



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 308

**Senate Substitute
Amendment 1 and Senate
Amendment 1 to Senate
Substitute Amendment 1**

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Current law does not require the licensure of individuals who are engaged in the business of breeding dogs.

Senate Bill 308 requires commercial dog breeders, defined as individuals who are in the business of breeding dogs and sell 60 dogs in a year or have at least eight breeding female dogs, to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). License fees are as follows:

1. For a person who sells or offers to sell fewer than 100 dogs in a year, \$75.
2. For a person who sells or offers to sell at least 100 but fewer than 150 dogs in a year, \$100.
3. For a person who sells or offers to sell at least 150 dogs in a year, \$125.

The bill requires DATCP to promulgate rules establishing minimum standards and requirements for commercial dog breeders. A commercial dog breeder must sign an affidavit stating that he or she complies with the DATCP rules and holds a current seller's permit under s. 77.52 (9), Stats. (sales tax). A commercial dog breeder must also submit an annual report to DATCP describing the number of dogs kept on the date of the report, the number of dogs sold in the preceding calendar year, and the number of dogs for which a person received a remedy under the provisions of the bill. If an annual report indicates that 15% or more of the dogs sold during the preceding year are dogs for which a purchaser received a remedy under the provisions of the bill, DATCP must revoke the commercial dog breeder license and the breeder is ineligible for a license for 12 months from the date of revocation.

The bill permits local law enforcement agencies to conduct investigations regarding violations of the licensure provisions of the bill and report their findings to DATCP. DATCP may inspect a breeding facility for compliance only after receiving a report from local law enforcement or a complaint from an individual alleging violation of the licensure provisions.

The bill prohibits a person who sells dogs at retail from purchasing a dog from an unlicensed commercial dog breeder. A person who violates the licensure provisions, commercial dog breeder rules promulgated by DATCP, or who falsifies information on a license application is subject to the following penalties:

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

If a dog breeder does not have a license at the time of a first or second conviction, the breeder is ineligible for a commercial dog breeder license for 12 months following the conviction. If a dog breeder convicted of a first or second violation has a commercial dog breeder license, the breeder is ineligible for a new license for a period of 12 months from conviction. A commercial dog breeder who is convicted of a third violation under the bill is permanently ineligible for future licensure as a commercial dog breeder.

The bill provides that the purchaser of a covered dog is entitled to a remedy if the dog meets certain conditions or dies under specified circumstances and a veterinarian certifies that the dog was unfit for sale. A covered dog is defined as either a dog sold to a purchaser by a commercial dog breeder or a dog sold to a purchaser by a person other than a commercial dog breeder if the dog is not more than 18 months of age at the time of sale. A purchaser is defined as a person who buys a dog as a pet.

A purchaser of a covered dog is generally entitled to a remedy if any of the following apply:

1. The dog dies before the 366th day after the day on which the purchaser received the dog from the seller, a veterinarian certifies that the dog was unfit for sale due to a condition that is congenital or hereditary, and, if the seller complied with notice requirements, the purchaser presents the certification to the seller before the 373rd day after the day on which the purchaser received the dog from the seller.
2. The dog shows symptoms, before the 366th day after the day on which the purchaser received the dog from the seller, of a condition that is congenital or hereditary, a veterinarian certifies that the dog was unfit for sale due to that condition, and, if the seller complied with notice requirements, the purchaser presents the certification to the seller before the 373rd day after the day on which the purchaser received the dog from the seller.
3. The dog dies before the 15th day after the day on which the purchaser received the dog from the seller, a veterinarian certifies that the dog was unfit for sale, and, if the seller complied with notice requirements, the purchaser presents the certification to the seller before the 22nd day after the day on which the purchaser received the dog from the seller.
4. The dog dies before the 15th day after the day on which the purchaser received the dog from the seller, a veterinarian certifies that the dog died from causes other than an accident or

injury suffered after the purchaser received the dog from the seller, and, if the seller complied with notice requirements, the purchaser presents the certification to the seller before the 22nd day after the day on which the purchaser received the dog from the seller.

5. The dog shows symptoms of an injury, defect, or illness before the 15th day after the day on which the purchaser received the dog from the seller, a veterinarian certifies that the dog was unfit for sale due to the injury, defect, or illness, and, if the seller complied with notice requirements, the purchaser presents the certification to the seller before the 22nd day after the day on which the purchaser received the dog from the seller.

A purchaser entitled to a remedy due to the death of a covered dog may obtain a refund of the purchase price or another dog of equivalent value and reimbursement of veterinary fees. A purchaser who is entitled to a remedy due to an injury, defect, or illness may do any of the following:

1. Return the dog and receive a full refund of the amount that the purchaser paid for the dog, including sales tax, and reimbursement for veterinary fees incurred with respect to the dog.
2. Retain the dog and receive reimbursement for veterinary fees incurred with respect to the dog plus the future cost of veterinary fees for curing or attempting to cure the dog, as estimated in the veterinarian's certification.
3. Return the dog and receive another dog of equivalent value that is selected by the purchaser plus reimbursement for veterinary fees incurred with respect to the dog.

The bill limits the total amount of reimbursement for veterinary fees under the remedy provisions to twice the amount the purchaser paid for the dog, including sales tax.

In order to receive a remedy, the purchaser must provide the seller with a notice including the required veterinarian certification and the purchaser's choice of remedy. The seller must provide the purchaser with the chosen remedy within 10 days of receipt of such notice or the purchaser may commence an action against the seller. The court may award twice the amount of damages, together with costs including reasonable attorney fees, under such an action. The person who sold the dog to the seller may be held liable to the seller if the seller is required to provide a remedy under the provisions of the bill.

When a person sells a dog as a pet, they must provide a written description of any vaccinations and any treatments for parasites that the dog has received. They must also provide a description of the remedies available for the sale of a dog that is unfit for sale and obtain the signature of the purchaser on a copy of the remedy disclosure document. The seller must retain a copy of the signed document for inspection by DATCP. When a person sells a dog for resale as a pet, that person must provide the buyer with a written description of any vaccinations and any treatments for parasites the dog has received. A person who fails to provide the required information is subject to a forfeiture of not more than \$500.

A person who knowingly sells a dog that is unfit for sale is subject to the following penalties under the bill:

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

2. For a second offense committed 365 days or more after conviction for a first offense, a fine of not more than \$5,000 or imprisonment for not more than 30 days, or both.
3. For a second offense committed fewer than 365 days after conviction for a first offense, for a third offense, or for a subsequent offense, a fine of not more than \$10,000 or imprisonment for not more than 90 days, or both.

The bill takes effect on the first day of the 25th month beginning after publication.

Senate Substitute Amendment 1 alters the definition of a commercial dog breeder to a person who is engaged in the business of breeding dogs and who either sells or offers to sell at least 50 dogs a year.

The substitute amendment defines a covered dog as a dog sold to a purchaser by a commercial dog breeder or a dog sold to a purchaser by a person other than a commercial dog breeder, a humane society, or rescue group if the dog is not more than 12 months of age at the time of sale.

In order to be eligible for a remedy under the substitute amendment, if the dog dies, a veterinarian must certify that the dog was unfit for sale, that the dog's death was not caused by an action or inaction of the purchaser and that the cause of death was not due to a condition that the seller disclosed in advance. If the dog shows symptoms of a condition, the veterinarian must certify that the infirmity is not due to a condition that was disclosed to the purchaser in advance of the sale. Communicable disease is added to accident and injury as a potential cause of death after the time of sale.

The substitute amendment permits a seller who receives a veterinary certification indicating that a dog was unfit for sale three days to request an examination or an autopsy of the dog by a veterinarian of the seller's choosing. If the seller makes such a request, the seller is not required to provide the purchaser with the chosen remedy until the 10th day after the day the dog is made available for examination or autopsy. If the purchaser does not comply with this request, the purchaser is not entitled to a remedy.

The substitute amendment alters the remedy option for the purchaser to receive another dog of equivalent value to another dog of equivalent monetary value, if another dog is available. A purchaser who prevails under the cause of action provision of the substitute amendment may only receive those damages which are incurred by the purchaser.

Under the substitute amendment, the disclosure and signature requirements for the description of remedies only apply to the sale of covered dogs. In addition, the substitute amendment provides that when a person sells a dog as a pet in general, the seller may provide a written description of any congenital or hereditary conditions that are specific to the dog's breed or of the dog's injury, defect, or illness.

The general penalty provisions of the substitute amendment only apply if the person knowingly sells a dog that is unfit for sale and does not disclose that the dog is unfit for sale.

Senate Amendment 1 to Senate Substitute Amendment 1 alters the substitute amendment to permit the taking of custody of animals and holding of animals for cause for violations of the provisions of the rules promulgated under the bill.

The amendment defines a broker as a person who buys a dog for the purpose of reselling the dog and includes brokers in addition to dog breeders in the bill's requirements. It clarifies that the number of dogs sold or offered for sale by a person in determining whether the person is a commercial dog breeder includes all dogs sold or offered for sale by related persons who engage in the business of breeding dogs at the same location or locations.

A criminal background check is required under the amendment as a condition of receiving a commercial breeder license and prohibits the licensure of individuals convicted of a crime against an animal. In addition, a local law enforcement agency must conduct an investigation into a violation of the licensure provisions or refer the complaint to another law enforcement agency with jurisdiction in the area where a violation is suspected to have occurred.

The amendment adds any other veterinary treatment to the written disclosure of vaccinations and parasite treatments required of an individual who sells a dog of not more than 12 months of age. It prohibits a person who sells a dog from knowingly misrepresenting the breed, sex, or health of the dog and requires a buyer seeking a remedy under the bill to provide a copy of the veterinary certification to the seller, rather than present the original copy. Finally, the amendment requires the veterinary certifications created in the bill are done in writing.

Legislative History

Senate Amendment 1 to Senate Substitute Amendment 1 was adopted, Senate Substitute Amendment 1 to Senate Bill 308 was adopted, and Senate Bill 308, as amended, was recommended for passage by the Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection by a vote of Ayes, 5; Noes, 0; on January 23, 2008.

DWS:ksm