?

SENATOR LANDIS: The track record of the Thone Administration was that there was real savings.

SENATOR ROBINSON:: What?

SENATOR LANDIS: The track record of the Thone Administration was that there was, was that there was real savings...

SENATOR ROBINSON: I like...I like...I like the idea, I really do...

SENATOR LANDIS: ..and savings in multiples of the investment. The investment was roughly $7,000 in sig.... Now, now, there's an investment of having people sit around and review the ideas, and that's just...that...that's a fixed sum of the people's time that spent doing it. The actual cash awards totaled about $8,000 bucks. One of the suggestions...the highest payout was for $1,400. In its first year it saved $28,000. By the end of the third year it had saved $84,000 bucks. I'd spend $1,400 bucks to save $90,000 bucks. That's...that's a $1,500 bucks I'd spend.

SENATOR SCHIMEK: Senator Push...Senator Pirsch.

SENATOR PIRSCH: The savings would be in the employee suggestion, but then we are also creating another...hiring another person on the wrongdoing and whistle blower.

SENATOR LANDIS: That is...that is the suggestion of the...of the Public Counsel, and Marshall Lux is here and perhaps he could ask...you could ask him about the A bill. If...if I could escape the A bill, I would in a minute. I'm going...I'm going to guess that they're strained in their resources now.

SENATOR PIRSCH: You've combined two things excellently...

SENATOR LANDIS: Thank you.

SENATOR PIRSCH: ...because they... (laughter)

SENATOR LANDIS: As did your last hearing. I know, everybody's trying to slip in two ideas at one time here. Sort of a "bargain basement" committee here, the "half-price store", the "two for one" committee. I...there is...there is one underlying theory to the bill, and the underlying theory is that your employees can save you money. They can save you money with suggestions on how to improve, and they can tell you where you're misusing your money now. And people who come in from the outside, who are consultants and pay big fees and know...you know, draw $50,000 or