2007 SENATE BILL 308


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

Analysis by the Legislative Reference Bureau

Licensing of commercial dog breeders

This bill 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 either sells 60 dogs in a year or has at least eight breeding female dogs.

The bill 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 bill 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.

**Remedies for purchasers**

This bill 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, the dog is not more than 18 months old when purchased. A purchaser of such a dog (covered dog) is entitled to a remedy if any of the following happens:

1. The dog dies within 12 months of purchase and a veterinarian certifies that the dog had a congenital or hereditary condition that severely affected the health of the dog.
2. Within 12 months of purchase, the dog shows symptoms of a congenital or hereditary condition that severely affects the health of dogs and a veterinarian certifies that the dog has that condition.
3. The dog dies within two weeks of purchase and 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.
4. The dog dies within two weeks of purchase and a veterinarian certifies that the dog died from causes other than accident or injury suffered after the purchaser received the dog.
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 and a veterinarian certifies that the dog has that injury, defect, or illness.

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, 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.

**Information for purchasers**

This bill 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
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that the dog has received. The bill also requires a person who sells a covered dog to provide a written description of the remedies provided to purchasers under the bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

93.20 (1) Definition. In this section, “action” means an action that is commenced in court by, or on behalf of, the department of agriculture, trade and consumer protection to enforce chs. 88, 91 to 100 or 126, or 173.

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

173.35 Regulation of commercial dog breeders. (1) Definitions. In this section:

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

(c) “Commercial dog breeder” means a person who is engaged in the business of breeding dogs and who either sells or offers to sell at least 60 dogs in a year or has at least 8 breeding female dogs.

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

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

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

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

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

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

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

(4) ANNUAL REPORT. (a) Annually, a person holding a license under sub. (2) shall submit to the department a report that includes all of the following information:
1. The number of dogs at the locations at which the person is engaged in the
business of dog breeding on the date on which the report is prepared.

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

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

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

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

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

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

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

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

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

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

(f) Requirements for record keeping by commercial dog breeders.
(g) Reinspection fees, designed not to exceed the cost of performing a reinspection, to be charged when an inspection by the department under sub. (8) reveals conditions that require correction and reinspection.

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

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

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

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

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

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

3. For a 2nd offense committed fewer than 365 days after conviction for a 1st offense, for a 3rd offense, or for a subsequent offense, a fine of not more than $10,000 or imprisonment for not more than 90 days or both.
(b) 1. If a commercial dog breeder convicted of a 1st or 2nd violation under par. (a) does not have a license under sub. (2), the commercial dog breeder is ineligible for a license for 12 months following the conviction. If a commercial dog breeder convicted of a 1st or 2nd violation under par. (a) has a license under sub. (2), the department shall revoke the license and the commercial dog breeder is ineligible for a new license for 12 months after the conviction.

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

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

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

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

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

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

2. 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.

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

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

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

1. Having a condition that is congenital or hereditary and that severely affects the health of the dog.
2. Having an injury, defect, or illness that was obvious or able to be diagnosed before the purchaser received the dog from the seller or that is likely to have been acquired before the purchaser received the dog from the seller.

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

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

2. A description of the remedies under this section for the sale of a dog that is unfit for sale.

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

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

(3) RIGHT TO REMEDY. A purchaser of a covered dog is entitled to a remedy specified under sub. (4) if any of the following applies:

(a) 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 sub. (2) (a) 2. and (b), 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.

(b) 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 sub. (2) (a) 2. and (b), 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.

(c) 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 sub. (2) (a) 2. and (b), 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.

(d) 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 sub. (2) (a) 2. and (b), 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.

(e) 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 sub. (2) (a) 2. and (b), 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) Certification. A certification from a veterinarian satisfies the requirements under sub. (3) if it contains all of the following:

(a) The name of the purchaser.

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

(c) The dog’s breed, color, sex, and age.
(d) A statement of the veterinarian’s findings concerning the condition of the
dog.

(e) If the dog died, a statement of the probable cause of death.

(f) A statement that at the time of sale the dog was unfit for sale or, if the dog
died before the 15th day after the day on which the purchaser received the dog, that
the dog died from a cause other than an accident or injury suffered after the
purchaser received the dog from the seller.

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

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

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

(5) Remedies Available. (a) A purchaser who is entitled under sub. (3) to a
remedy due to the death of a covered dog may obtain all of the following:

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

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

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

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, subject to par. (c).
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, subject to par. (c).

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, subject to par. (c).

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

(6) Procedure. (a) When a purchaser presents a certification that complies with sub. (4) to a seller, the purchaser shall notify the seller of the purchaser’s choice of remedy. The seller shall prepare a document confirming the choice to be signed by the seller and the purchaser. The seller shall give a copy of the confirmation to the purchaser and shall retain a copy of the document.

(b) A seller that receives a veterinarian’s certification and a confirmation of choice of remedy shall provide the purchaser with the chosen remedy no later than the 10th day after the day of receipt.

(c) A purchaser entitled to a remedy under sub. (3) has a cause of action against a seller who fails to comply with pars. (a) and (b). The court shall award a consumer who prevails in such an action twice the amount of damages, together with costs including reasonable attorney fees, notwithstanding s. 814.04 (1).

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

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

(9) PENALTIES. (a) A person who sells a dog that is unfit for sale knowing that the dog is unfit for sale 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.

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

SECTION 5. Effective date.

(1) This act takes effect on the first day of the 25th month beginning after publication.