

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 308**

November 26, 2007 – Offered by Senator PLALE.

1 **AN ACT** *to amend* 20.115 (2) (j) and 93.20 (1); and *to create* 173.35 and 173.37
2 of the statutes; **relating to:** the sale of dogs, regulation of certain dog breeders,
3 granting rule-making authority, making an appropriation, and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

Licensing of commercial dog breeders

This substitute amendment requires certain persons who breed and sell dogs (commercial dog breeders) to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). The licensing requirement applies to a person who is engaged in the business of breeding dogs and sells 50 dogs in a year.

The substitute amendment requires DATCP to promulgate rules setting minimum standards for facilities at which commercial dog breeders operate and that specify requirements for humane care to be provided by commercial dog breeders. To obtain a license a commercial dog breeder must have a seller's permit issued by the Department of Revenue and must submit an affidavit stating that the commercial dog breeder complies with DATCP's rules.

The substitute amendment prohibits a person who sells dogs at retail from purchasing a dog from a commercial dog breeder if the person knows that the commercial dog breeder is not licensed.

A person who violates the requirements concerning licensure or who violates DATCP's rules is subject to a forfeiture (a civil monetary penalty) for a first or second offense and criminal penalties (a fine or imprisonment, or both) for a third or subsequent offense. A person convicted of a third offense is permanently barred from licensure as a commercial dog breeder.

Information for purchasers

This substitute amendment requires each person who sells a dog as a pet, or for resale as a pet, to provide a written description of any vaccinations and any treatment for parasites that the dog has received. The substitute amendment also requires a person who sells a dog to provide a written description of the remedies provided to purchasers under the substitute amendment.

The substitute amendment allows a person who sells a dog as a pet to give the purchaser a written description of any congenital or hereditary conditions that are specific to the dog's breed or of any injury, defect, or illness that the dog has.

Remedies for purchasers

This substitute amendment provides remedies for a person who buys a dog as a pet (purchaser) if the purchaser buys the dog from a commercial dog breeder or, if the purchaser buys the dog from someone who is not a commercial dog breeder, a humane society, or a rescue group, the dog is not more than 12 months old when purchased. A purchaser of such a dog (covered dog) is generally entitled to a remedy if any of the following happens:

1. The dog dies within 12 months of purchase; a veterinarian certifies that the dog had a congenital or hereditary condition that severely affected the health of the dog and that the purchaser did not cause the death; and the death was not caused by a condition that the seller disclosed in advance.

2. Within 12 months of purchase, the dog shows symptoms of a congenital or hereditary condition that severely affects the health of dogs; a veterinarian certifies that the dog has that condition; and the seller did not disclose the condition in advance.

3. The dog dies within two weeks of purchase; a veterinarian certifies that the dog had an injury, defect, or illness that was obvious or able to be diagnosed before the purchaser received the dog or that is likely to have been acquired before the purchaser received the dog and that the purchaser did not cause the death; and the death was not caused by an injury, defect, or illness that the seller disclosed in advance.

4. The dog dies within two weeks of purchase; a veterinarian certifies that the dog died from causes other than accident, injury, or communicable disease suffered after the purchaser received the dog and that the dog's death was not caused by an action or inaction of the purchaser; and the death was not caused by an injury, defect, or illness that the seller disclosed in advance.

5. Within two weeks of purchase, the dog shows symptoms of an injury, defect, or illness that was obvious or able to be diagnosed before the purchaser received the dog or that is likely to have been acquired before the purchaser received the dog; a veterinarian certifies that the dog has that injury, defect, or illness; and the seller did not disclose the injury, defect, or illness in advance.

The substitute amendment allows a seller who receives a certification to request the purchaser to allow a veterinarian chosen by the seller to examine the dog or, if the dog is dead, to conduct an autopsy on the dog at the seller's expense. A purchaser who does not comply with a request is not entitled to a remedy.

A purchaser who is entitled to remedies because of the death of a covered dog may obtain a refund of the purchase price and reimbursement of veterinary fees. A purchaser who is entitled to remedies because of the injury, defect, or illness of a covered dog may do any of the following:

1. Return the dog and obtain a refund of the purchase price and reimbursement of veterinary fees.

2. Return the dog, receive another dog of equivalent value if one is available, and obtain reimbursement of veterinary fees.

3. Keep the dog and obtain reimbursement of veterinary fees plus the estimated future cost of veterinary fees for attempting to cure the dog.

In each situation, the total amount of reimbursement for past and future veterinary fees is limited to twice the purchase price of the dog.

If a seller fails to provide the remedies to which a buyer is entitled, the buyer may sue the seller and recover double the amount of his or her damages plus attorney fees.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (2) (j) of the statutes is amended to read:

2 20.115 **(2)** (j) *Dog licenses, rabies control, and related services.* All moneys
3 received under ss. 95.21 (9) (c), 173.27, 173.35, and 174.09 (1) and (3), to provide dog
4 license tags and forms under s. 174.07 (2), to perform other program responsibilities
5 under ch. 174, to administer the rabies control program under s. 95.21, to help
6 administer the rabies control media campaign, and to carry out activities under s.
7 93.07 (11) and ch. 173.

8 **SECTION 2.** 93.20 (1) of the statutes is amended to read:

9 93.20 **(1)** DEFINITION. In this section, "action" means an action that is
10 commenced in court by, or on behalf of, the department of agriculture, trade and
11 consumer protection to enforce chs. 88, 91 to 100 ~~or~~, 126, or 173.

12 **SECTION 3.** 173.35 of the statutes is created to read:

1 **173.35 Regulation of commercial dog breeders. (1) DEFINITIONS.** In this
2 section:

3 (a) “Adequate food” means wholesome food that is accessible to an animal, is
4 appropriate for the type of animal, and is sufficient in amount to maintain the animal
5 in good health.

6 (b) “Adequate water” means potable water that is accessible to an animal and
7 is sufficient in amount to maintain the animal in good health.

8 (c) “Commercial dog breeder” means a person who is engaged in the business
9 of breeding dogs and who either sells or offers to sell at least 50 dogs in a year, except
10 that “commercial dog breeder” does not include a humane society or rescue group.

11 (d) “Humane care” includes the provision of adequate heating, cooling,
12 ventilation, sanitation, shelter, and medical care consistent with the normal
13 requirements of an animal’s size and breed, adequate food, and adequate water.

14 **(2) LICENSE.** (a) No person may act as a commercial dog breeder without an
15 annual license from the department. A person shall obtain a license under this
16 subsection for each separate location at which the person is engaged in the business
17 of dog breeding.

18 (b) The department may not issue a license to a person under this subsection
19 unless the person submits an application that includes an affidavit stating that the
20 person complies with the rules under sub. (6) (a) to (f) and includes evidence
21 satisfactory to the department that the person holds a current seller’s permit under
22 s. 77.52 (9).

23 **(3) FEE.** The fee for a license under sub. (2) is as follows:

24 (a) For a person who sells or offers to sell fewer than 100 dogs in a year, \$75.

1 (b) For a person who sells or offers to sell at least 100 but fewer than 150 dogs
2 in a year, \$100.

3 (c) For a person who sells or offers to sell at least 150 dogs in a year, \$125.

4 **(4) ANNUAL REPORT.** (a) Annually, a person holding a license under sub. (2) shall
5 submit to the department a report that includes all of the following information:

6 1. The number of dogs at the locations at which the person is engaged in the
7 business of dog breeding on the date on which the report is prepared.

8 2. The number of dogs that the person sold in the preceding calendar year.

9 3. The number of dogs that the person sold for which a purchaser received a
10 remedy under s. 173.37 (5) during the preceding calendar year.

11 (b) If an annual report under par. (a) for a commercial dog breeder shows that
12 the number of dogs under par. (a) 3. is 15 percent or more of the number of dogs under
13 par. (a) 2., the department shall revoke the commercial dog breeder's license under
14 sub. (2) and the commercial dog breeder is ineligible for a license for 12 months from
15 the date of revocation.

16 **(5) PURCHASE FOR RETAIL SALE.** No person who sells dogs at retail may purchase
17 a dog from a commercial dog breeder if the person knows that the commercial dog
18 breeder is not licensed under sub. (2).

19 **(6) RULES.** The department shall promulgate rules that specify all of the
20 following:

21 (a) Minimum standards for facilities at which commercial dog breeders
22 operate.

23 (b) Minimum requirements for humane care to be provided by commercial dog
24 breeders.

1 (c) Requirements relating to the transportation of dogs by commercial dog
2 breeders.

3 (d) Minimum ages for the sale of puppies by commercial dog breeders.

4 (e) Requirements relating to space and opportunity for exercise to be provided
5 to dogs by commercial dog breeders.

6 (f) Requirements for record keeping by commercial dog breeders.

7 (g) Reinspection fees, designed not to exceed the cost of performing a
8 reinspection, to be charged when an inspection by the department under sub. (8)
9 reveals conditions that require correction and reinspection.

10 (h) Grounds for revocation of licenses issued under sub. (2).

11 **(7) INVESTIGATIONS.** If a local law enforcement agency receives a complaint
12 alleging a violation of this section or otherwise has reason to believe that a violation
13 has occurred, the local law enforcement agency may conduct an investigation and
14 report its findings to the department.

15 **(8) INSPECTIONS.** The department may inspect a facility for the purpose of
16 determining compliance with this section only after receiving a report under sub. (7)
17 or a complaint from an individual alleging a violation of this section. The department
18 may charge a person whose facility is inspected under this subsection for the costs
19 of conducting the inspection only if the inspection reveals a violation of this section.
20 The department may reinspect a facility if an inspection reveals conditions that
21 require correction and may charge the fee under sub. (6) (g) for the reinspection.

22 **(9) PENALTIES.** (a) A person who violates this section or a rule promulgated
23 under this section or who falsifies information on an application for a license under
24 sub. (2) or on an annual report under sub. (4) is subject to the following penalties:

25 1. For a 1st offense, a forfeiture of not more than \$3,000.

1 2. For a 2nd offense committed 365 days or more after conviction for a 1st
2 offense, a fine of not more than \$5,000 or imprisonment for not more than 30 days
3 or both.

4 3. For a 2nd offense committed fewer than 365 days after conviction for a 1st
5 offense, for a 3rd offense, or for a subsequent offense, a fine of not more than \$10,000
6 or imprisonment for not more than 90 days or both.

7 (b) 1. If a commercial dog breeder convicted of a 1st or 2nd violation under par.
8 (a) does not have a license under sub. (2), the commercial dog breeder is ineligible for
9 a license for 12 months following the conviction. If a commercial dog breeder
10 convicted of a 1st or 2nd violation under par. (a) has a license under sub. (2), the
11 department shall revoke the license and the commercial dog breeder is ineligible for
12 a new license for 12 months after the conviction.

13 2. If a commercial dog breeder convicted of a 3rd violation under par. (a) does
14 not have a license under sub. (2), the commercial dog breeder is permanently
15 ineligible for a license. If a commercial dog breeder convicted of a 3rd violation under
16 par. (a) has a license under sub. (2), the department shall revoke the license and the
17 commercial dog breeder is permanently ineligible for a new license.

18 **SECTION 4.** 173.37 of the statutes is created to read:

19 **173.37 Protection for purchasers of dogs. (1) DEFINITIONS.** In this section:

20 (a) “Commercial dog breeder” has the meaning given in s. 173.35 (1) (c).

21 (b) “Covered dog” means one of the following:

22 1. A dog sold to a purchaser by a commercial dog breeder.

23 2. A dog sold to a purchaser by a person other than a commercial dog breeder,
24 a humane society, or rescue group if the dog is not more than 12 months of age at the
25 time of sale.

1 (c) “Purchaser” means a person who buys a dog as a pet.

2 (d) “Seller” means a person who sells a dog as a pet.

3 (e) “Unfit for sale” means either of the following:

4 1. Having a condition that is congenital or hereditary and that severely affects
5 the health of the dog.

6 2. Having an injury, defect, or illness that was obvious or able to be diagnosed
7 before the purchaser received the dog from the seller or that is likely to have been
8 acquired before the purchaser received the dog from the seller.

9 **(2) INFORMATION FOR PURCHASERS.** (a) When a person sells a dog as a pet, the
10 person shall provide all of the following to the purchaser, in writing:

11 1. A description of any vaccinations and any treatments for parasites that the
12 dog has received.

13 2. If the dog is a covered dog, a description of the remedies under this section
14 for the sale of a dog that is unfit for sale.

15 (b) A person who sells a covered dog shall obtain the signature of the purchaser
16 on a copy of the document under par. (a) 2. containing the written description of
17 remedies and retain a copy of the signed document for inspection by the department.

18 (c) When a person sells a dog as a pet, the person may provide to the purchaser
19 a written description of any congenital or hereditary conditions that are specific to
20 the dog’s breed or of any injury, defect, or illness that the dog has.

21 (d) When a person sells a dog for resale as a pet, the person shall provide the
22 buyer with a written description of any vaccinations and any treatments for
23 parasites that the dog has received.

24 **(3) RIGHT TO REMEDY.** Except as provided in sub. (4m), a purchaser of a covered
25 dog is entitled to a remedy specified under sub. (4) if any of the following applies:

1 (a) The dog dies before the 366th day after the day on which the purchaser
2 received the dog from the seller; a veterinarian certifies that the dog was unfit for sale
3 due to a condition that is congenital or hereditary and that the dog's death was not
4 caused by an action or inaction of the purchaser; the cause of the dog's death, as
5 indicated in the certification, was not a condition that was disclosed under sub. (2)
6 (c); and, if the seller complied with sub. (2) (a) 2. and (b), the purchaser presents the
7 certification to the seller before the 373rd day after the day on which the purchaser
8 received the dog from the seller.

9 (b) The dog shows symptoms, before the 366th day after the day on which the
10 purchaser received the dog from the seller, of a condition that is congenital or
11 hereditary; a veterinarian certifies that the dog was unfit for sale due to that
12 condition; the cause of dog's symptoms, as indicated in the certification, is not a
13 condition that was disclosed under sub. (2) (c); and, if the seller complied with sub.
14 (2) (a) 2. and (b), the purchaser presents the certification to the seller before the 373rd
15 day after the day on which the purchaser received the dog from the seller.

16 (c) The dog dies before the 15th day after the day on which the purchaser
17 received the dog from the seller; a veterinarian certifies that the dog was unfit for sale
18 and that the dog's death was not caused by an action or inaction of the purchaser; the
19 cause of the dog's death, as indicated in the certification, was not a condition that was
20 disclosed under sub. (2) (c); and, if the seller complied with sub. (2) (a) 2. and (b), the
21 purchaser presents the certification to the seller before the 22nd day after the day
22 on which the purchaser received the dog from the seller.

23 (d) The dog dies before the 15th day after the day on which the purchaser
24 received the dog from the seller; a veterinarian certifies that the dog died from causes
25 other than an accident, injury, or communicable disease suffered after the purchaser

1 received the dog from the seller and that the dog's death was not caused by an action
2 or inaction of the purchaser; the cause of the dog's death, as indicated in the
3 certification, was not a condition, injury, defect, or illness that was disclosed under
4 sub. (2) (c); and, if the seller complied with sub. (2) (a) 2. and (b), the purchaser
5 presents the certification to the seller before the 22nd day after the day on which the
6 purchaser received the dog from the seller.

7 (e) The dog shows symptoms of an injury, defect, or illness before the 15th day
8 after the day on which the purchaser received the dog from the seller; a veterinarian
9 certifies that the dog was unfit for sale due to the injury, defect, or illness; the cause
10 of the dog's symptoms, as indicated in the certification, is not an injury, defect, or
11 illness that was disclosed under sub. (2) (c); and, if the seller complied with sub. (2)
12 (a) 2. and (b), the purchaser presents the certification to the seller before the 22nd
13 day after the day on which the purchaser received the dog from the seller.

14 **(4) CERTIFICATION.** A certification from a veterinarian satisfies the
15 requirements under sub. (3) if it contains all of the following:

16 (a) The name of the purchaser.

17 (b) The date or dates on which the veterinarian examined the dog.

18 (c) The dog's breed, color, sex, and age.

19 (d) A statement of the veterinarian's findings concerning the condition of the
20 dog.

21 (e) If the dog died, a statement of the probable cause of death and that the dog's
22 death was not caused by an action or inaction of the purchaser.

23 (f) A statement that at the time of sale the dog was unfit for sale or, if the dog
24 died before the 15th day after the day on which the purchaser received the dog, that

1 the dog died from a cause other than an accident, injury, or communicable disease
2 suffered after the purchaser received the dog from the seller.

3 (g) An itemized statement of the veterinary fees incurred for examination and
4 treatment of the dog as of the date of certification.

5 (h) If the dog did not die and may be curable, an estimate of the cost of
6 attempting to cure the dog.

7 (i) The name and address of the veterinarian and the date of the certification.

8 **(4m)** SECOND OPINION. A seller who receives a certification under sub. (3) may,
9 no later than the 3rd day after receiving the certification, request the purchaser to
10 allow a veterinarian chosen by the seller to examine the dog or, if the dog is dead, to
11 conduct an autopsy on the dog at the seller's expense. If a seller makes a request
12 under this subsection, the seller is not required to provide the purchaser with the
13 chosen remedy until the 10th day after the day that the purchaser makes the dog
14 available for examination or autopsy. A purchaser who fails to comply with a request
15 under this subsection is not entitled to a remedy.

16 **(5)** REMEDIES AVAILABLE. (a) A purchaser who is entitled under sub. (3) to a
17 remedy due to the death of a covered dog may obtain all of the following:

18 1. A full refund of the amount that the purchaser paid for the dog, including
19 sales tax, or another dog of equivalent monetary value that is selected by the
20 purchaser if another dog is available.

21 2. Reimbursement for veterinary fees incurred with respect to the dog, subject
22 to par. (c).

23 (b) A purchaser who is entitled under sub. (3) to a remedy due to the injury,
24 defect, or illness of the dog may do one of the following, as determined by the
25 purchaser:

1 1. Return the dog and receive a full refund of the amount that the purchaser
2 paid for the dog, including sales tax, and reimbursement for veterinary fees incurred
3 with respect to the dog, subject to par. (c).

4 2. Retain the dog and receive reimbursement for veterinary fees incurred with
5 respect to the dog plus the future cost of veterinary fees for curing or attempting to
6 cure the dog, as estimated in the veterinarian's certification, subject to par. (c).

7 3. Return the dog and receive another dog of equivalent monetary value that
8 is selected by the purchaser if another dog is available, plus reimbursement for
9 veterinary fees incurred with respect to the dog, subject to par. (c).

10 (c) The total amount of reimbursement for past and future veterinary fees
11 under this subsection is limited to twice the amount that the purchaser paid for the
12 dog, including sales tax.

13 **(6) PROCEDURE.** (a) When a purchaser presents a certification that complies
14 with sub. (4) to a seller, the purchaser shall notify the seller of the purchaser's choice
15 of remedy. The seller shall prepare a document confirming the choice to be signed
16 by the seller and the purchaser. The seller shall give a copy of the confirmation to
17 the purchaser and shall retain a copy of the document.

18 (b) A seller that receives a veterinarian's certification that complies with sub.
19 (4) and a confirmation of choice of remedy shall provide the purchaser with the
20 chosen remedy no later than the 10th day after the day of receipt, except as provided
21 in sub. (4m).

22 (c) A purchaser entitled to a remedy under sub. (3) has a cause of action against
23 a seller who fails to comply with pars. (a) and (b). The court shall award a purchaser
24 who prevails in such an action twice the amount of damages incurred by the

1 purchaser, together with costs including reasonable attorney fees, notwithstanding
2 s. 814.04 (1).

3 **(7) RECOURSE FOR SELLER.** A person who sold a dog to a seller is liable to the
4 seller if the seller provides a remedy under sub. (5) to the purchaser of the dog and
5 the dog had a condition that is congenital or hereditary and that severely affects the
6 health of the dog or the dog had an injury, defect, or illness that was obvious, able to
7 be diagnosed, or likely to have been acquired before the person sold the dog to the
8 seller.

9 **(8) RULES.** The department shall promulgate rules for the administration of
10 this section, including rules specifying the information that a seller must provide
11 under sub. (2) (a) 2. and the form for confirming the choice of remedies under sub.
12 (6) (a).

13 **(9) PENALTIES.** (a) A person who sells a dog that is unfit for sale knowing that
14 the dog is unfit for sale and without disclosing that the dog is unfit for sale is subject
15 to the following penalties:

- 16 1. For a first offense, a forfeiture of not more than \$3,000.
- 17 2. For a second offense committed 365 days or more after conviction for a first
18 offense, a fine of not more than \$5,000 or imprisonment for not more than 30 days
19 or both.
- 20 3. For a second offense committed fewer than 365 days after conviction for a
21 first offense, for a third offense, or for a subsequent offense, a fine of not more than
22 \$10,000 or imprisonment for not more than 90 days or both.

23 (b) A person who violates sub. (2) is subject to a forfeiture of not more than \$500.

24 **SECTION 5. Effective date.**

