



**INTERNATIONAL SOCIETY FOR ANIMAL RIGHTS**

**MODEL STATUTE REGULATING  
DOG BREEDING, FACILITATION AND SALES**

**HENRY MARK HOLZER**

**Professor Emeritus, Brooklyn Law School  
Chairman, International Society for Animal Rights**

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Post Office Box F  
Clarks Summit, PA  
18411

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(570) 586-2200 (Tel)

(570) 586-9580 (Fax)

[www.isaronline.org](http://www.isaronline.org)

[contact@isaronline.org](mailto:contact@isaronline.org)

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# *Dedication*

**To the countless dogs who have suffered, and  
continue to suffer, at the hands of breeders, facilitators and sellers.**

## **ACKNOWLEDGEMENTS**

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## INTRODUCTION

A major defect in many animal protection statutes is that crucial terms are ill-defined, or not defined at all. This failure leads to ambiguity, avoidable litigation, lack of enforcement, and other problems undermining the goals the legislation was enacted to achieve.

Hence, for purposes of this Monograph and ISAR’s Model Statute Regulating Dog Breeding, Facilitation and Sales (hereafter “Model Statute”), we use the following definitions:

- “Commercial”: “relating to the buying or selling of goods, including dogs, or services, in return for a monetary or non-monetary benefit.”
- “Retail”: “the selling of goods, including animals, or services directly to purchasers.”
- “Sale”: “the transfer of property, including dogs, to the ownership of someone else.”
- “Seller”: “any person or legal entity that makes a sale.”
- “Outlet”: “the place where, or through the means of which, a retail sale occurs.”
- “Purchaser”: “any person or legal entity that is the recipient of a sale.”
- “Breeder”: “any person or legal entity which intentionally, recklessly or negligently causes or allows a living female dog to be inseminated by a male canine.”<sup>1</sup>
- “Puppy mill”: “a place where at the same time at least three female dogs are kept whose sole or major purpose is producing puppies for sale.”<sup>2</sup>
- “Facilitator”: “any person or legal entity, not a breeder, seller, sales outlet or purchaser, as defined herein, who acts as a broker, dealer, wholesaler, agent,

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<sup>1</sup> This definition is deliberately broad because it intends to include all breeding—from family pets to the most egregious type, “puppy mills.”

<sup>2</sup> A puppy mill has been defined by one court as “a dog breeding operation in which the health of the dogs is disregarded in order to maintain a low overhead and maximize profits.” *Avenson v. Zegart*, 577 F. Supp. 958, 960 (D. Minn. 1984). While that description of a puppy mill accurately identifies one aspect of such an operation, it does not adequately invoke the horrors of puppy mills and is thus insufficient for the purposes of ISAR’s Model Statute.



bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership, custody or control of dogs, whether or not such animals are in the custody or control of the facilitator at the time of transfer.”<sup>3</sup>

While ISAR’s Model Statute applies to all breeders, it contains certain provisions aimed specifically at the horrors of puppy mills because they are, by far, the most inhumane kind of dog breeding that exists today in the United States and elsewhere in the world.

Puppy mills, however, are only the first stage in the mass production and sale of dogs. Next come the facilitators, followed by the commercial retailers who sell to the public.

That public, however, has little or no idea just how immoral and inhumane are certain aspects of the business of commercially producing and selling puppies and adult dogs as if they were inanimate objects, no different from sausages.

Not only is the factory-like commercial production and sale of dogs by itself immoral and inhumane, the business is a leading cause of the nationwide canine overpopulation problem. That problem, in turn, has an adverse impact not only on the animals themselves, but also on society at large. Overpopulation of dogs has severe economic, social, political, financial, health, environmental and other consequences which are well-documented and not debatable.

Accordingly, by severely reducing the numbers of dogs produced by breeders, brokered by facilitators, and sold by commercial retailers, the related problems of immorality, inhumaneness and overpopulation could be dealt a serious blow.

Regrettably, however, even the most aggressive educational efforts by the animal protection movement have not been powerful enough to put sufficient pressure on breeders, facilitators and commercial retailers to reduce voluntarily their production and sales of dogs, let alone to drive them out of business altogether.

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<sup>3</sup> The Animal Health and Plant Inspection Service (hereafter “APHIS”), a division of the United States Department of Agriculture (hereafter “USDA”) groups “pet wholesalers” and “animal brokers” under the heading of “dealers.” Pet wholesalers are defined as “anyone importing, buying, selling, or trading pets in wholesale channels.” *Licensing and Registration Under the Animal Welfare Act*, USDA, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf) (last visited Sept. 20, 2009). Animal brokers are defined as “anyone who deals in regulated animals but does not take physical possession.” *Id.* Both pet wholesalers and animal brokers are required to be licensed by USDA. *Id.* The Humane Society of the United States (hereafter “HSUS”) defines brokers as those who purchase dogs from puppy mills and kennels and then resell them to retail pet stores. *More on How Petland Continues to Support Cruel Puppy Mills*, HSUS, Jun. 29, 2009, available at <http://www.hsus.org/pets/>. The term “facilitator” as used in ISAR’s Model Statute is intended to include all of the persons and legal entities described above.

That said, however, there is a way in which production, trafficking and sale of dogs can be greatly reduced—a way in which puppy mill producers, facilitators and commercial retail sellers of dogs could virtually be put out of business.

How, then, to accomplish this worthy goal?

The short answer—which is developed at length in this Monograph—is through strict administrative regulation of breeders, facilitators and commercial retail sellers, coupled with harsh penalty and generous “standing to sue” provisions.

## **1.** **BREEDERS**

### **Types of breeders.**

There are several types of breeders in the United States today.

Beginning at the more benign top of the ladder, there are individuals, often families, who breed their pets for reasons ranging from the understandable (e.g. having Fluffy’s offspring before she dies) to the indefensible (e.g. wanting their children to see “the miracle of birth”).

The rung below is occupied by the “show dog” crowd of the American Kennel Club and similar organizations who selectively breed limited numbers of dogs for competition, with winners bringing their owners substantial sums of money in stud fees and sales—let alone adulation from other breeders and plaudits from an uninformed public.

Descending to the next rung, there are “backyard,” or “hobby” breeders who run small operations, often out of their homes, involving a handful of dogs whose offspring are usually sold locally or even given away.

At the lowest rung, at breeding hell, are the puppy mills.

### **Genesis of puppy mills in the United States.**

Puppy mills originated following the decline in United States agriculture after World War II, when farmers began to breed, raise and sell dogs for profit.<sup>4</sup> Establishing a puppy mill

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<sup>4</sup> Adam J. Fumarola, *With Best Friends Like Us Who Needs Enemies? The Phenomenon of the Puppy Mill, the Failure of Legal Regimes to Manage It, and the Positive Prospects of Animal Rights*, 6 Buff. Envtl. L.J. 253, 262 (1999); Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, The Legal and Historical Animal Center (2008), available at <http://www.animallaw.info/articles>.

as an additional source of income for farmers was actually endorsed by the United States Department of Agriculture.<sup>5</sup>

**“Life” in a puppy mill.**

The reality of today’s puppy mills is horrific. A puppy mill breeding dog usually lives in a cage slightly larger than its own body, moves around and sleeps on wire flooring, and either wears a clip on its ear, a USDA tag around its neck<sup>6</sup> or is tattooed with a number.<sup>7</sup> A female dog will likely be bred twice a year for eight years, with little time between litters.<sup>8</sup> Puppy mill dogs can, and usually do, suffer from problems including, but not limited to, untreated bite wounds, pneumonia, heat stroke, ear infections, blindness, malnutrition, splayed and swollen feet, rotted teeth and mange, all due to the conditions of their confinement and treatment, and lack of veterinarian care.<sup>9</sup>

Unfortunately, examples of these breeding hellholes abound.

In 2007, HSUS conducted a five-month, undercover investigation into some of Virginia’s one thousand puppy mills.<sup>10</sup> Investigators discovered many breeders were in violation of both federal and state laws.<sup>11</sup> Although federal law requires breeders with three or more female breeding dogs to be licensed by United States Department of Agriculture, only a handful of those Virginia breeders were licensed.<sup>12</sup> Breeders had also failed to provide

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<sup>5</sup> *Id.*

<sup>6</sup> *Puppy Mills*, Main Line Animal Rescue, available at <http://www.mainlinerescue.com/puppy-mills/factory-farming-dogs> (last visited May 6, 2009).

<sup>7</sup> *About Baby*, A Rare Breed of Love, available at <http://www.ararebreedoflove.com/about-author.html> (last visited May 6, 2009).

<sup>8</sup> *Puppy Mills*, Main Line Animal Rescue, available at <http://www.mainlinerescue.com/puppy-mills/factory-farming-dogs> (last visited May 6, 2009).

<sup>9</sup> *Id.*

<sup>10</sup> *Virginia: The Next Puppy Mill State?*, HSUS, Nov. 1, 2007, available at [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/](http://www.hsus.org/pets/pets_related_news_and_events/).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

the minimum care for their dogs.<sup>13</sup> As a result of the investigation, officials in Carroll County alone were able to rescue 980 dogs.<sup>14</sup>

Over 1,000 dogs were rescued from a Lehigh County puppy mill in Pennsylvania in October 2008.<sup>15</sup> Inspectors from the Pennsylvania SPCA found animals “encrusted with their own waste . . . sick [and] dying to dead.”<sup>16</sup>

In January 2009, following a citizen’s tip, Snohomish County officers rescued 155 dogs from a puppy mill in Gold Bar, Washington.<sup>17</sup> Many of them were housed in small crates and several dead dogs were found in a freezer.<sup>18</sup> Eighty-seven of the dogs were found in a converted attic on the property.<sup>19</sup> Fur on the dogs was heavily matted and covered in urine and feces.<sup>20</sup> Other dogs had open sores, tumors and other abnormal physical conditions.<sup>21</sup> A large commercial dumpster on the property was discovered overflowing with dog waste.<sup>22</sup> The owners were charged with six counts of first-degree animal cruelty and if convicted could face 17 to 22 months in prison.<sup>23</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Victoria Fisher, *Shelters Step Up for Rescued Pups*, HSUS, available at [http://www.hsus.org/pets/pets\\_related\\_news\\_and\\_events/](http://www.hsus.org/pets/pets_related_news_and_events/) (last visited May 6, 2009).

<sup>15</sup> Tor Smith, *Animals Receive Medical Care After Massive Puppy Mill Raid*, Myfoxphilly (Pa.), Oct. 2, 2008, available at <http://www.myfoxphilly.com/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Officers Raid Puppy Mill, ‘Astounded’ by Filth*, KomoNews (Wash.), Jan. 18, 2009, available at <http://www.komonews.com>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Puppy Mill – Nearly 600 Dogs Seized in 2 Counties, Pet-Abuse*, available at <http://www.pet-abuse.com/cases/15120/WA/US/> (last visited May 6, 2009).

A few days after the Gold Bar arrests, officers from the Skagit County Sheriff's Department, also in Washington State, seized more than 400 dogs from a puppy mill.<sup>24</sup> Dogs were living in wire cages without food or water and standing in their own feces.<sup>25</sup> The owners have been charged with four counts of second-degree animal cruelty.<sup>26</sup>

Most of the dogs from both Washington puppy mills were "designer dogs," such as miniature Chihuahuas, Shih Tzus, Poodles, and Yorkshire Terriers.<sup>27</sup> Animal Service officials estimated that of the 600 dogs rescued from both raids, approximately eighty percent of the dogs were pregnant.<sup>28</sup> On April 30, 2009, the governor of Washington signed Senate Bill 5651 mandating specific requirements for certain dog breeding practices.<sup>29</sup>

It is no surprise that the United States is not alone in its abuse of dogs in puppy mills. These animal factories exist and function similarly in many other countries. South Korea and Russian puppy mills, for example, have taken advantage of lax regulations and easily export puppies.<sup>30</sup> In one case, a shipment was sent from South Korea to Los Angeles, California. Of the thirty dogs shipped, twenty died or had to be euthanized. The ten survivors were turned over to the city's shelter. (Generally, Asians are not known for their humane treatment of dogs, which are considered edible commodities.)<sup>31</sup>

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<sup>24</sup> Rob Piercy, *Charges Filed in Puppy Mill Case*, King5 (Wash.), Feb. 2, 2009, available at <http://www.king5.com>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Christine Clarridge, *600 Rescued Dogs and 80% are Pregnant*, The Seattle Times, Jan. 24, 2009, available at <http://seattletimes.nwsourc.com>.

<sup>28</sup> *Id.*

<sup>29</sup> S. 5651, 2009 Reg. Sess. (Wash. 2009) <http://apps.leg.wa.gov>. See "Links to Statutes/Bills" document #1.

<sup>30</sup> Carrie Kahn, *Shipment Shows Dark Side of Foreign Puppy Mills*, National Public Radio, Dec. 30, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=98688596>.

<sup>31</sup> Public Law 110-234 (2008) added a new section to the Animal Welfare Act (hereafter "AWA") (7 U.S.C. Section 2148) which prohibits the importation of a dog into the United States for purposes of resale unless the Secretary of Agriculture (hereafter "Secretary") determines that the dog is in good health, has received all necessary vaccinations, and is at least six months of age.

Canada also has numerous puppy mills, with an estimated 2,000 in Quebec Province alone.<sup>32</sup> (Working together, the HSUS and the Humane Society International exposed three puppy mills in Canada.)<sup>33</sup>

**Puppy mills are a blight on civilized society.**

An elaboration of this sordid story of puppy mill horrors could fill many volumes, dramatizing conditions and practices which are immoral and inhumane no matter where they are found. But for them to exist in the United States, somehow seems worse.

Being in the United States, however, a nation which prides itself on possessing high standards of humaneness (at least in certain respects), much more can be done to ameliorate the plight of the countless wretched animals captive in the dog trade. At least, that is, if only our legislators and political leaders will take the matter seriously and not, as they have repeatedly, say one thing but act differently.

For example, the related issues of animal cruelty and pet adoption were brought to national attention during the 2008 presidential election. While campaigning, then-Senator Barack Obama replied to a question about animal welfare by stating, “I think how we treat our animals reflects how we treat each other. And it’s very important that we have a president who is mindful of the cruelty that is perpetrated on animals.”<sup>34</sup> The cited article states that in the book *A Rare Breed of Love: The True Story of Baby and the Mission She Inspired to Help Dogs Everywhere*, Obama specifically advocated pet adoption as a means to end puppy mills. However, an examination of the book itself reveals that Obama actually made only a vague, general commitment to stop animal cruelty. Obama was even photographed in front of the Lincoln Memorial holding “Baby,” a puppy mill survivor (about whom, more below).<sup>35</sup>

However, despite their campaign promises to adopt shelter dogs, the President acquired a dog which had originated with a breeder. The Vice-President obtained one from a

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<sup>32</sup> *Take action now to stop puppy mills!*, HSI, available at <http://e-activist.com/ea-campaign/clientcampaign.do?ea.client.id=104&ea.campaign.id=1745> (last visited May 6, 2009).

<sup>33</sup> Bernard Unti, *Puppy Mills Dark, Hopeless Places*, HSUS, Dec. 29, 2008, available at <http://www.hsus.org/pets/>; *Animal Protection Groups Call for Provincial and Federal Action to Shut Down Puppy Mills*, HSUS, Dec. 12, 2008, available at [http://www.hsus.org/press\\_and\\_publications/](http://www.hsus.org/press_and_publications/).

<sup>34</sup> *Author Who Featured Obama in a Book About Adoption Speaks Out About His Broken Pledge*, PR Newswire, available at <http://sev.prnewswire.com/> (last visited May 6, 2009).

<sup>35</sup> *Id.*

Pennsylvania puppy mill—one which had actually been cited for violations.<sup>36</sup> Unfortunately, the cynicism of these two politicians regarding the humane treatment of animals is widespread through the executive, legislative and administrative branches of the American government and undercut efforts to deal with the blight of puppy mills.

Wayne Pacelle, president and CEO of HSUS, has correctly articulated one of the reasons why puppy mills are a blight on 21<sup>st</sup> Century America: “[I]t’s precisely because we are intelligent and powerful that we have responsibilities to these animals. They are helpless before us, and they rely on our good conscience.” Pacelle continues, “[T]he terrible thing is the inhumane treatment of these animals at the puppy mills. It’s awful. It’s contributing to the larger pet overpopulation crisis, which is resulting in over 4 million dogs and cats being killed every year.”<sup>37</sup>

### **The moral case against puppy mills.**

No one can dispute that government has a moral and political obligation to protect children from harm.

At common law, before the enactment of modern statutes, it was the consistent policy of government to look after the interests of children (although the form and extent of that protection often left much to be desired). Laws protected children from their own folly and improvidence, and from abuse by adults. From the time of their birth, children were considered wards of the state. These common law principles have been enacted into statutes in every state in America. Modern child-protection laws reflect governmental humane concerns with physical and mental wellbeing, neglect, abuse, food, clothing, shelter, education, vagrancy, capacity to contract, lack of capacity to consent to sexual acts, and much more.

The principle underling all modern child protection legislation unites the cause of children’s rights with the parallel cause of animal rights in general, and the immoral and inhumane treatment of dogs in puppy mills in particular.

Government intervenes to prevent or remedy a child's fear, hunger, pain, suffering and abuse because children are incapable, mentally and physically, of protecting themselves from these conditions. So, too, are dogs. Like children, they are alive but defenseless. Like children, they can experience fear, hunger, pain, suffering and abuse. Like children, government has a duty to protect them (though the line-drawing about which animals

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<sup>36</sup> *Id.* The USDA’s Bureau of Dog Law Enforcement warned the puppy mill’s owner about drainage and maintenance violations during an inspection in Jan. 2009, just after Biden had purchased the six-week-old puppy. During a follow up inspection, investigators found “the conditions had not improved.”

<sup>37</sup> *Investigating Puppy Mills*, Oprah, available at <http://www.oprah.com> (last visited May 6, 2009).

should be protected, in what manner, and to what extent continues to bedevil everyone from legislators to moral philosophers to shelter workers—though not when these questions concern dogs).

This proposition—that government has an obligation to protect animals, at least some, in some manner, and at least to some extent—is not novel. The fact is that existing animal protection legislation in every state and at the federal level is an explicit recognition by government of its responsibility.

The genesis of that moral and legal responsibility, and the ensuing legislation, is not widely known.

Lewis Gompertz (1779-1865) was a founding member of the British Society for the Prevention of Cruelty to Animals (later the Royal Society for the Prevention of Cruelty to Animals), and probably the first public person in modern times to opine in the English language about the rights of animals.

In his *Moral Inquiries into the Situation of Man and of Brutes* Gompertz wrote that:

The dreadful situation of the brute creation, particularly of those which have been domesticated, claims our strictest attention.<sup>[38]</sup> \* \* \* Who can dispute the inhumanity of the sport of hunting, of pursuing a poor defenseless creature for mere amusement, till it becomes exhausted by terror and fatigue, and of then causing it to be torn to pieces by a pack of dogs? From what kind of instruction can men, and even women, imbibe such principles as these? How is it possible they can justify it? And what can their pleasure in it consist of? Is it not solely in the agony they produce to the animal? They will pretend that it is not, and try to make us believe so too, that it is merely in the pursuit. But what is the object of their pursuit? Is there any other than to torment and destroy?<sup>39</sup>

It seems that the crime of cruelty proceeds greatly from improper education. Subjects of moral inquiry are too often chased from the attention of youth, from a false idea that they are mere chimeras too difficult to enter into, that they only serve to confound us and to lead us into disputes, which never come to a conclusion; that they cause us to fall into eccentricities, and unfit us for all the offices of life, and at last drive us into downright madness.<sup>40</sup>

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<sup>38</sup> Lewis Gompertz, *Moral Inquiries On The Situation Of Man And Brutes*, Fontwell Sussex: Centauer Press, Ltd, 1992, 22.

<sup>39</sup> Gompertz, 29.

<sup>40</sup> Gompertz, 30.



Forbid it that we should give assent to such tenets as these! That we should suffer for one moment our reason to be veiled by such delusions! But on the contrary let us hold fast every idea, and cherish every glimmering of such kind of knowledge, as that which shall enable us to distinguish between *right* and *wrong*, what is due to one individual—what to another.<sup>41</sup>

Some two hundred years later, Gompertz's words eloquently remind us that cruelty to animals continues to demand a *moral inquiry*, including asking and answering questions about the consequences of dog (and other companion animal) overpopulation.

Anyone who looks closely at how animals are treated in America today cannot help being confused. Hunters cherish their hunting dogs, but kill and trap wildlife without conscience or regret. Stylish women coddle furry house pets, but think nothing of wearing the skins of animals. At animal farms and petting zoos, parents introduce their children to a world of innocence and beauty, but see no harm in exposing them to circus acts which degrade animals, and to rodeos, which brutalize them.

The law, too, is contradictory. It is legal to butcher livestock for food, but not to cause them to suffer during slaughter (although federal law contains an exception: "ritually" slaughtered cattle are allowed to suffer). It is legal to kill chickens for the pot, but not to allow fighting cocks to kill each other. Animals can be used for painful laboratory experiments, but they must be exercised and their cages must be kept clean. Kittens can be drowned, but not abandoned. Certain types of birds are protected, but others are annihilated. With a permit, one can own a falcon, and with a falcon, one can hunt rabbits; but rabbits cannot be dyed rainbow colors and sold at Easter time.

It is not surprising that countless contradictions exist today in man's relationship to animals, because never has there been a consistent humane principle to guide him in dealing with those dependent creatures who share his planet. What is surprising is that animals have been accorded any decent treatment at all, considering the overwhelmingly dominant attitude, from the earliest of times, that animals could be used, abused, and even tormented, at the utterly capricious will of man. Absent from the history of ideas has been even a semi-plausible notion to the contrary, let alone a defensible, fully integrated theory of animal rights.

The problem of animal rights antedated Lewis Gompertz by thousands of years, and begins with the Book of Genesis<sup>42</sup>: "And God said: Let us make our image, after our likeness; and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth." Later, after the flood, ". . . Noah builded an altar unto the Lord; and took of every clean beast, and of every clean fowl, and offered burnt offerings on the

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<sup>41</sup> Gompertz, 30. Emphasis in original.

<sup>42</sup> Genesis 1:24-28.

altar, and the Lord smelled the sweet savour . . . .”<sup>43</sup> To express his gratitude, “God . . . blessed Noah and his sons and said unto them: Be fruitful, and multiply, and replenish the earth. And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon the fishes of the sea; into your hand are they delivered. Every moving thing that liveth shall be for food for you; as the green herb have I given you all.”<sup>44</sup>

In short, the view expressed by scripture was that animals were put on earth by God to be used by man.

The predominant Greek attitude, as expressed by its most influential philosopher, Aristotle, was no better: “. . . we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all, at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete . . . and nothing in vain, the inference must be that she has made all animals for the sake of man.”<sup>45</sup>

As to the attitude of the Romans, one need only recall history's bloody forerunner to today's bullfights and rodeos—the Coliseum—where no distinction was made between animal and human victims.

When pagan Rome gave way to Christianity, men may have fared better, but Christian charity was not extended to animals. Indeed, early Christian thought seems obediently to echo the Genesis thesis: animals exist merely to serve man's needs.

Hundreds of years passed, with no discernible change in attitudes toward animals. With the advent of St. Thomas Aquinas in the 1200s, the concept of animal servitude was reinforced. Aquinas, drawing on the Old Testament and on Aristotle, not surprisingly concluded that since all things are given by God to the power of man, the former's dominion over animals is complete.

Aquinas' theory of dominion says nothing, one way or the other, about the nature of the animals being dominated, but renowned Christian philosopher-mathematician Rene Descartes had a great deal to say on that subject. He held that animals were automatons—literally. He asserted that lacking a Christian “soul,” they possessed no consciousness. Lacking a consciousness, he concluded, they experienced neither pleasure nor pain. His conclusion was a convenient one: It allowed him to rationalize dissection of unanesthetized living creatures.

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<sup>43</sup> Genesis 8:20-21.

<sup>44</sup> Genesis 9:1-3.

<sup>45</sup> Aristotle, *Politics*, Bk I, Ch. 8, Random House, 1941, 1137.

Although Descartes's hideous experiments purportedly were done to advance the knowledge of anatomy, they properly earn him a place in history as the Seventeenth Century soul mate of Mengele, the Nazi concentration camp doctor who experimented on human beings.

Although the existence of the dominant Genesis-Aristotle-Descartes view of animals, and the resultant lack of an appropriate theory of animal rights, is reason enough to explain more than fifteen-hundred years of man's maltreatment of animals, there is a related explanation: during this same period there was no appropriate theory of the rights of *man*.

From the days of the Pharaohs to the threshold of modern philosophy in the 1600s, man's status fell into one of two categories: oppressor or oppressed. The tyrants of Egypt had much in common with the despots of feudal Europe; the Hebrew slaves who built the pyramids, with the serfs who tilled their lords' estates. It is not surprising that cultures which regarded some men as other men's chattels would treat animals, at best, as plants, and, at worst, as inanimate objects. Accordingly, when man's lot improved, the lot of animals also improved, albeit very slightly.

The historical turning-point for the Rights of Man came with the 18th Century's Age of Enlightenment. It was a time of Adam Smith and laissez-faire capitalism, of John Locke, and of Thomas Jefferson's Declaration of Independence. Man was recognized, at least by some, to possess inalienable rights, among them the right to life, liberty and the pursuit of happiness. By no means had the world's ideas about liberty changed, but a fresh wind was blowing for man, one which would soon lead to the creation of a new Nation—one, as Lincoln would say nearly a century later, "conceived in liberty and dedicated to the proposition that all men are created equal." Surely, it is more than coincidence that at about the same time, thinkers like Voltaire, Rousseau, Pope, and Bentham were questioning man's maltreatment of animals.

Yet, despite these questions, for another two centuries the lot of animals did not improve noticeably even in the civilized world, because the attitudes of most people remained rooted in the ideas of Genesis, Aristotle, and Descartes.

Before change could come, these ideas had to be discarded. Although it was a long gestation, finally, in the last quarter-century, a handful of philosophers, scientists, theologians, and lawyers—among them Brigid Brophy, Andrew Linzey, Richard Ryder, Peter Singer, Gary Francione, and Steven M. Wise—have launched broadside attacks on the basic ideas which for so long have served to rationalize man's brutalization of the only other living species with whom he shares this planet.

But as important as that is, merely exposing fallacies and immoralities does not itself constitute propounding anything affirmative. Recognizing this, today's animal rights activists have begun to build that affirmative, defensible theory of animal rights.

An inevitable result of this growing inquiry into the rights of animals has been scrutiny of various aspects of the abuse of companion animals generally and of dogs in particular—a particularly monstrous example of which are puppy mills.

That scrutiny has led to some successes in society's efforts to alleviate, though not nearly eliminate, the puppy mill abuse.

For example, to HSUS's great credit in recent years it conducted several investigations into U.S. puppy mills. It campaigned, and filed a class action lawsuit against, Petland, the largest retailer of dogs acquired from puppy mills (about whom, more below).<sup>46</sup> The organization lobbied for an amendment to the Farm Bill that bans the importation of dogs from foreign puppy mills. And numerous dogs were rescued from puppy mills throughout the country by HSUS itself, and through its efforts.<sup>47</sup>

Public awareness was also heightened through several puppy mill exposés featured on such television shows as Oprah Winfrey featuring Main Line Animal Rescue (an organization that has rescued over 5,000 animals from puppy mills),<sup>48</sup> Animal Planet featuring Philadelphia's SPCA,<sup>49</sup> and National Geographic featuring Cesar Millan (the "Dog Whisperer").<sup>50</sup>

Public awareness is, of course, crucially important because ultimately it leads to legislation.

#### **Federal efforts to regulate breeders and others.**

Congress enacted the Animal Welfare Act<sup>51</sup> in 1966<sup>52</sup> with the initial, narrow aim of regulating and licensing animals used in science and research.<sup>53</sup> Specifically, the AWA

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<sup>46</sup> Regrettably, as of Aug. 9, 2009, HSUS's complaint was dismissed. See *Judge Dismisses Lawsuit Against Petland and Hunte – For Now*, Mar. 21, 2009, available at <http://www.animallawcoalition.com/>.

<sup>47</sup> *Why Must Puppy Mill Regulations Raise Hackles?*, HSUS, May 6, 2009, available at <http://hsus.typepad.com/>.

<sup>48</sup> *Investigating Puppy Mills*, Oprah.com, available at <http://www.oprah.com/> (last visited May 6, 2009).

<sup>49</sup> *Inside a Puppy Mill*, Animal Planet, available at <http://animal.discovery.com> (last visited May 6, 2009).

<sup>50</sup> *Inside Puppy Mills*, National Geographic, available at <http://channel.nationalgeographic.com/> (last visited May 6, 2009). Millan is a dog trainer, TV host of the "Dog Whisperer" (seen in 80-plus countries), has received two Emmy nominations, and is best-selling author of three books.

<sup>51</sup> 7 U.S.C. Sec. 2131-59 (2006).

<sup>52</sup> *Laws that Protect Dogs in Puppy Mills*, American Society for the Prevention of Cruelty to Animals (ASPCA), available at <http://www.aspca.org/> (last visited May 6, 2009).

regulates, “who may possess or sell certain animals and the living conditions under which the animals must be kept.”<sup>54</sup>

Since its enactment, the AWA’s scope has been considerably expanded through amendments, which address pet protection and other subjects.<sup>55</sup>

The AWA’s provisions that affect the breeding and sale of dogs—which are in no sense intended to be, or are, anti-breeding or anti-overpopulation—authorize the Secretary of Agriculture to “promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers . . . .” The act also requires the Secretary to “promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith. . . .” The devil is, of course, in the details—more specifically in the *regulations* promulgated by the Secretary to fill out the broad, even vague grant of power delegated by the Act itself. This is a major reason that a stand-alone “dog” statute, such as ISAR’s proposed Model Statute, is necessary.

The AWA’s definition of “animal” makes the act applicable to any warm-blooded animal kept as a pet, and thus includes dogs.

The act requires the licensing of “dealers,” defined as “any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sell, or negotiates the purchase or sale of, (1) any dog or . . . whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes.”<sup>56</sup>

Importantly, the statutory term “dealer” encompasses most commercial dog breeders, thus subjecting them, at least in theory, to the AWA’s regulations, licensing requirements, penalty provisions, and also inspection regimen which is supposed to be conducted by the USDA.<sup>57</sup> (The government’s Animal Care Report for Fiscal Year 2007 lists over 9,200 regulated breeder facilities, but only 102 inspectors to conduct the statutorily-mandated inspections.)

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<sup>53</sup> David Farve, *Overview of the U.S. Animal Welfare Act*, The Legal and Historical Animal Center, May 2002, available at <http://www.animallaw.info>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> 7 U.S.C. Sec. 2132 (2006).

<sup>57</sup> *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.asPCA.org/> (last visited May 6, 2009).

However, in an unfortunate loophole which ISAR's Model Statute plugs, the AWA "dealer" definition exempts retail pet stores (i.e., ISAR's "commercial retail sales outlets"), breeders who do not gross more than \$500.00 annually from the sale of animals, breeders who sell directly to the public, and breeders who sell animals online.<sup>58</sup> These loophole exemptions within the AWA<sup>59</sup> allow some breeders to avoid regulation altogether.

To its credit, several years ago the Doris Day Animal League filed a petition with the Department of Agriculture seeking to close this loophole by changing the definition "retail pet store" to include "non-residential business establishments used primarily for the sale of pets to the ultimate consumer." Ultimately, the League's petition was unsuccessful and breeders who sell directly to the public or gross less than \$500.00 annually from the sale of animals remain exempt from the AWA's provisions.<sup>60</sup>

Effectuating the mandated and crucially important licensing requirements, penalty provisions, and inspection regimen already provided for in the AWA are problematic at best. Inspections to ensure breeders are not violating animal care standards are not a top priority for the USDA.<sup>61</sup> Worse, too many breeders fail even to apply for a license, allowing them to operate their business under the USDA's radar and thus avoid inspections altogether.<sup>62</sup>

In sum, as well intentioned as the AWA may have been in its inception, and as useful as some of its amendments may be, insofar as the breeding and commercial retail sale of dogs is concerned the Act falls far short. For that reason, ISAR believes that federal regulation of the breeding and commercial retail sale of dogs must be severed from the AWA, and embodied in a stand-alone statute aimed at the specific abuses from which these animals suffer.

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<sup>58</sup> *Id.*

<sup>59</sup> Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, The Legal and Historical Animal Center, May 6, 2009, available at <http://www.animallaw.info/articles/>; *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.asPCA.org/> (last visited May 6, 2009).

<sup>60</sup> *Doris Day Animal League v. Veneman*, 315 F.3d 297 (D.C. Cir. 2003).

<sup>61</sup> Lisa Acho Remorenko, *Doggie Danger: Oprah Exposes Puppy Mills*, Santa Barbara Independent (Cal.), Apr. 11, 2008, available at <http://www.independent.com/>.

<sup>62</sup> *Id.*

In 2008, Congress enacted the Farm Bill,<sup>63</sup> the second federal statute affecting puppy mills and breeders.<sup>64</sup> The bill was in response to the influx of sick imported puppies that are not subject to the AWA regulations requiring humane treatment.<sup>65</sup> These foreign puppies, often as a result of the abuse they suffer in offshore puppy mills, potentially carry diseases that could harm humans and domestic animals.<sup>66</sup> Specifically, the Farm Bill bans the importation of puppy mill puppies less than six months old for the purpose of resale.<sup>67</sup>

The third federal statute, the Puppy Uniform Protection Statute (PUPS) was introduced in the House by Representatives Sam Farr (D-Cal.), Jim Gerlach (R-Pa.), Lois Capps (D-Cal.) and Terry Everett (R-Ala.). A companion bill was introduced in the Senate by Sen. Richard Durbin (D-Ill.) in September 2008, all in an effort to regulate commercial breeders.<sup>68</sup>

PUPS is also known as “Baby’s Bill” so named after the three-legged Bichon Frise, mentioned earlier in connection with Mr. Obama, who survived nine years in a puppy mill.<sup>69</sup> The last major action on the bill was on November 19, 2008 when it was referred to the House Subcommittee on Department Operations, Oversight, Nutrition and Forestry (where it will probably die).

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<sup>63</sup> In 1949, the original Farm Bill authorized mandatory commodity programs. Any changes (e.g., H.R. 6124, the 2008 Farm Bill) remain in effect for approximately four to six years, until Congress specifies the next rewrite.

<sup>64</sup> *Laws that Protect Dogs in Puppy Mills*, ASPCA, available at <http://www.asPCA.org/> (last visited May 6, 2009).

<sup>65</sup> Puppies from foreign countries are not subject to the standards of care established in U.S. regulations, such as the Animal Welfare Act, prior to their arrival in this country. But see footnote 31, above.

<sup>66</sup> *Id.*

<sup>67</sup> *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, HSUS, Sep. 19, 2008, available at <http://www.humanesociety.org/pets/>. See “Links to Statutes/Bills” document #2, Farm Bill. Text is available online at [http://www.usda.gov/documents/Bill\\_6124.pdf?class](http://www.usda.gov/documents/Bill_6124.pdf?class).

<sup>68</sup> *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, HSUS, Sep. 19, 2008, available at <http://www.humanesociety.org/pets/>.

<sup>69</sup> *About Baby, A Rare Breed of Love*, available at <http://www.ararebreedoflove.com/> (last visited May 6, 2009).

The proposed legislation would amend the Animal Welfare Act by defining “‘retail pet store’ as a person that: (1) sells an animal directly to the public for use as a pet; and (2) does not breed or raise more than 50 dogs for use as pets during any one-year period.”<sup>70</sup> PUPS has yet to be re-introduced in the current, 111<sup>th</sup>, 2008-2009, Congressional session. Although it is a small step in the right direction, the bill as drawn is inadequate to deal with the serious commercial retail sales outlet problem that is addressed in ISAR’s Model Statute.

Because of failure at the federal level to regulate commercial breeders to any significant extent, let alone successfully, some state legislatures are no longer content to stand by while breeders, puppy mills, facilitators and commercial retail sales outlets stain their states’ reputations. Recently, some states have been forced to take matters into their own hands.

### **State efforts to regulate puppy mills.**

HSUS lists twenty-eight states with general “puppy mill” legislation that contains varying definitions of kennels, pet animal facilities, breeders, retail dealers, and outlines licensing and inspection regulations.<sup>71</sup> Unfortunately, but typically, several states provide exemptions for breeders, which allow them to operate unlicensed and thus unregulated.<sup>72</sup>

Nineteen states require inspections of breeding facilities.<sup>73</sup> Inspection requirements include a wide range of time-frames and conditions. For example, from as infrequently as every three years to as frequently as every six months, and from “only announced” inspections to “upon complaint” unannounced inspections.<sup>74</sup>

Just as the inspection requirements vary, so do the regulatory agencies.<sup>75</sup> Agencies with real or supposed oversight of dog breeders include: County Board of Supervisors, State Agricultural Commission, Town Clerk, Department of Natural Resources and Environmental Control, State Animal Health Department, Police Commissioner, County

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<sup>70</sup> H.B. 6949, 110th Cong. (2008) <http://thomas.loc.gov/> (last visited May 6, 2009).

<sup>71</sup> *Puppy Mill Laws: Where Does Your State Stand?*, HSUS, available at <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf> (last visited May 6, 2009).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*



Animal Control, Sheriff's Department, County Auditor, and the Environmental Management Office.<sup>76</sup>

Three states have passed explicit legislation regulating puppy mills by limiting the number of breeding dogs a facility can maintain: Louisiana (75), Virginia (50) and Washington (50).<sup>77</sup> An additional ten states have puppy mill legislation pending.<sup>78</sup>

In 2008, Virginia took the lead in puppy mill legislation with the passage of H.B. 538 limiting commercial dog breeders to no more than 50 dogs over the age of one year at a time.<sup>79</sup> Breeders may be exempt from the 50 dogs over the age of one year limit if a higher number of dogs is approved by a local ordinance after a public hearing.<sup>80</sup>

Virginia defines a commercial breeder as a person who maintains 30 or more adult female dogs for the primary purpose of selling their offspring.<sup>81</sup> Also provided in the law are requirements for annual certifications by a licensed veterinarian prior to breeding, inspections by animal control officers, maintenance of records for sales, breeding history and veterinarian care. Under the new law, commercial breeders in violation can be fined \$2,500 or face up to 12 months in jail.<sup>82</sup>

Virginia's law also requires pet stores to purchase dogs only from USDA licensed dealers or persons.<sup>83</sup>

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<sup>76</sup> *Id.*

<sup>77</sup> *State Legislation*, HSUS, available at [http://www.hsus.org/legislation\\_laws/state\\_legislation/](http://www.hsus.org/legislation_laws/state_legislation/) (last visited May 6, 2009).

<sup>78</sup> *Puppy Mill Laws: Where Does Your State Stand?*, HSUS available at <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf> (last visited May 6, 2009).

<sup>79</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008) <http://leg1.state.va.us/> (last visited May 6, 2009); *Bill to Protect Man's Best Friend Becomes Law*, Puppy Mill Dog's Voice, Apr. 23, 2008, available at <http://www.pupppymilldogsvoice.org/>.

<sup>80</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008); Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, The Legal and Historical Animal Center, available at <http://www.animallaw.info/articles/> (last visited May 6, 2009).

<sup>81</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008).

<sup>82</sup> H.B. 538, Gen. Assem., Reg. Sess. (Va. 2008); *Bill to Protect Man's Best Friend Becomes Law*, Puppy Mill Dog's Voice, Apr. 23, 2008, available at <http://www.pupppymilldogsvoice.org/>.

<sup>83</sup> *Id.*

In 2008, Louisiana enacted H.B. 1193, which limits breeder operations to no more than 75 breeder dogs over the age of one year.<sup>84</sup> The bill also includes license fees for individuals or businesses that breed five or more dogs for retail sale.<sup>85</sup> Penalties for violations include a fine of not more than \$500 or imprisonment for not more than 6 months.<sup>86</sup>

Pennsylvania became the third state in 2008 to enact puppy mill legislation. H.B. 2525 specifies kennel cage size, temperature, and flooring requirements; outlines licensing requirements; and mandates exercise and bi-annual veterinarian examinations.<sup>87</sup> The statute also calls for the establishment of a Canine Health Board for the purpose of establishing standards to provide for the dogs' welfare and a Dog Law Board to advise in the administration of the Act.<sup>88</sup> Violations can lead to \$1,000 fine or up to a year of imprisonment.<sup>89</sup>

In 2009, Indiana adopted legislation regulating puppy mills. The new law which takes effect in 2010 does not limit the number of breeding dogs a facility can maintain, but does set a minimum standard of care for dogs and requires breeders to pay an annual registration fee.<sup>90</sup>

Oregon and Washington are the most recent states to pass puppy mill legislation limiting the number of breeding dogs a breeder can maintain. Oregon's legislation limits large scale breeding facilities to 50 dogs; requires minimum care for housing and exercise; and

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<sup>84</sup> H.B. 1193, 2008 Leg., Reg. Sess. (La. 2008) <http://www.legis.state.la.us/>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>; *PA's New Dog Law Provides Better Protections for 'Man's Best Friend,' Says Gov. Rendell During Ceremonial Bill Signing*, Pennsylvania Dog Law Action, available at <http://www.doglawaction.com> (last visited May 6, 2009).

<sup>88</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>; *Puppy Mills*, Main Line Animal Rescue, available at <http://www.mainlinerescue.com/> (last visited May 6, 2009).

<sup>89</sup> H.B. 2525, Gen. Assem., Reg. Sess. (Pa. 2008) <http://www.legis.state.pa.us/>.

<sup>90</sup> *Governor Signs Bills on Teen Drivers, Puppy Mills*, WTHR (Ind.), May 7, 2009, available at <http://www.wthr.com/>. See "Links to Statutes/Bills" document #4, IN House Act No. 1468. Available online at <http://www.in.gov/>.

requires pet stores to provide buyers with information concerning the dog's place of origin, health history and registry information.<sup>91</sup> The new legislation prohibits commercial dog breeders from keeping more than 40 breeding dogs over the age of one year; requires a licensed veterinarian to certify female dogs are in suitable health for breeding; requires commercial dog breeders to keep records; and allows for the inspection of commercial dog breeders.<sup>92</sup>

Of the remaining states with puppy mill legislation pending, the definition of a breeder differs. Various states allow a maximum of from 20 to 50 breeding dogs.<sup>93</sup> Some states such as Illinois, Massachusetts and Texas list explicit kennel requirements for wire flooring, temperature control and ventilation.<sup>94</sup> Texas requires daily exercise periods for dogs kept by breeders.<sup>95</sup>

While there has been success obtaining some puppy mill legislation in Indiana, Louisiana, Maine, Oregon, Pennsylvania, Tennessee, Virginia and Washington, newly introduced bills in seven other states—Colorado, Connecticut, Florida, Illinois, Maryland, Montana, and New Hampshire—have failed to be enacted.<sup>96</sup>

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<sup>91</sup> *Oregon Senate Votes to Crack Down on Abusive Puppy Mills*, HSUS, available at [http://www.hsus.org/press\\_and\\_publications/](http://www.hsus.org/press_and_publications/) (last visited Sept. 20, 2009).

<sup>92</sup> H.B. 2843, 79<sup>th</sup> Leg., 1<sup>st</sup> Sess. (W. Va. 2009) <http://www.legis.state.wv.us/>.

<sup>93</sup> *State Legislation*, HSUS, available at [http://www.hsus.org/legislation\\_laws/state\\_legislation/](http://www.hsus.org/legislation_laws/state_legislation/) (last visited May 6, 2009).

<sup>94</sup> H.B. 198, 184<sup>th</sup> Gen. Ct., Reg. Sess. (Mass. 2009); Nicole Sica, *Puppy Mill Bill Introduced in Texas by State Rep. Thompson*, Examiner (N.Y.), available at <http://www.examiner.com/> (last visited May 6, 2009); *Puppy Mill Legislation Update*, ThoughtsFurPaws, available at <http://thoughtsfurpaws.com/dogs/puppy-mill-legislation-update/> (last visited May 6, 2009).

<sup>95</sup> H.B. 2470, 2009 Leg., 75<sup>th</sup> Sess. (Or. 2009) <http://landru.leg.state.or.us/>; *Indiana Puppy Mill Bill Passes*, Animal Law Coalition, available at <http://www.animallawcoalition.com/> (last visited May 6, 2009); *Oregon HB 2470: Prohibits Owning More Than 25 Intact Dogs: Puppy Lemon Law*, American Dog Owners Association, Jan. 31, 2009, available at <http://www.adoa.org/> (last visited May 6, 2009); *Puppy Mill Bill Introduced in Texas by State Rep. Thompson*, Examiner (N.Y.), Mar. 13, 2009, available at <http://www.examiner.com/>.

<sup>96</sup> *State Legislation*, HSUS, available at [http://www.hsus.org/legislation\\_laws/state\\_legislation/](http://www.hsus.org/legislation_laws/state_legislation/) (last visited May 6, 2009).

State legislation even merely regulating breeders, let alone putting them out of business, has failed for a variety of reasons. For example, legislation introduced in Minnesota met resistance from veterinary groups, hobby breeders, and cruelty investigators (!).<sup>97</sup>

While the laudable goal of these state efforts to regulate puppy mills may have been motivated by concern about the inhumane treatment of the living machines that are prisoners of these enterprises, there have consistently been two fundamental problems.

The first, of course, is that every one of these statutes, those enacted and proposed, have been satisfied to *regulate* rather than *abolish* the mass commercial breeding of dogs.

ISAR categorically rejects the premise that soft *regulation* of that dirty business is a step in the direction of ultimate abolition, because the existing and proposed statutes contain so many exemptions, and the breeders so easily escape surveillance and compliance, that the laws are of little, if any, effect. Indeed, they are counter productive, because under the camouflage of regulation, of appearing to have the factory-like mass breeding of dogs and production of puppies “under control,” the politicians and too many of the public are lulled into the false sense of security that nothing is “really wrong.”

ISAR’s extensive research into this subject has found no attempt on a state level to ban entirely the business of commercial dog breeding—which is our ultimate goal.

### **The Petland case and the torturous road of litigation.**

As a result of HSUS’s groundbreaking investigations into puppy mills, to the organization’s everlasting credit it engineered a class action lawsuit, referred to above, which was brought in the spring of 2009 against Petland, Hunte Corporation, and various unnamed corporations and individuals. The *Martinelli* case was brought in the United States District Court for the District of Arizona, where it is now pending.

The plaintiffs are six individuals who have sued on behalf of themselves and unnamed others who suffered the same kind of damage caused by the defendants’ fraudulent sale of puppy mill dogs purportedly not from that source, who were, or became, seriously ill and even died.

The defendants are corporations (and perhaps, ultimately, individuals) engaged in the puppy mill trade.

The facts pleaded by the plaintiffs regarding the reality of their puppies’ production, descriptions of puppy mills, and the illnesses and death that befell their pets, is, to say the least, heart wrenching. Indeed, even those hardened to the endless stories of animal abuse must necessarily be emotionally overwhelmed.

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<sup>97</sup> Beth Walton, *Animal Activists Target Puppy Mills Across the State*, City Pages, Jan. 14, 2009, available at <http://www.citypages.com/>.

Based on those facts, the *Petland* plaintiffs have asserted that it is appropriate for the court to certify their case as a class action, the class being defined in their complaint as “All persons who purchased a puppy from a Petland retail store since November 20, 2004. Excluded [for obvious reasons] from the class are any defendants, their respective parents, employees, subsidiaries and affiliates, and all government entities.”

In addition to making the boiler-plate allegations required by the federal class action statute—e.g., common questions of law and fact, too many injured parties to make individual lawsuits practical, geographical problems in getting all potential plaintiffs before the same court—the plaintiffs pleaded that their situation was shared by “tens of thousands of consumers who purchased puppy mill puppies from Petland retail locations across the nation.”

Based on the extensive facts alleged in the complaint, the plaintiffs alleged violation of several federal and state laws. One is the famous federal Racketeer Influenced and Corrupt Organizations Act (“RICO”). Another is violation of multi-state consumer protection laws, and specifically Ohio’s Consumer Sales Practices Act. Yet another claim is cleverly based in the non-statutory law of “unjust enrichment,” which seeks “the disgorgement and restitution of defendants’ wrongful profits, wrongful commissions, revenue and benefits. . . .”

If plaintiffs prove their case, the relief they seek is “A judgment awarding Plaintiffs and each member of the class a full refund of all monies paid for their puppies, along with consequential damages resulting from Defendants’ fraudulent conduct, interest thereon and any amount by which Defendants have been unjustly enriched, plus treble damages, and any additional relief to which they may be entitled under state consumer protections laws. . . .”

But the plaintiffs are still not finished with what they want from the Defendants. They seek also “An order awarding Plaintiffs and the class their costs of suit, including reasonable attorneys’ fees and expenses. . . .”

And, “A declaratory judgment that Defendants’ conduct constitutes unfair, deceptive or unconscionable sales practices. . . .”

In sum, the HSUS case against the puppy mill trade seeks nothing less than putting Petland, Hunte and its aiders and abettor and co-conspirator out of business. This is a long overdue, noble goal.

Although the case has been adequately financed, well conceived, smartly structured and carefully pleaded, there are two concerns.

One is that, like virtually every class action, it will be settled short of ending what is a, if not *the*, worst puppy mill atrocity in the United States. One hopes that HSUS will not falter, and instead will stay with the case until the defendants and their accomplices are

crushed. Pursuing that goal, ironically, gives rise to the second concern: how long litigation takes.

The case was brought in March 2009. A few months later, the trial judge dismissed the complaint, allowing plaintiffs to file an amended version, because of a perceived lack of specificity in how their fraud allegations were pleaded. That has been done, and the first amended complaint was filed early in September 2009. Six months after the case began.

Defendants, who have time on their side while they continue to crank out more and more puppies, may move again against the first amended complaint. And so it goes.

When the motions directed to the plaintiffs' complaint and the defendants' answer (and perhaps counterclaim) are over, then the discovery process begins: mutual depositions, production of documents—with still more motions directed to that stage of the case.

When all that is finished, a trial date will be set. But this civil case will take a back seat to the criminal cases that must be tried in Arizona, many arising from the drug trade and illegal immigration traffic.

Let anyone conclude that because of these serious problems with the litigation process itself ISAR thinks less of HSUS's stalwartness in bringing the case, we want to make it clear that just the opposite is true. The *Martinelli* case is a landmark attempt to attack and destroy the puppy mill business, and as such it is to be applauded.

Indeed, *and this is a crucially important* point, the case's complaint is a template for others who would bring similar cases against other breeders, puppy mills, facilitators, and commercial retail sellers of puppies. Essentially, *other lawyers need only plead similar facts pertaining to other plaintiffs, invoke the same statutes, and seek the same relief against other defendants*. ISAR doesn't know whether that was HSUS's intention, but thanks to its efforts the template now exists.

While it is true, as we've said above, that litigation takes time, still, it has its value—as does the model legislation we present in Chapter 5 below.

## 2. **FACILITATORS**

### **ISAR definition.**

Between the breeders and the commercial retail sales outlets there exists a pipeline of individuals and entities which, in one way or another, deal in the purchase and sale of dogs. ISAR's analysis of the problem which our Model Statute addresses has required us to use the broadest definition possible, in order to catch within our net everyone who plays a role in this nefarious dog trade. Hence, as noted above, we have labeled these individuals and entities "facilitators" and defined them as:

Any person or legal entity, not a breeder, seller, sales outlet or purchaser as defined herein, who acts as a broker, dealer, wholesaler, agent, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership, custody or control of dogs, whether or not such animals are in the custody or control of the facilitator at the time of transfer.

### **USDA definition.**

APHIS, a division of the USDA groups “pet wholesalers” and “animal brokers” under the heading of “dealers.” Pet wholesalers are defined as “anyone importing, buying, selling, or trading pets in wholesale channels.”<sup>98</sup> Animal brokers are defined as “anyone who deals in regulated animals but does not take physical possession.”<sup>99</sup> Both pet wholesalers and animal brokers are required to be licensed by USDA.<sup>100</sup> HSUS defines brokers as those who purchase dogs from puppy mills and kennels and then resell them to retail pet stores.<sup>101</sup>

The term “facilitator” as used in ISAR’s Model Statute is intended to include all of the persons and entities described above.

### **Examples of facilitators.**

Examples of facilitators are the notorious Missouri puppy broker and *Petland* case defendant, Hunte Corporation, which sells the staggering number of some 80,000 puppies a year, which are produced at hundreds of kennels and puppy mills, and Lambriar, Inc., which sells thousands of puppies each year, produced in dozens of kennels and puppy mills in Missouri, Oklahoma, Iowa, South Dakota, Kansas and other states.<sup>102</sup>

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<sup>98</sup> *Licensing and Registration Under the Animal Welfare Act*, USDA, available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/aw/awlicreg.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/aw/awlicreg.pdf) (last visited Sept. 20, 2009).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *More on How Petland Continues to Support Cruel Puppy Mills*, HSUS, Jun. 29, 2009, available at <http://www.hsus.org/pets/>.

<sup>102</sup> *Petland in Pennsylvania*, HSUS, available at, <http://www.stoppupmills.org/pdfs/petland-stores/petland-store-sources-pennsylvania.pdf> (last visited Sept. 20, 2009).

### **3.** **RETAIL SELLERS**

#### **Introduction.**

It is a sad reality that many individuals and families when deciding to bring a pet into their home think first, and only, of pet stores or other commercial retail sales outlets as the places to acquire a dog. These commercial retail sales outlets, whether superstores or small local shops, vary wildly in the sources of their dogs. Once the animals arrive at the stores, their quality of the onsite treatment, housing and living conditions similarly vary.

#### **State laws.**

Current state laws—there are no federal laws— regarding the commercial retail sale of dogs differ greatly in terms of coverage and enforcement.<sup>103</sup> As of late 2008, fifteen states had no laws of any kind regulating commercial retail sales outlets.<sup>104</sup> The major variance between states that do regulate commercial retail sales outlets is the level of specificity.

Of those states that do have regulations, several, such as Arizona and Indiana, only provide the most basic kennel restrictions and enforcement guidelines. And some states, such as Ohio, only have statutes detailing with the administration and collection of licensing fees, with no specific standards as to treatment, housing, transportation, living conditions and sale of dogs.

While animal shelters generally focus primarily on the adoption of local, and perhaps regional, dogs, commercial retail outlets regularly receive their dogs from out of state— dogs which have been transported in, and are part of, interstate commerce—and even dogs which have been transported internationally.

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<sup>103</sup> A good breakdown of current state pet store laws is found at [www.tulsaworld.com/webextra/content/2007/pupmillsite/Puppy Mill Laws by state.pdf](http://www.tulsaworld.com/webextra/content/2007/pupmillsite/Puppy_Mill_Laws_by_state.pdf) (last visited Oct. 26, 2008). Note, though, that many statute citations are incorrect or incomplete, and the list is only current through August 2007. For example, the Virginia pet store regulations have since been repealed.

<sup>104</sup> Ashley Duncan, *Detailed Discussion of Retail Pet Stores*, Animal Legal & Historical Center, Aug. 2006, available at <http://www.animallaw.info/articles/>.



The latter kind of long-distance, high-density travel is extremely stressful on dogs, and usually leads to a myriad of health problems. Death from stress, respiratory complications, and other maladies is common. Shippers, dealers and brokers of these dogs blame veterinarians or owners, but never themselves.<sup>105</sup> In an effort to deal with these problems, patrons of commercial retail sales outlets have begun rallying for tighter restrictions to protect the health of these dogs during travel, which is their most susceptible period.<sup>106</sup> However, these calls for reform have been met with indifference, even resistance by commercial retail sales outlets. Again, reform has not come, nor will it ever come, voluntarily. It must come through coercive laws.

Most states require commercial retail sales outlets to record basic data relating to individual dogs, such as the dates of acquisition and sale of each animal, the animals' identification numbers, the breeder's name and contact information. Also, the purchaser's name and contact information.<sup>107</sup> Generally, the commercial retail sales outlets must keep such information on file for at least one year to facilitate inspections.

The level of specificity in statutory language can make a substantial difference in how protective a statute is in reality. States like California provide extremely specific regulations as to how animals must be housed and treated while resident in commercial retail sales outlets.

Other states, such as Connecticut, require only that dogs be treated "humanely," with no further definition. Commercial retail sales outlets have a very different perception from the general public as to what constitutes humane treatment. Some states, such as Maryland, barely provide any protection at all, outside of prohibiting "cruel" treatment. Indiana, in fact, has actually repealed laws concerning licensing pet stores and kennels, retaining language allowing only for taxation of such facilities.

Some states provide only rudimentary standards, such as certain types of enclosures. For example, New York statutes only require "adequate" amounts of food, water, and ventilation. Other states, such as Nevada, have very specific and well-defined standards, requiring specific amounts of food, water and ventilation. While commercial retail sales outlets may object to such well-defined standards as being too onerous or complex, these

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<sup>105</sup> Pete Keesling, *Readers Respond to "Healthy Pets" Legislation*, The Gilroy Dispatch (Cal.), Oct. 1, 2008, available at <http://www.gilroydispatch.com/lifestyles/249009-readers-respond-to-healthy-pets-legislation>.

<sup>106</sup> *Pet Store Customers Call for Tougher Laws*, WFSB (Conn.), available at <http://www.wfsb.com/iteam/16356958/detail.html> (last visited Oct. 26, 2008); *Latest News*, New Jersey Consumers Against Pet Shop Abuse, available at <http://www.njcapsa.org/> (last visited Oct. 26, 2008).

<sup>107</sup> *The Current State of Pet Shop Laws*, Born Free USA, available at <http://www.api4animals.org/> last visited Oct. 26, 2008).

statutes in providing for more objective standards enable enforcement officials to more easily ascertain compliance or non-compliance.

Addressing the current national scourge of dog overpopulation is something which only some states address in their laws. While most states or localities with commercial retail sales outlet statutes or ordinances require all dogs sold to be neutered, a few, such as Maine, only require a nominal surcharge (\$25) when an unneutered dog is sold.

Despite the unfortunate nomenclature that likens the sale of dogs to inanimate objects such as used cars, some jurisdictions have enacted so-called “Lemon Laws” to protect the purchasers of dogs from commercial retail sales outlets. The well-meaning intention of these “Lemon Laws” is to prevent the sale to an unaware purchaser of dogs with undisclosed health problems.

Dog Lemon Laws allow purchasers to return dogs within a certain period of time (between two weeks and two years, depending on the state) for a full refund if a disease or injury is found. These Lemon Law provisions are only found in about a dozen states.<sup>108</sup> However, even in states lacking Lemon Laws, the state Attorney General or the State Department of Consumer Affairs may have jurisdiction to impose penalties on commercial retail sales outlets of dogs.<sup>109</sup>

Fines also vary wildly between states. In Rhode Island, a commercial retail sales outlet operating without a license only faces a \$50 fine for a first-time offense. However, many other states allow for fines up to \$1,000 for violations, regardless of the scope or nature of the offense.

More stringent protections on the retail level for dogs continue to be introduced in state legislatures.<sup>110</sup> In particular, protections for consumers who purchase dogs who are sick, injured, or congenitally ill, the Lemon Laws mentioned above, appear to be gaining in popularity. The introduction of such laws may put pressure on commercial retail sales outlets to not only improve conditions on their premises, but also to refrain from using suppliers, such as large-scale puppy mills, with track records of providing unhealthy animals caused by inbreeding, disease, and inhumane living conditions.

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<sup>108</sup> *Lemon Laws and Consumer Protection Laws*, Companion Animals Protection Society, available at [http://www.caps-web.org/laws\\_legislation.php](http://www.caps-web.org/laws_legislation.php) (last visited Oct. 26, 2008).

<sup>109</sup> *The Current State of Pet Shop Laws*, Born Free USA, available at <http://www.api4animals.org/> (last visited Oct. 25, 2008).

<sup>110</sup> A good resource cataloging recent proposed animal welfare legislation, including pet store regulations, can be found at Born Free USA, *2008 State Legislation*, [http://www.api4animals.org/legislation\\_archive\\_state\\_map.php](http://www.api4animals.org/legislation_archive_state_map.php) (last visited Oct. 26, 2008).

The movement toward commercial retail sales outlet laws that are more protective of dogs is an international one. Australia has introduced legislation to increase penalties against businesses found engaged in animal cruelty, including issuing on-the-spot fines. The country also has proposed a three-day “cooling off” period for the purchase of dogs, and a prohibition on sales to minors, in order to reduce “impulse buys” of animals that people cannot adequately provide for.<sup>111</sup> Belgium and Croatia have placed an outright ban on the sale of dogs at commercial retail sales outlets, and the Australian state of New South Wales is considering a similar ban. The New South Wales legislation would allow the sale of dogs, cats, and other mammals only by registered breeders, shelters, and veterinarians.<sup>112</sup> At least one legislator in the country has gone so far as to propose banning commercial retail outlets altogether, due to the extensive abuse that occurs.<sup>113</sup>

Looking at this international movement toward increased regulation, and even prohibition, of commercial retail outlet sales of dogs, it is apparent that the United States lags behind most other countries. As that trend continues to grow, international pressure may result in state governments, and perhaps even the federal government, reexamining their own statutory schemes. *But neither the animals, nor we, can wait for that to happen.*

Unsurprisingly, there are powerful opponents to these commercial retail outlet laws, particularly pet store operators such as Petland and breeder organizations such as the American Kennel Club. They often cite potential lost profits which could result from putting resources into investigating suppliers’ conditions, or being more choosy about from whom they receive animals.<sup>114</sup>

However, not all commercial retail outlets have resisted these laws. Some have willingly consented to regulations which require monitoring of record-keeping and physical conditions.<sup>115</sup> But because the overall industry is not willing to self-discipline, it will take tougher regulations, as well as increased consumer awareness of the problems, for the industry to move towards greater protections for dogs sold at commercial retail sales

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<sup>111</sup> Lauren Williams, *Dodgy Pet Shops Face Tough New Penalties*, The Daily Telegraph (Australia), Sept. 11, 2008, available at <http://www.news.com.au/>.

<sup>112</sup> Laura Allen, *An Idea Whose Time Has Come: Banning the Sale of Dogs and Cats by Pet Stores*, Animal Law Coalition, Oct. 19, 2007, available at <http://www.animallawcoalition.com/>.

<sup>113</sup> *Id.*

<sup>114</sup> Pete Keesling, *Readers Respond to “Healthy Pets” Legislation*, The Gilroy Dispatch (Cal.), Oct. 1, 2008, available at <http://www.gilroydispatch.com/lifestyles/249009-readers-respond-to-healthy-pets-legislation>.

<sup>115</sup> Justin Herndon, *State Inspectors Check Out Pet Stores Ahead of the Holidays*, WINK (Fla.), Dec. 7, 2007, available at <http://www.winknews.com>.

outlets. Since that does not seem to be forthcoming, they will have to be forced, by strict laws, to act differently.

Regardless of the regulations in place, the unfortunate reality is that animal protection enforcement agencies are woefully understaffed throughout the United States, all the more now as a result of the dire economic situation that confronts the United States.

Even so, there are still methods available for those purchasing dogs from commercial retail sales outlets to investigate whether they originated from a puppy mill. For example, the website “[petshoppuppies.org](http://petshoppuppies.org)” allows purchasers to run free “puppy reports” to determine the source of the puppy.<sup>116</sup> There are additional avenues for those who want to obtain USDA or state reports.<sup>117</sup> Also, if customers witness abuse or neglect of dogs at commercial retail sales outlets but are unsure about what to do, there are internet resources to assist with documenting and submitting reports.<sup>118</sup>

#### 4.

#### **CONSTITUTIONALITY OF REGULATING DOG BREEDING AND SALES**

Various levels of government throughout the United States are today increasingly enacting laws that severely restrict, or even prohibit, the breeding and owning of dogs; some of these laws are breed-specific, some apply generally. Communities located in some thirty-eight states have passed breed-specific legislation.<sup>119</sup>

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<sup>116</sup> *Pet Shop Puppy Request Form*, PetShopPuppies.org, available at <http://www.petshoppuppies.com/request.asp> (last visited Oct. 26, 2008).

<sup>117</sup> *How To Find Out More About Your Puppy’s Breeder*, PetStoreCruelty, available at <http://www.petstorecruelty.org/> (last visited Oct. 26, 2008). Members of the public can view Inspection Reports on Class A (breeder) and B (dealer) license holders on the USDA, Animal & Plant Health Inspection Service (APHIS) website.

<sup>118</sup> *Reporting Pet Store Abuse & Neglect*, Pet-Abuse, available at [http://www.pet-abuse.com/pages/animal\\_cruelty/reporting\\_abuse/pet\\_stores.php](http://www.pet-abuse.com/pages/animal_cruelty/reporting_abuse/pet_stores.php) (last visited Oct. 26, 2008); *Pet Store Complaint Form*, Companion Animal Protection Society, available at [http://www.caps-web.org/complaint\\_form.php](http://www.caps-web.org/complaint_form.php) (last visited Oct. 26, 2008).

<sup>119</sup> *BSL Locations*, American Dog Owners Assoc., May 20, 2008, available at [http://www.adoa.org/index.php?option=com\\_content&view=article&id=116&Itemid=66](http://www.adoa.org/index.php?option=com_content&view=article&id=116&Itemid=66). For example, Fairfield, Iowa’s Ordinance No.999, Section II, 6.14.70. Dangerous Animals, includes: “l. Doberman Pincher; m. Pit Bull Terrier, American Pit Bull, Staffordshire Terrier, or any other dog whose appearance and characteristic of breed is commonly regarded as Pit Bull, Pit Bull Dog, or Pit Bull Terrier or a combination of such breeds; n. Rottweiler; o. German Shepherd; p. Belgian Malinois; q. Siberian Huskies; r. Malamutes; s. Dogs that by size present control concerns including Great Danes, Wolfhounds, Deerhounds, Mastiffs, Boerboels and other dogs weighing in excess of 100 pounds.” These dogs are not allowed in Fairfield, subject

There is, of course, substantial opposition to these types of laws, especially from organizations such as the American Kennel Club, which have a huge financial stake in the breeding of dogs. Among their many other arguments against anti-breeding laws, opponents claim they are unconstitutional.

They are not.

Categorically, a law which regulates breeders, facilitators and commercial retail sales outlets of dogs will pass muster under federal and state constitutions *even if they are severely restrictive, as is ISAR's Model Statute*. Doubters need only consider how constitutional challenges to other animal protection laws have been unsuccessful.

Because Part I of ISAR's Model Statute is directed at strictly regulating all breeders, and especially puppy mills, which are in reality nothing more than dog breeding factories, an examination of anti-breeding laws will illustrate why there is no constitutional problem.

Important to the question of constitutionality is the "Declaration of Intent" found in typical anti-breeding laws. For example: "The Board of Supervisors of the Town of Wherever hereby finds and declares that it intends to provide for the *public, health safety, and welfare*, by imposing a moratorium on the breeding of dogs owned, harbored, or kept in this municipality in order to bring the population of abandoned and stray animals to an acceptable level."

To understand why anti-breeding laws motivated by this kind of intent will be held constitutional, it is necessary first to understand something about the American system of government.

When the United States was founded, the Constitution created a new *federal* government possessing substantial power. Concern was expressed about whether any power was left to the states. To address that concern, the Tenth Amendment to the federal Constitution reserved to the states what is commonly referred to as the "police power"—not in the sense of law enforcement, but rather the power to legislate for the public's health, safety, welfare and morals.

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to certain limited exceptions. Proposed legislation in the District of Columbia would "amend the Animal Control Act of 1979 to prohibit the importation, possession, displaying, selling, trading, bartering, exchanging, adoption, or giving of pit bulls in the District of Columbia; to require present owners of pit bulls to comply with certain standards and requirements and to take certain protective measures when the pit bull is on public space; to provide penalties for injury or death caused by pit bulls." See <http://www.dccouncil.washington.dc.us/images/00001/20090109111732.pdf>. See also [http://www.arottalove.org/docs/BSL\\_Citizen\\_Packet\\_FINAL.pdf](http://www.arottalove.org/docs/BSL_Citizen_Packet_FINAL.pdf).

All state constitutions, in turn, delegate its police power from the state to various municipalities—e.g., cities, counties, towns, villages—which gives the latter power to pass laws related to the public health, safety, welfare and morals.

But those laws, like all legislative enactments made at every level of government—federal, state, municipal—must pass the test of constitutionality.

Laws affecting rights so fundamental that they are *expressly* protected by the federal and state constitutions – e.g., speech, press, religion—are tested by a very strict standard. In effect, laws affecting these kinds of fundamental rights (e.g., censoring media reporting, regulating church services) must advance an extremely important (i.e., “compelling”) governmental interest (e.g., not exposing the coming D-Day invasion), and be virtually the only way to accomplish that goal.

On the other hand, laws not affecting such fundamental rights are measured for constitutionality by a much less demanding test: Is there a problem properly within the government’s area of concern (e.g. teenage driving), and is the enacted law (e.g. requiring twenty-hours of classes and road testing) a rational way to deal with that problem? Put another way, the legislation must address legitimate “ends” and employ reasonable “means.”

Since laws restricting breeding and selling of dogs do not affect any fundamental rights, they are tested by this lesser, “rational relation” standard.

Clearly, the number of unwanted dogs causes significant social problems: senseless and often brutal killing, health risks, wasted taxes, and more. Clearly, these problems raise important issues of public health, safety, welfare—and even morals. In other words, from a constitutional perspective, the “end” of anti-breeding laws is entirely legitimate.

The next question, thus, is one of “means”: Is breeding, facilitation and sales regulation a reasonable way to deal with the problems?

The “practical” answer is obvious: If there are too many unwanted dogs, it’s certainly reasonable to prevent the breeding of any more in order to prevent the overpopulation from growing, allowing normal attrition to reduce the existing numbers.

The more basic answer is that the overpopulation problem is a moral and humane outrage. Government has the constitutional *power* and the moral *duty* to solve it—to alleviate, if not eliminate, visiting the sins of irresponsible breeders, facilitators and commercial retail sales outlets on innocent animals.

As the Supreme Judicial Court of Massachusetts opined as long ago as 1931, “[t]he natural, essential, and unalienable rights of men to acquire, possess and protect property are subject to reasonable regulation in the interest of public health, safety and morals.” Indeed, a wide variety of statutes and ordinances affecting animals in general and dogs in

particular (who are still considered by the law to be mere “property”) have been upheld against constitutional challenge.

ISAR has been down this road before, with our Model Mandatory Spay/Neuter Statute. Abundant examples of animal protection laws which have been held constitutional on the federal, state, and municipal levels appear at [http://house.ethersense.com/~isaronline/wp-content/uploads/2015/01/constitutionality\\_of\\_mandatory\\_sn\\_statutes.pdf](http://house.ethersense.com/~isaronline/wp-content/uploads/2015/01/constitutionality_of_mandatory_sn_statutes.pdf).

In sum, Congress has prohibited hunting animals from the air, regulated animal performances, limited the number of lobsters that can be taken, protected eagles, shielded endangered and threatened species, enforced humane slaughter methods, exerted control over wild horses and burros—and every constitutional challenge against this and other federal, legislation has failed.

States have legislated concerning animals on a variety of topics: fighting, licensing, taxation, regulation of dealers, public sanitation, running at large, number and breed restrictions—and in case after case the statutes have been upheld against substantive constitutional challenges.

Municipalities have enacted ordinances dealing with the number of animals that can be owned, the areas they can be kept, the species and breeds they can be; the impounding of animals and how they are to be disposed of; the possession of dangerous and exotic animals; the rules by which shelters must operate—and, just as with state statutes, these and similar municipal ordinances have been consistently upheld against substantive constitutional challenges.

Moreover, not only have states and municipalities each enacted animal protection legislation, but under the constitutional “preemption doctrine” in virtually all cases the courts have allowed the statutes and ordinances to coexist—thus providing two governmental layers of laws benefiting animals.

The significance of the federal, state and municipal laws just surveyed for anti-breeder, facilitator and commercial retail sales outlet laws which might be faced with constitutional challenges is unmistakable: if those laws serve the public health, safety, welfare or morals, they will always survive constitutional scrutiny.

## 5.

### **ISAR’S MODEL STATUTE REGULATING DOG BREEDING, FACILITATING AND SALES**

#### **Animal Welfare Act.**

The AWA is, in the main, a federal regulatory law which seeks to control who may possess or sell certain animals and the living conditions (for non-agricultural, domestic

animals) under which the animals must be kept. The law provides for criminal penalties, civil penalties and revocation of licenses for violations of the act.

In that respect, the Animal Welfare Act has a much longer reach than regulating merely the conduct of dog breeders and those who facilitate sales, which, along with the conduct of commercial retail sales outlets (excluded from the act's coverage) is solely what ISAR's Model Statute is exclusively concerned with. While there is much commendable about the AWA, shortcomings in its coverage and USDA's often immoral and scandalous indifference to, and inept discharge of, its statutorily mandated regulatory tasks has for decades left the canine prisoners of breeders, facilitators and commercial retail sales outlets to suffer in silence while enduring unspeakable suffering.

The following indented text is an edited version of the AWA from which all references to non-dog breeders and facilitators have been removed. What remains, then, is the AWA as it pertains to dogs.<sup>120</sup> Unsatisfactory provisions are indicated by italics; those which might advance the goal of ISAR's Model Statute are underlined, though such provisions, as written, may not be acceptable to ISAR.<sup>121</sup>

#### Section 2131. Congressional statement of policy [Sec. 1]

The Congress finds that [dogs] and activities which are regulated under this Act are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of [dogs] and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order--

(1) to insure that [dogs] intended for . . . use as pets are provided humane care and treatment;

(2) to assure the humane treatment of [dogs] during transportation in commerce;  
and

The Congress further finds that it is essential to regulate, as provided in this Act, the transportation, purchase, sale, housing, care, handling, and treatment of [dogs] by carriers or by persons or organizations engaged in . . . holding them for sale as pets. . . .”

#### Section 2132. Definitions [Sec. 2]

When used in this chapter--

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<sup>120</sup> All of the following text which appears under section headings is quoted from the Animal Welfare Act.

<sup>121</sup> Text appearing in brackets has been added by the author.



(f) *The term "dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog . . . [for] use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include--*

(i) a retail pet store. . . . ; or

(ii) any person who does not sell, or negotiate the purchase or sale of any . . . dog . . . and who derives no more than \$500 gross income from the sale of other animals during any calendar year;

(g) The term "animal" means . . . all dogs including those used for hunting, security, or breeding purposes;

(i) The term "intermediate handler" means any person including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer . . . any person excluded from the definition of a dealer, . . . an operator of an auction sale, or a carrier) who is engaged in any business in which he receives custody of [dogs] in connection with their transportation in commerce;

(h) The term "carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise, which is engaged in the business of transporting [dogs] for hire;

Section 2133. Licensing of dealers . . . . [Sec. 3]

The Secretary shall issue licenses to dealers . . . upon application therefore in such form and manner as he may prescribe and upon payment of such fee established pursuant to section 23 of this Act: Provided, That no such license shall be issued until the dealer . . . shall have demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to section 13 of this Act: Provided, however, That any retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs . . . on his own premises and sells any such dog . . . to a dealer or research facility shall not be required to obtain a license as a dealer . . . under this Act. The Secretary is further authorized to license, as dealers . . . , *persons who do not qualify as dealers . . .* within the meaning of this Act upon such persons' complying with the requirements specified above and agreeing, in writing, to comply with all the requirements of this Act and the regulations promulgated by the Secretary hereunder.

Section 2134. Valid license for dealers . . . required [Sec. 4]

No dealer . . . shall sell or offer to sell or transport or offer for transportation, in commerce . . . for use as a pet any [dog], or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer . . . under this Act any [dog], unless and until such dealer . . . shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

Section 2135. Time period for disposal of dogs or cats by dealers . . . . [Sec. 5]

No dealer . . . shall sell or otherwise dispose of any dog . . . within a period of five business days after the acquisition of such animal or within such other period as may be specified by the Secretary: Provided, that operators of auction sales subject to section 12 of this Act *shall not be required to comply* with the provisions of this section.

Section 2140. Recordkeeping by dealers . . . . [Sec. 10]

Dealers . . . shall make and retain for such reasonable period of time as the Secretary may prescribe, such records with respect to the purchase, sale, transportation, identification, and previous ownership of [dogs] as the Secretary may prescribe.

Section 2141. Marking and identification of [dogs] [Sec. 11]

All [dogs] delivered for transportation, transported, purchased, or sold, in commerce, by a dealer . . . shall be marked or identified at such time and in such manner as the Secretary may prescribe . . . .

Section 2142. Humane standards and recordkeeping requirements. . . . [Sec. 12]

The Secretary is authorized to promulgate humane standards and recordkeeping requirements governing the purchase, handling, or sale of [dogs], in commerce, by dealers . . . at auction sales and by the operators of such auction sales. The Secretary is also authorized to require the licensing of operators of auction sales where any dogs . . . are sold, in commerce, under such conditions as he may prescribe, and upon payment of such fee as prescribed by the Secretary under section 23 of this Act.

Section 2143. Humane standards for [dogs] transported in commerce [Sec. 13]

(a) Promulgation of standards, rules, regulations, and orders; research facilities; State authority.

(1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of [dogs] by dealers. . . .

(2) The standards described in paragraph (1) shall include minimum requirements--

(A) for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of [dogs]; and

(B) for exercise of dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the Secretary. . . .

(3) The Secretary shall also promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by intermediate handlers, air carriers, or other carriers, of [dogs] consigned by any dealer . . . operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or of any State or local government, for transportation in commerce. The Secretary shall have authority to promulgate such rules and regulations as he determines necessary to assure humane treatment of [dogs] in the course of their transportation in commerce including requirements such as those with respect to containers, feed, water, rest, ventilation, temperature, and handling.

Section 2146. Administration and enforcement by Secretary [Sec. 16]

(a) Investigations and inspections. The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer . . . intermediate handler, carrier . . . or operator of an auction sale subject to section 12 of this Act, has violated or is violating any provision of this Act or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, [dogs], and those records required to be kept pursuant to section 10 of any such dealer . . . intermediate handler, carrier . . . or operator of an auction sale.

The Secretary shall inspect each research facility *at least once each year* and, in the case of deficiencies or deviations from the standards promulgated under this Act, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected. The Secretary shall promulgate such rules and regulations as he deems necessary to permit inspectors to confiscate or destroy in a humane manner any [dog] found to be suffering as a result of a failure to comply with any provision of this Act or any regulation or standard issued thereunder if (1) such [dog] is held by a dealer . . . (4) such [dog]

is held by an operator of an auction sale, or (5) such [dog] is held by an intermediate handler or a carrier.

(b) Penalties for interfering with official duties. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than \$5,000, or imprisoned not more than three years, or both.

Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under sections 1111 and 1114 of title 18, United States Code.

(c) Procedures. For the efficient administration and enforcement of this Act and the regulations and standards promulgated under this Act the provisions (including penalties) of sections 6, 8, 9, and 10 of the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September 26, 1914 . . . and the provisions of Title II of the “Organized Crime Control Act of 1970” . . . are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this Act and to any person, firm, or corporation with respect to whom such authority is exercised.

The Secretary may prosecute any inquiry necessary to his duties under this Act in any part of the United States, including any territory, or possession thereof, the District of Columbia, or the Commonwealth of Puerto Rico.

#### Section 2149. Violations by licensees [Sec. 19]

(a) Temporary license suspension; notice and hearing; revocation. If the Secretary has reason to believe that any person licensed as a dealer . . . or operator of an auction sale subject to section 12 of this Act, has violated or is violating any provision of this Act, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order. Any dealer . . . intermediate handler,

carrier, or operator of an auction sale subject to section 12 of this Act, that violates any provision of this Act, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation.

Each violation and each day during which a violation continues shall be a separate offense.

No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals.

The Secretary shall give due consideration to the *appropriateness of the penalty* with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations.

Any such *civil penalty may be compromised* by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals. Any dealer . . . intermediate handler, carrier, or operator of an auction sale subject to section 12 of this Act, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of section 2341, 2343 through 2350 of title 28, United States Code, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

(d) Criminal penalties for violation; initial prosecution brought before United States magistrates; conduct of prosecution by attorneys of United States Department of Agriculture. Any dealer, exhibitor, or operator of an auction sale subject to section 12 of this Act, who knowingly violates any provision of this Act

shall, on conviction thereof, be subject to imprisonment for *not more than* 1 year, or a fine of not more than \$2,500, or both.

Prosecution of such violations shall, to the maximum extent practicable, be brought initially before United States magistrates . . . as provided in section 636 of title 28, United States Code, and sections 3401 and 3402 of title 18, United States Code, and, with the consent of the Attorney General, may be conducted, at both trial and upon appeal to district court, by attorneys of the United States Department of Agriculture.

Section 2159. Authority to apply for injunctions [Sec. 29]

(a) Request. Whenever the Secretary has reason to believe that any dealer, carrier or intermediate handler is . . . placing the health of any [dog] in serious danger in violation of this Act or the regulations or standards promulgated thereunder, the Secretary shall notify the Attorney General [of the United States], who may apply to the United States district court in which such dealer, carrier . . . or intermediate handler resides or conducts business for a temporary restraining order or injunction to prevent any such person from operating in violation of this Act or the regulations and standards prescribed under this Act.

(b) Issuance. The court shall, upon a proper showing, issue a temporary restraining order or injunction under subsection (a) *without bond*. Such injunction or order shall remain in effect until a complaint pursuant to section 19 . . . is issued and dismissed by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective or is set aside on appellate review.

Attorneys of the Department of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action brought under this section.

It should be plain that from ISAR's perspective of *diminishing, if not eliminating, the businesses of most breeders, facilitators and commercial retail sales outlets rather than continuing to countenance their activities*, the Animal Welfare Act contains several strong provisions, but others that are considerably weaker.

Worse even than the weak provisions is that the Act itself is only part of the regulatory story. The actual, day-by-day provisions governing APHIS's oversight of breeders and facilitators, *such as it is*, appears not in the statute itself, but in the myriad regulations which USDA has the power to issue. For example, as the Animal Law Coalition wrote in 2007,

The Animal Welfare Act (AWA) and the U.S. Department of Agriculture regulations establish licensing requirements and provide rules for identification of

animals, inspections, record keeping, and staffing. (9 C.F.R. 1.1-3.19<sup>[122]</sup>) There are certain standards that are described in the regulations for the care of animals at the breeder's facility and during transport.

For example, breeders are required to provide adequate veterinary care and even observe the animals daily. (9 C.F.R. 2.40) The regulations state housing must be sanitary and in good repair with surfaces that can be cleaned and are impervious to moisture. (9 C.F. R. 3.1, 3.2, 3.3, 3.4, 3.11) The area where the animal is housed is required to be kept dry and cleaned of waste once each day. (9 C.F.R. 3.11) But the regulations permit animals to live in cages with pans or areas underneath to catch waste. These pans or areas must be cleaned “as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects and odors.” (9 C.F.R. 3.11) There are also requirements for adequate ventilation, lighting and protection from extremes of temperature. (9 C.F.R. 3.2, 3.3, 3.4)

It is required that breeders “[p]rovide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner.” (9 C.F.R. 3.6) Each dog must be provided with space calculated by dividing the mathematical square of the length of the dog plus 6 inches by 144. (9 C.F.R. 3.6(c(1))) There must also be 6 inches of space above the dog's head. Simply put, a dog that is 40 inches long must be given 14.69 square feet of space.

The regulations require each dog must be provided with regular exercise. (9 C.F.R. 3.8) Curiously, exercise may be provided, however, by putting a dog in group housing even in a cage as long as it provides at least 100 percent of the required space for each dog. That means if a dog that is 40 inches long is put with other dogs in a cage with 215.92 square feet of space, according to the USDA it has been provided with exercise. Alternatively, the exercise requirement may be met by housing the dog alone in a cage with about 29 square feet of space.

There are requirements for providing clean, wholesome, nutritious food in sufficient quantities to animals at least once a day. (9 C.F. R. 3.9) Potable water in clean bowls must be provided not less than twice each day for an hour on each occasion. (9 C.F. R. 3.10)

The USDA regulations are enforced by the Animal and Plant Health Inspection Service (APHIS). The standards required, however, are minimal; the regulations require no more care than necessary to keep animals breeding. To some extent difficult to enforce because they are vague. The APHIS Animal Care inspectors are very understaffed and overworked.

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<sup>122</sup> “C.F.R.” refers to the federal Code of Federal Regulations.

There are less than 100 inspectors for the thousands of breeders and dealers along with the other facilities APHIS monitors, i.e., exhibitions, circuses, and research facilities. APHIS' approach has been to encourage compliance and not penalize or shut down mill operations.

Moreover, the USDA has interpreted the AWA to exclude breeders who sell puppies or kittens from their residences directly to the public. These breeders sell the animals over the internet or through newspaper ads. In a lawsuit to challenge the USDA's interpretation, the D.C. Circuit sided with the USDA. See *Doris Day Animal League v. Veneman*, 315 F.3d 297 (D.C. Cir. 2003).

These breeders who sell directly to the public are also not regulated in most states.<sup>123</sup>

It is because of the many weaknesses in the Animal Welfare Act and the Secretary's regulations promulgated under it—which, in reality, are what actually govern the conduct of breeders and facilitators, but which do not reach the conduct of commercial retail sales outlets at all—that an entirely new approach is necessary, one which incorporates the useful provisions of the AWA, eliminates or at least ameliorates the undesirable ones, is specifically designed to help dogs, and reaches the entire sordid dog-trafficking pipeline from mega-breeders to local pet stores.

### **Preface to ISAR's model statute.**

The Humane Society of the United States suggests that an acceptable statute regulating a puppy breeding facility is one which

applies to all breeding operations with animals or animal sales numbering over a specified threshold; requires a licensing fee and pre-inspection; includes routine, unannounced inspections at least twice yearly; is enforced by an agency with adequate funding and properly trained and tested staff; rotates inspectors to cover different areas of the state; and is equipped with strong penalties when facilities are in repeated non-compliance, including but not limited to cease and desist orders.<sup>124</sup>

While these requirements impose conditions and behavior which are better than those found today in most, if not all, statutes, implicit in them are two premises which ISAR

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<sup>123</sup> *Animal Welfare Act: Regulating Animals Caught in the Pet Trade*, Animal Law Coalition, available at <http://www.animallawcoalition.com/> (last visited Oct. 30, 2009).

<sup>124</sup> *State Legislation*, HSUS, available at [http://www.hsus.org/legislation\\_laws/state\\_legislation/](http://www.hsus.org/legislation_laws/state_legislation/) (last visited May 6, 2009).



categorically rejects: (1) that indiscriminate breeding of dogs is morally acceptable so long as it is moderately (“humanely”!?) regulated, and (2) that through such “moderate” regulation the treatment of dog “breeding machines” can be made morally and humanely tolerable.

If ISAR’s monograph [\*The Policy, Law and Morality of Mandatory Spay/Neuter\*](#) and Chapters 1, 2 and 3 of this monograph teach anything, they speak loudly for the proposition that there is an intractable dog overpopulation problem, that the only feasible way to alleviate it today is by mandatory spay/neuter and severe regulation of breeders, facilitators and commercial retail sales outlets, and that legislation seeking to deal with the problem must be strict, comprehensive, loophole-free, and without the kinds of compromises that gut the few statutes which have been enacted and others that are now in the legislative pipeline.

In the end, dealing effectively with the breeder-facilitator-commercial retail sales outlet situation, and the dog overpopulation problem it so greatly contributes to, is an either/or choice.<sup>125</sup>

Either the dog breeding, facilitating and sales valve is turned off almost completely, or useless and counterproductive legislative efforts will perpetuate the charade that something constructive is being done while countless millions of hapless prisoner dogs continue to be bred, born, traumatized, abused, killed, and incinerated—and while figuratively, and often literally, our land is suffused with their wind-borne ashes.

In ISAR’s proposed Model Statute, we have made the “either” choice: *ISAR proposes to turn off almost completely the dog breeding, facilitating and commercial retail selling outlet valve, and in so doing see the dog overpopulation problem substantially ameliorated.*

Before presenting the annotated text of ISAR’s proposed Model Statute, several important antecedent points have to be made.

First. ISAR realizes that its proposed Model Statute far exceeds the prohibitions on breeding, facilitation and sales which appear in other animal protection laws, actual and proposed. ISAR has staked out its extreme position because the organization deeply believes that only very strict regulatory laws will achieve the stated goal, and if there are to be necessary compromises they must be as few, narrow, and morally and humanely defensible as possible.

Second. ISAR acknowledges that even if its proposed Model Statute were to be adopted by the federal government, or in a slightly different form by every state in America, there would still be unwanted dogs. ISAR believes, however, that if its Model Statute accomplishes its intended purpose there would be adoptive homes for those far fewer

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<sup>125</sup> So, too, is the problem of feline overpopulation.

dogs. (In this connection, see <http://isaronline.blogspot.com/2008/04/redemption-myth-of-pet-overpopulation.html>).

Third. ISAR believes that while Americans have the right to enjoy the companionship and services of dogs of their choosing, no one has either the moral or legal right to be an accessory to the tortured lives and ultimate fates that await the living reproductive machines of most breeders and all puppy mills, and many of their offspring.

Fourth. As Chapter 4 proves, there are neither constitutional nor legal impediments to even the most restrictive breeding and sales laws. Attacks on them in court will fail if the statutes are drafted carefully and defended intelligently.

Fifth. Readers of ISAR's Model Statute may be surprised at its comparative simplicity. There are several reasons for its comparative brevity. Since ISAR's Model Statute should be enacted on the federal level, and thus be uniformly applicable nationwide, no provisions for state or local involvement are necessary. Absent Congressional enactment, however, the statute could easily be adapted for, and enacted on, a state level. Even then, there would be no need for local involvement.<sup>126</sup>

Sixth. ISAR's Model Statute is not the last word on the subject, neither from it nor any one person or other organization who can offer constructive suggestions—so long as others recognize the underlying premise upon which ISAR's proposal is based: *turning off almost completely the dog breeding, facilitating and commercial retail sales outlet valve*. That is ISAR's goal, and that is what it has endeavored to codify in the Model Statute.

Seventh. ISAR is well aware that our statute will be unpopular not only with dog breeders, facilitators and commercial retail sales outlets, aiders and abettors, and others complicit in the dog-trade, but also with other animal protection organizations. So be it!

(Please note that throughout this Monograph 12-point Times New Roman font has been used. The same specifications apply to the following text of ISAR's Model Statute. *However, in order to identify ISAR's annotation of each section, ISAR's comments appear immediately after each section in 12-point Courier font, in which this sentence is written*).

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<sup>126</sup> In addition, compromises and exemptions which always require considerable verbiage to accommodate, have been held to a bare minimum, unlike in the recent unlamented California "mandatory" spay/neuter statute which, until its demise at the hands of compromisers and lobbyists, attempted to accommodate various anti-mandatory spay/neuter constituencies and in doing so turned itself inside out.

**ISAR’s Model Statute Regulating Dog Breeding, Facilitation and Sales.**<sup>127</sup>

**Preamble.**

Whereas, Congress finds that the dogs and dog-related activities regulated under this Act occur in interstate and foreign commerce, and substantially affect such commerce and the free flow thereof, and that regulation of the dogs and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce; and

Whereas, there have been and there are within the United States countless unwanted dogs lacking permanent homes, who are a major cause of canine overpopulation; and

Whereas, a major source of such dogs are commercial dog breeders who operate puppy mills, and other breeders; and

Whereas, many of the dogs used by breeders to produce puppies, and the puppies themselves, as well as the products used for their production and ultimate sale, are transported in, and affect, interstate and foreign commerce; and

Whereas, only approximately half of the states of the United States regulate breeders, facilitators or commercial retail sales outlets to any significant extent, and such regulation is inconsistent and mostly ineffective; and

Whereas, the Animal Welfare Act offers inadequate protection to dogs used for breeding, provides insufficient regulation of facilitators, and is inapplicable to those sold by commercial retail sales outlets; and

Whereas, the treatment of dogs and their physical conditions at breeders, puppy mills, facilitators and commercial retail sales outlets, are a matter of national concern affecting the public, health, safety, welfare, and environment; and

Whereas, although some of the dogs produced by breeders, puppy mills, and elsewhere, and sold by facilitators and commercial retail sales outlets are healthy, many are not; and

Whereas, many of the dogs produced by breeders, puppy mills, and elsewhere, and sold by facilitators and commercial retail sales outlets have an adverse impact on the public health, safety, welfare, and environment; and

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<sup>127</sup> An unannotated version of ISAR’s proposed statute appears at Appendix A. HSUS lists twenty-nine states that have “State Puppy Mill Laws” that at a minimum require licensing or registration. See <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf>

Whereas, the social impact of these dogs includes, but is not limited to, the transmission of disease, the injury and sometimes death of humans and other animals and the drain on public finances; and

Whereas, many of these animals are eventually euthanized by shelters, humane societies, and similar organizations; and

Whereas, euthanizing dogs except for *bona fide* medical reasons is inhumane and abhorrent to the people of the United States; and

Whereas, euthanizing dogs except for *bona fide* medical reasons is not an effective, economical, humane, or ethical solution to the problem of dog overpopulation; and

Whereas, one of the most effective, economical, humane, and ethical solutions to the problem of dog overpopulation is to substantially reduce, if not entirely eliminate, their breeding, facilitation and commercial retail sale; and

Whereas, by such reduction or elimination the Congress seeks to promote the public health, safety, welfare, and environmental interests of its citizens;

Among the major faults of virtually all dog anti-breeding and sale legislation is the failure to set forth explicitly the fundamental legislative premises upon which the statutes are based. ISAR has sought to remedy that omission by making clear in the above Preamble exactly upon what premises ISAR's statute rests.

Lest there be any misunderstanding, *ISAR seeks to severely reduce the number of dogs being bred and to reduce the production of puppies later sold to and by commercial retail sales outlets.* ISAR proposes to accomplish this goal through regulation of breeders, facilitators and commercial retail sales outlets which is so stringent that compliance will impose unacceptable and unsustainable costs.

As a matter of principle, ISAR deplores the commercial, and most other, breeding of all dogs. But until the day comes when ISAR's view is accepted as a moral imperative and is translated into law subject to virtually no exceptions, ISAR will have to be content with the statutory provisions set forth below if they are consistently and fairly applied and rigorously and intelligently enforced.

Readers of ISAR's Model Statute may wonder why it is in certain respects so detailed, rather than written in more general terms which would allow USDA/APHIS to promulgate regulations implementing the law. The reason is that

federal statutes can be changed only by *Congress*, while administrative regulations can be changed by *bureaucrats* at their whim.

## **Part I** **Definitions**

Section 1. Commercial. For purposes of this statute, the term “commercial” is defined as “relating to the buying or selling of goods, including animals generally and dogs in particular, or services in return for a monetary or non-monetary benefit.”

Section 2. Retail. For purposes of this statute, the term “retail” is defined as “the selling of goods, including animals, or services directly to purchasers.”

Section 3. Sale. For purposes of this statute, the term “sale” is defined as “the transfer of property to the ownership to someone else with or without consideration.”

Section 4. Seller. For purposes of this statute, the term “seller” is defined as “any person or legal entity that makes a “sale” as defined herein.

Section 5. Outlet. For purposes of this statute, the term “outlet” is defined “as the place where a “retail sale,” as defined herein, occurs.

Section 6. Purchaser. For purposes of this statute, the term “purchaser” is defined as “any person or legal entity who is the recipient of a sale.”

Section 7. Breeder. For purposes of this statute, the term “breeder” is defined as “any person or legal entity that intentionally, recklessly or negligently causes or allows a female dog to be inseminated by a male canine.”

Section 8. Puppy mill. For purposes of this statute “puppy mill” is defined as “a place where at the same time at least three female dogs are kept whose sole or major purpose is producing puppies for sale.”

Section 9. Facilitator. For purposes of this statute, the term “facilitator” is defined as any person or legal entity, not a breeder, seller, sales outlet or purchaser as defined herein, who acts as a broker, dealer, wholesaler, agent, bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership, custody or control of dogs, whether or not such animals are in the custody or control of the facilitator at the time of transfer.”

While these definitions speak for themselves, it should be emphasized that neither the terms “breeder” nor “puppy mill” are defined—as they are universally in other federal and state statutes—by the number of dogs, their monetary value, whether sales are made to the public, etc.

The ISAR-created category of "facilitator" is designed to sweep up everyone in the chain of the dog trade--between breeders at one end and commercial retail sales outlets at the other.

Given these definitions and categories, everyone in the entire dog trade process should be covered. This approach makes it unnecessary to deal separately with the problem of Internet sales.

## **Part II** **Breeders**

As noted above, the Animal Welfare Act contains some useful provisions for the protection of the animals caught up in the dog-trade. They are, however, inadequate if the trade is allowed to continue, and they will certainly not put breeders out of business.

Accordingly, taking the best provisions from the Animal Welfare Act and some state statutes, the following is what ISAR considers the most acceptable statutory scheme to control the breeding of dogs.

### **Section 1. Definitions**

(a) Part I of this statute is incorporated by reference herein.

See Part I above for commentary on the definitions.

### **Section 2. Breeding licensees**

*Caveat:* Readers of this section's title are advised not to jump to conclusions about what provisions it contains. What follows concerning the licensing of breeders is not the usual, unacceptable exception to "mandatory" animal protection statutes, which effectively nullify such laws by granting broad exemptions.

(a) **Breeding license.** Other than as expressly provided below, no male dog may be used for insemination or female dog for breeding except by a person or entity holding a currently valid breeding license as provided in this Act.

This Part begins with the absolute prohibition against anyone acting as a breeder, unless currently possessing a valid breeding license. Period. Express, but very limited, exemptions are provided below.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

Breeding licenses may, or may not, be issued by the Secretary. The exercise of "absolute" discretion, even if it results in the non-issuance of a breeding license, would be very difficult to overturn in court. ISAR has used the "absolute discretion" language in order to virtually preclude judicial review of non-issuance of a breeding license.

(c) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

(d) Issuance of licenses. No breeding license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

This subsection puts the burden on the license applicant to prove to the Secretary's satisfaction that the facilities proposed to house dogs comply with the requirements of this Act and the Secretary's regulations promulgated pursuant to it.

(e) Limitations on licensees. While a breeding license is valid, no subsequent breeding license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

This subsection is aimed at preventing breeders from escaping the limitations contained below and by using front-men, dummy companies, etc.

### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this Act, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

(i) To make unannounced inspections of breeding facilities at least twice annually and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.

(ii) To commence civil actions for violation of this Act, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.

(iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.

(iv) To seize dogs from breeders which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere and in a manner, temporarily or permanently, a court shall direct, following notice to, and an opportunity to be heard by, the licensee.

(v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of breeders, including complaints of non-compliant licensee conduct and operations by non-licensees.

(vi) To enter upon breeder premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

It is self-evident that unless the licensing authority possesses these enumerated powers, and others it deems necessary, in aid of its statutory responsibilities, it will be unable to discharge them.

#### Section 4. License and other fees

(a) License and other fees. The licensing authority may establish fees as shall be necessary to implement its statutory duties.

It is common for administrative regulators to impose fees related to their regulatory function.

#### Section 5. Identification of dogs

(a) Identification of dogs. Each breeder licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

If the regulations imposed by this statute are to be effective and enforceable, especially those regarding recordkeeping and reporting, it is essential that the population of breeders' facilities be ascertained and ascertainable.

(b) Violation. Violation of subsection (a) of this Section shall be an offense.

#### Section 6. Numbers of dogs



(a) Limitation on number of dogs. No breeder licensee shall possess at any one time in any calendar year more than three unneutered male dogs and three unspayed female dogs, except for unweaned litters which may be kept for no more than three months at which time the provisions of this statute will apply to them.

This section deliberately and substantially reduces and limits the scope of breeder operations.

(b) Violation. Violation of subsection (a) of this Section shall be a felony.

#### Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a breeder licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold by a breeder licensee must be free of disease, injuries, or abnormalities. If a dog is determined by a licensed veterinarian to be unfit to be bred, it must immediately be treated or relinquished to a shelter, breed-specific rescue group, or humane animal shelter.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.

Lack of adequate care and treatment by breeders is immoral, notorious and unacceptable. This section is designed to impose strict veterinary and financial requirements on breeders in order that they act more humanely and are heavily penalized if they do not.

#### Section 8. Standards of care and treatment

(a) Standards of care and treatment. The licensing authority shall promulgate and enforce standards of care and treatment for all dogs in possession of control of breeder licensees, which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and wellbeing. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and wellbeing, to wit: not less than 55 degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals, except for same-species breeding purposes, unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, except for the limited period of breeding. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around. If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than ¼-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall certify in writing before an animal is bred that it is in suitable health for breeding.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be bred while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care by a licensed veterinarian when necessary, and without delay.

(ix) Dogs shall be transported within or from a breeding facility subject to all the requirements of this subsection.

(xv) All dogs in a breeding facility shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a licensed veterinarian.

(xvi) Noise levels in a breeding facility shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

Consistent with general principle of administrative law, the Department of Agriculture has virtually unlimited discretion in establishing applicant qualifications and regulating the conduct of licensees.

This subsection mandates minimum humane requirements that the license-issuing authority must impose on breeder

licensees. It may, of course, impose additional and more stringent requirements.

By incorporating these requirements in the Act, rather than in regulations issued by the Secretary, they cannot be changed except by Congressional amendment of the Act itself.

If breeders believe that these standards of care and treatment, or any other provisions of the Act, are too onerous, they can simply cease doing their nefarious business of the dog-trade.

### Section 9. Age considerations

(a) Insemination and breeding. The dogs covered by this Section regarding insemination and breeding shall be at least twenty-four months old, and no older than thirty-six months.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

This subsection creates a firm window for insemination and breeding. Neither may occur before or after those ages.

### Section 10. Sterilization responsibilities

(a) Sterilization of female dogs. Bred female dogs shall be sterilized promptly by a licensed veterinarian using customary medical procedures after delivery of the dogs' final litters.

(b) Sterilization of male dogs. Male dogs shall be sterilized promptly by a licensed veterinarian using customary medical procedures after they have twice inseminated females.

These two subsections are designed to end the continuing abuse of dogs used for breeding, which, in most breeding facilities today are treated no better than inanimate reproductive machines.

Many veterinarians believe that inseminating and giving birth twice in a twelve month period, with no further insemination or breeding thereafter, is not abusive to the animal.

The subsections, and others that appear below, deliberately and substantially reduce and limit the size of breeder operations.

(c) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this Act shall constitute a defense to liability under the penalty provisions of this statute.

(v) If during the disqualification period the dog breeds, the person or entity in control of the animal shall be punished as a felony.

This section provides a safe harbor for those dogs who have *bona fide* medical reasons not to be neutered. Obviously, this exemption is subject to abuse. We hope that veterinarians' respect for the law generally and what this statute is trying to accomplish in particular, and the requirement that their certification be under oath, will suffice to have medical exemptions granted only when legitimately deserved.

(d) Mandatory spay/neuter. No licensee shall release from its custody any live dog that has not been sterilized, except to provide temporary veterinary care or pursuant to the medical exemption provided in subsection (c) of this Section.

(e) Violation. Violation of subsections (a), (b), (c) and (d) shall be a misdemeanor.

This section will prevent breeding stock from going elsewhere to be put through the same inhumane reproductive cycle.

## Section 11. Recordkeeping and reports

(a) Recordkeeping and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all breeding licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a breeding licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) As to each dog received for breeding purposes between that time and date and 11:59 p.m. on December 31 of the reported year, its age, gender, breed and complete information as to whether and when it had been previously used for insemination or bred.

(cc) As to each dog bred during that period, identification of the sire and dam, the date that puppies were born, the number of puppies in the litter, and their identifying information.

(dd) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.

(ee) As to all dogs in the custody or under the control of a breeding licensee during a reported year which were no longer as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.

(ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(b) Retention. All records and reports shall be retained for five years.

(c) Violation. Violation of subsection (a) and (b) of this Section shall be a misdemeanor.

One reason for the deplorable inhumane treatment and confinement conditions of dogs in the hands of most breeders, especially puppy mills, and for the lack of enforcement of the laws that do exist, is that the authorities do not know what the recordkeeping and reporting required above would reveal. Let alone do they know what happens to the dogs that are processed through breeders and their facilities. The financial recordkeeping

and reporting requirement relates to the breeding licensees' financial ability to comply with the treatment and confinement conditions provided for in this statute.

#### Section 12. Required disclosures

(a) Breeder licensees' duty to disclose. As to each dog offered for sale, prior to sale licensees shall provide the following information which shall be posted on the dog's housing and provided to the purchaser in writing at the time of sale:

- (i) The dog's date of birth, gender, breed, and weight.
- (ii) The dog's color markings.
- (iii) A complete record of vaccinations and veterinary care, including a record of sterilization certified by a licensed veterinarian.
- (iv) The name, address and telephone number of the breeder of the dog.
- (v) Whether the dog was bred in a puppy mill, as defined herein, and, if so, its name, address and telephone number.
- (vi) The name and contact information of any other person or entity who had custody, control of, or who owned the dog between its birth and purchase from the breeder licensee.

(b) Proof of disclosure. After the aforesaid required written information is provided to the purchaser, the purchaser must acknowledge receipt of such information in writing.

(c) Violation. Violation of subsection (a) of this section shall be an offense.

Purchasers of dogs from breeders are usually in the dark about everything concerning the animal. This section is designed to provide the purchaser with sufficient information to make an informed choice, by placing the burden of providing that information where it belongs initially, on the breeder.

#### Section 13. Other laws

(a) Compliance with other laws. Breeding licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this statute shall be surrendered to any laboratory or similar facility which conducts experiments of any kind on animals, and provided, further, that in case of conflict between or among laws of this or any other jurisdiction this statute shall prevail.

The purpose of this subsection is to make sure that licensees can not argue successfully that this statute alone governs their conduct. Licensees must comply with anti-cruelty and all other federal and state laws regarding animals, and cannot participate in "pound seizure." The second proviso assures that in a conflict of laws, this statute will prevail. There will, of course, be a substantial problem with the Animal Welfare Act.

#### Section 14. Breeding limitations

(a) Male dogs. A breeding licensee may use a male dog only twice to inseminate a female, which second insemination must occur within a twelve month period from the first. No further insemination by the male dog is allowed thereafter.

(b) Female dogs. A breeding licensee may breed a female dog only twice, which must occur within a twelve month period, but no sooner than her first delivery. No further breeding is allowed thereafter.

These two subsections are designed to end the continuing abuse of dogs used for breeding, which, in most breeding facilities today are treated no better than inanimate reproductive machines. Many veterinarians believe that inseminating and giving birth twice in a twelve month period, with no further insemination or breeding thereafter, is not abusive to the animal. The subsections, and others that appear below, deliberately and substantially reduce and limit the size of breeder operations.

(c) Puppies. The offspring of breeder licensee's dogs may be retained by the breeding licensee, but they shall be subject to the same restrictions as their sires and dams, as shall be succeeding generations.

This subsection allows breeder licensees to retain offspring, but similarly limits their breeding.

(d) Placement of male and female dogs. Promptly after a male dog has twice inseminated a female, and promptly after a female dog has delivered her final litter, the breeder licensee shall either:

- (i) Relinquish such animal to a shelter, humane society, rescue group, or similar organization for adoption only, or
- (ii) Directly arrange for adoption, pursuant to the rules and regulations of the nearest shelter, humane society, rescue group, or similar organization;



provided, however, that the breeder licensee shall under no circumstances transfer custody of a dog to any individual or entity as to whom the breeder licensee knows, has reason to know, or should know, that the animal will be used for insemination, breeding or experimental purposes of any kind.

(e) Violation. Violation of subsections (a), (b) and (c) of this Section shall be a felony.

In addition to the limitations provided above, these sections will oblige breeder licensees to indirectly or directly find homes for their "breeding stock." After they have been used this way, they deserve loving homes and under this provision the breeding licensees are required to make an effort to achieve that humane goal.

### Section 15. Devocalization

(a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

"Devocalization" is a euphemism meant to mask truth. In reality, as applied to dogs, devocalization is the cutting of their vocal cords to eliminate barking. Putting aside the conclusive medical reasons militating against such a barbaric practice, and there are several, devocalization of dogs is morally indefensible because it changes their nature solely for the convenience of humans.

Not surprisingly, the American Veterinary Medical Association, in principle, approves of the practice.

With oversight provided by the AVMA's Animal Welfare (!) Committee, as a matter of policy in June 2002 the AVMA Executive Board approved "canine devocalization" and reaffirmed the approval in April 2008. "Canine devocalization," said the AVMA, "should only be performed by a qualified, licensed veterinarian as a final alternative after behavior modification efforts to correct excessive vocalization have failed."

Translation, without euphemisms: A human subjectively believes his or her dog barks "excessively" (i.e., too often or too loudly) and "behavior modification" (whatever that means) has been unsuccessful. Then, according to the

AVMA, as a matter of human convenience the dog's vocal cords can be cut.

This Act makes debarking, which is what the procedure should be called, a crime.

### **Part III** **Facilitators**

It is worth repeating the definition of "facilitator": "For purposes of this statute, the term 'facilitator' is defined as any person or legal entity not a 'breeder,' 'seller,' sales outlet or 'purchaser' as defined herein, who acts as a broker, dealer, wholesaler, agent, bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership, custody or control of dogs, whether or not such animals are in the custody or control of the facilitator at the time of transfer."

It should be noted that the term has been designed and defined for this model statute in order to sweep up everyone in the chain between breeders at one end of the dog-trafficking pipeline and commercial retail sales outlets at the other. Dogs in the custody or control of facilitators can suffer the same type of abuse as those in the hands of breeders and commercial retail sales outlets.

Accordingly, taking the best provisions from the Animal Welfare Act and some state statutes, the following is what ISAR considers the most acceptable statutory scheme for dealing with facilitating the sale of dogs.

#### **Section 1. Definitions**

(a) Part I of this statute is incorporated by reference herein.

See Part I above for commentary on the definitions.

#### **Section 2. Facilitator licensees**

*Caveat:* Readers of this section's title are advised not to jump to conclusions about what provisions it contains. What follows concerning the licensing of facilitators is not the usual, unacceptable exception to "mandatory" animal protection statutes, which effectively nullify such laws by granting broad exemptions.

(a) Breeding license. Other than as expressly provided below, any person or entity acting as a facilitator, as defined herein, must possess a currently valid license as provided in this Act. No person or entity may act as a facilitator unless licensed under this Act.

This Part thus begins with the absolute prohibition against anyone acting as a facilitator, unless currently possessing a valid license. Period. Express, but very limited, exemptions are provided below.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

Facilitator licenses may, or may not, be issued by the Secretary. The exercise of "absolute" discretion, even if it results in the non-issuance of a facilitator license, would be very difficult to overturn in court. ISAR has used the "absolute discretion" language in order to virtually preclude judicial review of non-issuance of a facilitator license.

(c) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

(d) Issuance of licenses. No breeding license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

This subsection puts the burden on the license applicant to prove to the Secretary's satisfaction that the facilities proposed to house dogs comply with the requirements of this Act and the Secretary's regulations promulgated pursuant to it.

(e) Limitations on licensees. While a facilitator license is valid, no subsequent facilitator license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

This subsection is aimed at preventing facilitators from escaping the limitations contained below and by using front men, dummy companies, etc.

### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this Act, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

(i) To make unannounced inspections of facilitator facilities at least twice annually, and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.

(ii) To commence civil actions for violation of this Act, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.

(iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.

(iv) To seize dogs from facilitators which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere and in a manner, temporarily or permanently, a court shall direct, following notice to, and an opportunity to be heard by, the licensee.

(v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of facilitators, including complaints of non-compliant licensee conduct and operations by non-licensees.

(vi) To enter upon facilitator premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

It is self-evident that unless the licensing authority possesses these enumerated powers, and others it deems necessary, in aid of its statutory responsibilities, it will be unable to discharge them.

#### Section 4. License and other fees

(a) License and other fees. The licensing authority may establish fees as shall be necessary to implement its statutory duties.

It is common for administrative regulators to impose fees related to their regulatory function.

#### Section 5. Identification of dogs

(a) Identification of dogs. Each facilitator licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

If the regulations imposed by this statute are to be effective and enforceable, especially those regarding recordkeeping and reporting, it is essential that the population of facilitators' facilities be ascertained and ascertainable.

(b) Violation of this section shall be an offense.

#### Section 6. Number of dogs

(a) Limitation on number of dogs. No facilitator licensee shall possess at any one time in any calendar year more than ten dogs, which shall have been spayed and neutered, except for unweaned litters which may be kept for no more than three months at which time the provisions of this Act will apply to them.

This section deliberately and substantially reduces and limits the scope of facilitator operations.

(b) Violation. Violation of subsection (a) of this Section shall be a felony.

#### Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a facilitator licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold by a facilitator licensee must be kept free of disease, injuries, or abnormalities. If a dog is determined by a licensed veterinarian to be unfit to be sold, purchased, traded, auctioned or otherwise transferred, it must immediately be treated by a licensed veterinarian or relinquished to a shelter, breed-specific rescue group, or humane animal shelter.

(c) Violation of this subsections (a) and (b) of this Section shall be a misdemeanor.

Lack of adequate care and treatment by facilitators is immoral, notorious and unacceptable. This section is designed to impose strict veterinary and financial requirements on facilitators in order that they act more humanely and are heavily penalized if they do not.

#### Section 8. Standards of care and treatment

(a) Standards of care and treatment. The licensing authority shall promulgate and enforce standards of care and treatment for all dogs in possession or control of facilitator licensees which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and wellbeing. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and wellbeing, to wit: not less than 55 degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals, except for same-species breeding purposes, unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, except for the limited period of breeding. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around. If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and

related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than ¼-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall certify in writing before an animal is bred that it is in suitable health for breeding.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be bred while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care by a licensed veterinarian when necessary, and without delay.

(ix) Dogs shall be transported subject to all the requirements of this subsection.

(xv) All dogs in a the custody or control of a facilitator shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a veterinarian.

(xvi) Noise levels in a facilitator's facility shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

Consistent with general principles of administrative law, the Department of Agriculture has virtually unlimited discretion in establishing applicant qualifications and regulating the conduct of licensees.

This subsection mandates minimum humane requirements that the license-issuing authority must impose on facilitator licensees. It may, of course, impose additional and more stringent requirements.

By incorporating these requirements in the Act, rather than in regulations issued by the Secretary, they cannot be changed except by Congressional amendment of the Act itself.

If facilitators believe that these standards of care and treatment, or any other provisions of the Act, are too onerous, they can simply cease doing their nefarious business of the dog-trade.

#### Section 9. Age considerations

(a) Insemination and breeding. No dog less than eight weeks old may be in the custody or control of a facilitator.

(b) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.

This subsection is designed to be consistent with other age considerations in this Act.

#### Section 10. Sterilization responsibilities

(a) Un-sterilized dogs. Upon coming into possession of an un-sterilized dog, the facilitator licensee shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or reasonably appears to be, less than three months old.

(b) Mandatory spay/neuter. No licensee shall release from its possession any dog that has not been sterilized, except to provide temporary veterinary care.

Whatever a facilitator's source of dogs, from breeders or elsewhere, upon coming into custody or control of an un-sterilized animal there is a duty of immediate sterilization.



(c) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this Section shall constitute a defense to liability under the penalty provisions of this Act.

(v) If during the disqualification period the dog breeds, the individual or entity in control of the animal shall be punished for a felony.

This section will reduce chances of un-sterilized dogs from being moved privately or in commerce.

This section provides a safe harbor for those dogs who have *bona fide* medical reasons not to be neutered. Obviously, this exemption is subject to abuse. We hope that veterinarians' respect for the law generally and what this statute is trying to accomplish in particular, and the requirement that their certification be under oath, will suffice to have medical exemptions granted only when legitimately deserved.

(d) Violation. Violation of subsections (a) and (b) of this Section shall be a felony.

Section 11. Recordkeeping and reports

(a) Recordkeeping and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all facilitator licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a facilitator licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) As to each dog received between that time and date and 11:59 p.m. on December 31 of the reported year, its age, gender, breed and complete information as to whether and when it had been previously used for insemination or bred.

(cc) As to each dog bred during that period, identification of the sire and dam, the date that puppies were born, the number of puppies in the litter, and their identifying information.

(dd) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.

(ee) As to all dogs in the custody or under the control of a facilitator licensee during a reported year which were no longer as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.

(ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(b) All records and reports shall be retained for five years.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.

One reason for the deplorable inhumane treatment and confinement conditions of dogs in the hands of most facilitators, and for the lack of enforcement of the laws that do exist, is that the authorities do not know what the recordkeeping and reporting required above would reveal. Let alone do they know what happens to the dogs that are processed through facilitators and their facilities. The financial recordkeeping and reporting requirement relates to the licensees' financial ability to comply with the treatment and confinement conditions provided for in this Act.

## Section 12. Compliance with other laws

(a) Compliance with other laws. Facilitator licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this Act shall be surrendered to any laboratory or similar facility which conducts experiments of

any kind on animals, and provided, further, that in case of conflict between or among laws this statute shall prevail.

The purpose of this subsection is to make sure that licensees can not argue successfully that this statute alone governs their conduct. Licensees must comply with anti-cruelty and all other federal and state laws regarding animals, and cannot participate in "pound seizure." The second proviso assures that in a conflict of laws, this statute will prevail. There will, of course, be a substantial problem with the Animal Welfare Act.

### Section 13. Breeding limitations

(a) No facilitator shall under any circumstances allow or cause a male dog to inseminate a female dog or a female dog to be inseminated.

(b) Violation of subsection (a) of this Section shall be a felony.

### Section 14. Devocalization.

(a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

"Devocalization" is a euphemism meant to mask truth. In reality, as applied to dogs, devocalization is the cutting of their vocal cords to eliminate barking. Putting aside the conclusive medical reasons militating against such a barbaric practice, and there are several, devocalization of dogs is morally indefensible because it changes their nature solely for the convenience of humans.

Not surprisingly, the American Veterinary Medical Association, in principle, approves of the practice.

With oversight provided by the AVMA's Animal Welfare (!) Committee, as a matter of policy in June 2002 the AVMA Executive Board approved "canine devocalization" and reaffirmed the approval in April 2008. "Canine devocalization," said the AVMA, "should only be performed by a qualified, licensed veterinarian as a final alternative after behavior modification efforts to correct excessive vocalization have failed."

Translation, without euphemisms: A human subjectively believes his or her dog barks "excessively" (i.e., too often or too loudly) and "behavior modification" (whatever that means) has been unsuccessful. Then, according to the AVMA, *as a matter of human convenience* the dog's vocal cords can be cut.

This Act makes debarking, which is what the procedure should be called, a crime.

#### **Part IV** **Commercial retail sales outlets**

As noted, the Animal Welfare Act exempts commercial retail sale outlets from the operation of that Act. Accordingly, ISAR's model statute plugs that loophole.

While some of the strictest laws pertaining to commercial retail sellers of dogs are found in Nevada, Colorado, and California, none provide the perfect template for other states to follow, or for ISAR to recommend. Rather, there are individual provisions in various state statutes that provide lesser or greater protection for dogs. There is also a significant amount of proposed state legislation that, if successful, would provide an even greater degree of protection for dogs sold by retail sellers.

Accordingly, using the best provisions from existing and proposed state laws, the following is what ISAR considers the most acceptable statutory scheme for the commercial retail sales of dogs.

##### **Section 1. Definitions**

(a) Part I of this statute is incorporated by reference herein.

See Part I above for commentary on the definitions.

##### **Section 2. Licensees**

*Caveat:* Readers of this section's title are advised not to jump to conclusions about what provisions it contains. What follows concerning the licensing of commercial retail sales outlets is not the usual, unacceptable exception to "mandatory" animal protection statutes, which effectively nullify such laws by granting broad exemptions.

(a) Commercial retail sales outlet license. Other than as expressly provided below, no person or entity doing business as a commercial retail sales outlet shall sell any dog unless such person or entity holds a currently valid commercial retail sales outlet license as provided in this Act.

This Part thus begins with the absolute prohibition against anyone acting as a commercial retail sales outlet, unless currently possessing a valid license. Period. Express, but very limited, exemptions are provided below.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

Sales licenses may, or may not, be issued by the Secretary. The exercise of "absolute" discretion, even if it results in the non-issuance of a license, would be very difficult to overturn in court. ISAR has used the "absolute discretion" language in order to virtually preclude judicial review of non-issuance of a commercial retail sales outlet license.

(c) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

(d) Issuance of licenses. No commercial retail sales outlet license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

This subsection puts the burden on the license applicant to prove to the Secretary's satisfaction that the facilities proposed to house dogs comply with the requirements of this Act and the Secretary's regulations promulgated pursuant to it.

(e) Limitations on licenses. While a commercial retail sales outlet license is valid, no subsequent license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

This section is aimed at preventing licensees from using front men, dummy companies, etc.

### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this statute, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

(i) To make unannounced inspections of commercial retail sales outlets at least twice annually, and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.

(ii) To commence civil actions for violation of this statute, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.

(iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.

(iv) To seize dogs from commercial retail sales outlets which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere, temporarily or permanently, and in a manner a court shall direct, following notice to, and an opportunity to be heard by, the licensee.

(v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of commercial retail sales outlets, including complaints of non-compliant licensee conduct and operations by non-licensees.

(vi) To enter upon commercial retail sales outlet premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

It is self-evident that unless the licensing authority possesses these enumerated powers, and others it deems necessary, in aid of its statutory responsibilities, it will be unable to discharge them.

### Section 4. License and other fees

(a) License fees. The licensing authority may establish license fees as shall be necessary to implement its statutory duties.

(b) Other fees. The licensing authority may establish fees other than those to obtain a license as shall be necessary to implement its statutory duties.

It is common for administrative regulators to impose fees related to their regulatory function.

## Section 5. Identification of dogs

(a) Identification of dogs. Each licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

(b) Violation. Violation of subsection (a) of this Section shall be an offense.

If the regulations imposed by this statute are to be effective and enforceable, especially those regarding recordkeeping and reporting, it is essential that the population of commercial retail sales outlets be ascertained and ascertainable.

## Section 6. Number of dogs

(a) Limitation on number of dogs. No commercial retail outlet licensee shall possess at one time in any calendar year more than ten dogs, except for unweaned litters which may be kept for no more than four months at which time the provisions of this statute shall apply to them.

(b) Violation. Violation of subsection (a) of this section shall be a felony.

This section deliberately and substantially reduces and limits the scope of commercial retail sales outlets.

## Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a commercial retail sales outlet licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold must be free of disease, injuries, or abnormalities. If a dog is determined by a veterinarian to be unfit to be sold, it must immediately be treated or relinquished to a shelter, breed-specific rescue group, or humane animal shelter. The licensee shall refund the dog's purchase price if it dies through normal causes within six months of being sold. If any dog is returned to the licensee due to disease, injury, or abnormality, the licensee shall immediately seek veterinary care prior to taking any other action.

(c) Violation. Violation of subsections (a) and (b) shall be a misdemeanor.

Lack of adequate care and treatment at commercial retail sales outlets, especially at pet shops, is notorious. This section is designed to impose strict veterinary and financial requirements on those establishments in order

that they act more humanely and are penalized if they do not.

### Section 8. Standards of care and treatment

(a) The licensing authority shall promulgate and enforce standards of care and treatment which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and wellbeing. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and wellbeing, to wit: not less than 55 degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, under any circumstances. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around. If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of



dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than 1/4-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty-minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall be on call and readily accessible during business hours.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be sold while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care by a licensed veterinarian when necessary, and without delay.

(ix) Dogs shall be transported within or from a commercial retail sales outlet subject to all the requirements of this subsection.

(xv) All dogs in a commercial retail sale outlet shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a veterinarian.

(xvi) Noise levels in a commercial retail sales outlet shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

Consistent with general principle of administrative law, the Department of Agriculture or other department charged with issuing licenses has virtually unlimited discretion in establishing applicant qualifications and regulating the conduct of licensees.

This subsection mandates minimum humane requirements that the license-issuing authority must impose on commercial retail sales outlet licensees. It may, of course, impose additional and more stringent requirements.

By incorporating these requirements in the Act, rather than in regulations issued by the Secretary, they cannot be changed except by Congressional amendment of the Act itself.

If commercial retail sales outlets believe that these standards of care and treatment, or any other provisions of the Act, are too onerous, they can simply cease doing their nefarious business of the dog-trade.

#### Section 9. Age considerations

(a) Age at time of sale. Dogs less than eight weeks old may not be sold under any circumstances, nor transported elsewhere for sale.

(b) Status at time of sale. No dog shall be sold or transported for sale unless it has been fully weaned.

(c) Violation. Violations of subsections (a) and (b) shall be a misdemeanor.

The humane reasons for these provisions are self-evident, and require no comment.

## Section 10. Sterilization responsibilities

(a) Un-sterilized dogs. Upon coming into the possession of an un-sterilized dog, the licensee shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or reasonably appears to be, less than three months old.

This section applies to non-breeder licensee retail sellers of dogs. Whatever their source of these animals, from breeders or elsewhere. If somehow a licensee comes into custody or control of an un-sterilized dog there is a duty of immediate sterilization.

(b) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this section shall constitute a defense to liability under the penalty provisions of this statute.

(v) If during the disqualification period the dog breeds, the individual or entity in control of the animal shall be punished as a felony.

This section provides a safe harbor for those dogs who have *bona fide* medical reasons not to be neutered. Obviously, this exemption is subject to abuse. We hope that veterinarians' respect for the law generally and what this statute is trying to accomplish in particular, and the requirement that their certification be under oath, will suffice to have medical exemptions granted only when legitimately deserved.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a felony.

## Section 11. Recordkeeping and reports

(a) Required records and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.

(cc) As to all dogs in the custody or under the control of a breeding licensee during a reported year which were no longer under such custody or control as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.

(ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(iii) The records required to be kept by this subsection shall be retained by the licensee for not less than three calendar years, and may be inspected by the licensing authority upon two days written notice.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

One reason for the deplorable inhumane treatment and confinement conditions of dogs in the hands of many commercial retail sales outlets, and for the lack of enforcement of the laws that do exist, is that the authorities do not know what the recordkeeping and reporting required above, if examined, would reveal. The financial recordkeeping and reporting requirement relates to the licensees' financial ability to comply with the treatment, confinement, and other requirements provided for in this statute.

## Section 12. Required disclosures

(a) Licensee's duty to disclose. As to each dog offered for sale, prior to sale licensees shall provide the following information which shall be posted on the dog's housing and provided to the purchaser in writing at the time of sale:

- (i) The dog's date of birth, gender, breed, and weight.
- (ii) The dog's color markings.
- (iii) A complete record of vaccinations and veterinary care, including a record of sterilization certified by a licensed veterinarian.
- (iv) The name and address of the breeder of the dog.
- (v) Whether the dog was bred in a puppy mill and, if so, its name and contact information.
- (vi) The name and contact information of any other person or entity who had custody, control of, or who owned the dog between its birth and purchase from the licensee.

(b) Proof of disclosure. After the required written information is provided to the purchaser, the purchaser must acknowledge receipt in writing.

(c) Consumer rights. A consumer rights notice which shall be prepared by the licensing authority shall be posted in close proximity to the dogs' housing, and a written copy shall be provided to the purchaser at the time of time of sale, which the purchaser shall acknowledge receipt of in writing. The licensee shall also provide written recommendations for the dog's future care and treatment. The purchaser shall be provided with a writing recommending regular veterinarian wellness visits, and emphasizing the legal necessity to comply with dog registration laws.

Too often, purchasers of dogs from commercial retail sales outlets are in the dark about everything concerning the animal. This section is designed to provide the prospective purchaser with sufficient information to make an informed choice, by placing the burden of providing that information where it belongs, on the seller.

## Section 13. Other laws

(a) Compliance with other laws. Licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this statute shall be surrendered to any laboratory or similar facility which conducts experiments of

any kind on animals, and provided, further, that in case of conflict between or among laws of this or any other jurisdiction, this statute shall prevail.

The purpose of this subsection is to make sure that licensees can not argue successfully that this statute alone governs their conduct. Licensees must comply with anti-cruelty and all other federal and state laws regarding animals, and cannot participate in "pound seizure." The second proviso assures that in a conflict of laws, this statute will prevail.

#### Section 14. Breeding limitations.

- (a) No commercial retail sales outlet shall under any circumstances allow or cause a male dog to inseminate a female dog or a female dog to be inseminated.
- (b) Violation of subsection (a) of this Section shall be a felony.

#### Section 15. Complaints.

- (a) Informational signs, creation. The licensing authority shall design and make available to licensees a sign informing the public of this statute's existence and who they can contact in connection with it.
- (b) Informational signs, display. At least two such signs shall be posted prominently at all commercial retail sales outlets.
- (c) Violation. Violation of subsections (a) and (b) of this Section shall be an offense.

This provision will facilitate complaints about substandard care and treatment at commercial retail sales outlets.

#### Section 16. Devocalization.

- (a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.
- (b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

"Devocalization" is a euphemism meant to mask truth. In reality, as applied to dogs, devocalization is the cutting of their vocal cords to eliminate barking. Putting aside the conclusive medical reasons militating against such a barbaric practice, and there are several, devocalization of dogs is morally indefensible because it changes their nature solely for the convenience of humans.

Not surprisingly, the American Veterinary Medical Association, in principle, approves of the practice.

With oversight provided by the AVMA's Animal Welfare (!) Committee, as a matter of policy in June 2002 the AVMA Executive Board approved "canine devocalization" and reaffirmed the approval in April 2008. "Canine devocalization," said the AVMA, "should only be performed by a qualified, licensed veterinarian as a final alternative after behavior modification efforts to correct excessive vocalization have failed."

Translation, without euphemisms: A human subjectively believes his or her dog barks "excessively" (i.e., too often or too loudly) and "behavior modification" (whatever that means) has been unsuccessful. Then, according to the AVMA, *as a matter of human convenience* the dog's vocal cords can be cut.

This Act makes debarking, which is what the procedure should be called, a crime.

## **Part V** **Miscellaneous provisions**

### **Section 1. Enforcement**

(a) Administration and enforcement of this statute shall be the responsibility of the Department of Agriculture of the United States.

For the reasons explained above, this statute is intended to be a federal law. If it is, the Department of Agriculture is necessarily the most appropriate government department to administer and enforce it—despite the well-known shortcomings of that department when it comes to animals.

However, if a state wanted to enact the model statute, or any part of it, administration should be vested in a statewide Department of Animal Affairs, and enforcement in the state Attorney General.

## Section 2. Transition

- (a) Notification. Immediately upon the effective date of this statute, the licensing authority shall make reasonable efforts to inform the public of its enactment and major provisions, including but not limited to the creation of an Internet website.
- (b) Issuance of licenses. Initial regulations contemplated by this statute shall be issued by the licensing authority within 90 days of its effective date.
- (c) Applications for licenses. Applications for licenses shall be made to the licensing authority within 120 days of regulations becoming final.
- (d) Granting of licenses. The licensing authority shall promptly process license applications.
- (e) Pending license applications. The filing of an application for a license under this statute shall not suspend the applicant's duty to comply with its requirements, which compliance shall be completed within 90 days from this statute's enactment.

## Section 3. Private Attorney General; standing to sue

- (a) Definition. As used in this statute, the term "person" shall be defined to mean any individual, private legal entity, government or government agency, including but not limited to an entity concerned with the humane treatment of animals.
- (b) Purpose of section. The purpose of this section is to confer legal standing to sue for violation of this statute upon any person.
- (c) Jurisdiction and venue. All actions brought under this section shall be commenced in the United States District Court for the district and division, if any, in which the alleged violation of this statute occurred.
- (d) Not exclusive remedy. The civil action provided in this section shall not be in lieu of, but in addition to applicable criminal and other civil proceedings provided elsewhere in this statute.
- (e) Causes of action. The person bringing an action for violation of this statute may combine causes of action against one or more defendants.
- (f) Civil procedure. The civil action provided in this section shall be governed by the Federal Rules of Civil Procedure.
- (g) Available remedies. The court shall have the power to grant a temporary restraining order, a preliminary injunction, and a permanent injunction.



- (i) Upon the filing of a civil action under this statute, the plaintiff or plaintiffs may, upon satisfactory proof by affidavit or testimony demonstrating by a preponderance of evidence that a temporary restraining order is necessary to prevent continued violation of this statute, obtain from the court *ex parte* a temporary restraining order not to exceed ten days in duration, ordering the defendant or defendants not to remove the animals and immediately cease such acts which are alleged in the complaint.
- (ii) The temporary restraining order may also, if appropriate, give the plaintiff or plaintiffs the power, acting themselves and through their agents, to temporarily correct the statutory violations alleged in the complaint. This power may include plaintiff or plaintiffs entering on the premises where the alleged statutory violation has occurred, or is occurring and, upon satisfactory proof that such violation is continuing and removal of dogs is necessary allowing plaintiff or plaintiffs to take temporary possession of such dogs subject to conditions of the order and subsequent ones which may be made.
- (iii) After due notice, opportunity to be heard, and hearing, the court may issue a preliminary injunction containing the same terms ordered under subparagraphs (i) and (ii) above, and such other terms as shall be necessary under the circumstances.
- (iv) The court shall decide the merits of the complaint's allegations sitting as the fact-finder.
- (v) The plaintiff or plaintiffs must prove the complaint's allegations by a preponderance of the evidence.
- (vi) The court's final order may:
- (aa) Dismiss the case and dissolve any preliminary injunction.
  - (bb) Enter a permanent injunction with appropriate mandatory and preventative terms.
  - (cc) Upon a finding that even with the issuance of a permanent injunction there would exist a substantial risk that a dog would be subjected to cruelty, as defined by the law of the state where the action was commenced, if it remained in the custody or control of the defendant or defendants, terminate the dogs ownership, custody, and control and transfer it to the plaintiff, plaintiffs, or such other person as the court shall direct.
  - (dd) In an action where a temporary restraining order or temporary injunction vested temporary possession of a dog in someone other than the owner, regardless of the outcome of the action order that the animal's

maintenance be paid by the defendant or defendants to such person for the period of such temporary possession.

(ee) Make such other order or orders which shall be just and proper under the circumstances, including but not limited to retaining jurisdiction to make such subsequent orders as may be necessary.

This section is adapted from a proposed "Model Civil Remedies For Anti-Cruelty Enforcement Act" drafted by Professor William A. Reppy, Jr. of Duke University School of Law, a long-time activist in animal law matters. The Model Act appears as an appendix to Professor Reppy's article "Citizen Standing to Enforce Anti-Cruelty Laws By Obtaining Injunctions: The North Carolina Experience," at 11 *Animal Law* 39 (2005).

This "standing to sue" section is an indispensable element of the entire statutory scheme presented in this ISAR Model Statute for two reasons. First, it solves the currently almost insurmountable problem of who can sue on behalf of animals and, secondly, because it gives the court power not only to make such orders as are necessary, but to include in them removal of dogs who are suffering.

#### Section 4. Penalties

- (a) License suspension. The licensing authority in its discretion shall have the power to suspend any license issued under this statute for violation of any of its provisions.
- (b) License revocation. The licensing authority shall have the power in its discretion to revoke any license issued under this statute for violation of any of its provisions.
- (c) Future license prohibition. The licensing authority shall have the power in its discretion to permanently prohibit any licensee from receiving a license under this statute in the future.
- (d) Permanent bar. Conviction of a criminal violation of this statute shall constitute a permanent bar to receiving a license under it.
- (e) Offenses. Each offense shall be punished by a fine of \$500.00.
- (f) Misdemeanors. Each misdemeanor shall be punished by a fine of \$1,000, 6 months in jail, or both.
- (g) Felonies. Each felony shall be punished by a fine of \$10,000, 3 years in prison, or both.

Doubtless there will be complaints that this section's penalties are harsh. They are, and they are meant to be.

Once and for all legislators and the regulation-enforcement community must take seriously the many problems created and perpetuated by breeders, facilitators and commercial retail sellers outlets of dogs and the resulting cruelty to which these innocent animals are subjected. That seriousness will be underscored for that community, and best conveyed to the public at large, by this section's harsh punishments for violation, and by the provisions of the next section.

#### Section 5. Further powers of the Secretary.

(a) Further powers of the Secretary. In addition to, but not in limitation of, the powers elsewhere granted in this Act to the Secretary of Agriculture, he shall have the following powers:

(i) Investigations and inspections. The Secretary shall make such investigations or inspections as he deems necessary to determine whether any person or entity subject to this Act, has violated or is violating, any provision of this Act, or any regulation or standard issued hereunder.

(ii) For such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities of such persons or entities, and to those records and reports required to be maintained hereunder.

(iii) The Secretary shall inspect each breeding and facilitator facility at least once each year, each commercial retail sales outlet at least every two years, and, in the case of deficiencies or deviations from the standards promulgated under this Act, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected.

(iv) The Secretary shall promulgate such rules and regulations as he deems necessary to permit inspectors, after notice and a prompt opportunity to be heard, to confiscate or destroy in a humane manner any dog found to be suffering as a result of a failure to comply with any provision of this Act or any regulation or standard issued hereunder.

(b) Penalties for interfering with official duties. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than \$5,000, or imprisoned not more than three years, or both.

(i) Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

(ii) Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under sections 1111 and 1114 of Title 18, United States Code.

(c) Procedures. For the efficient administration and enforcement of this Act and the regulations and standards promulgated under this Act the provisions, including penalties, of sections 6, 8, 9, and 10 of the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September 26, 1914 and the provisions of Title II of the “Organized Crime Control Act of 1970” are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this Act and to any person, firm, or corporation with respect to whom such authority is exercised.

(i) The Secretary may prosecute any inquiry necessary to his duties under this Act in any part of the United States, including any territory, or possession thereof, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) Temporary license suspension; notice and hearing; revocation. If the Secretary has reason to believe that any person or entity licensed under this Act has violated or is violating any provision of this Act, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person’s license temporarily, but not to exceed 21 days, and after notice and prompt opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(e) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order. Any person or entity that violates any provision of this Act, or any rule, regulation, or standard promulgated by the Secretary hereunder, may be assessed a civil penalty by the Secretary of not less than \$2,500, nor more than \$5,000, for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation.

(i) Each violation and each day during which a violation continues shall be a separate offense.

(ii) No penalty shall be assessed, or cease and desist order issued, unless such person or entity is given notice and prompt opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals.

(iii) Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action

in a district court of the United States or other United States court for any district in which such person or entity is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

(iv) Any person or entity who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(v) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals. Any dealer . . . intermediate handler, carrier, or operator of an auction sale subject to section 12 of this Act, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of section 2341, 2343 through 2350 of title 28, United States Code, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

(f) Criminal penalties for violation; initial prosecution brought before United States magistrates; conduct of prosecution by attorneys of United States Department of Agriculture. Any person or entity subject to this Act who knowingly violates any provision of this Act shall, on conviction thereof, be subject to the penalty provided above.

(i) Prosecution of such crimes shall, to the maximum extent practicable, be brought initially before United States magistrates . . . as provided in section 636 of title 28, United States Code, and sections 3401 and 3402 of title 18, United States Code, and, with the consent of the Attorney General, may be conducted, at both trial and upon appeal to district court, by attorneys of the United States Department of Agriculture.

(g) Temporary restraining order; injunction. Whenever the Secretary has reason to believe that any person or entity is placing the life or health of any dog in serious danger in violation of this Act or the regulations or standards promulgated hereunder, the Secretary shall notify the Attorney General of the United States, who may apply to the United States district court in which such person or entity resides or conducts business for a temporary restraining order or injunction to prevent any such person from operating in violation of this Act or the regulations and standards prescribed under this Act.

(i) Issuance. The court shall, upon a proper showing, issue a temporary restraining order or injunction which shall remain in effect until the court shall otherwise direct.

(h) Attorneys of the Department of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action brought under this section.

#### Section 6. Multiple licenses.

(a) No person or legal entity shall hold at the same time more than one license under this statute.

#### Section 7. Preemption.

(a) It is the express intention of the legislature that to the extent any of the provisions of this statute shall be, or shall construed to be, incompatible or inconsistent with provisions of the Animal Welfare Act or regulations promulgated thereunder, the former shall be deemed to preempt the latter.

This means that in a conflict of wording or interpretations between the AWA and ISAR' Model Statute, the courts must give effect to the latter.

#### Section 8. Severability.

(a) If any provision of this statute shall be held unconstitutional, illegal, or unenforceable for any reason, the remaining provisions shall remain as if the offending provision had not existed.

This section is important legally. If, for example, one provision is declared unconstitutional, vague, or otherwise unenforceable, there is no reason for the entire statute to fail.

#### Section 9. Effective date

This statute will be effective when it is approved according to law.

The statute's sponsors and advocates should resist attempts by its opponents to delay the effective date, during which time they might be able to mount an effective counterattack and perhaps repeal the law or at least gut it.

## CONCLUSION

As I write this sentence, indeed just its first five words, literally countless numbers of dogs, certainly hundreds of thousands, are held captive around the world in wretched conditions, while being used and abused as living breeding machines by conscienceless breeders, facilitators and commercial retail sales outlets whose only concern is for their own profit.

Because much of that abuse occurs in the United States, and because ISAR's self-imposed mandate is the protection of animals, we have prepared this Monograph and its Model Statute Regulating Dog Breeding, Facilitation and Sales. In effect, our Monograph is a brief in support of the Model Statute, each of which speaks for itself.

Our Model Statute's imposition of tough regulations on breeders, facilitators and commercial retail sales outlets is unapologetically draconian. This was ISAR's intention and goal because only in this manner can the dog-trade's participants' appalling, and often illegal, conduct be regulated out of existence.

In employing this "regulate-to-abolish" strategy by using ISAR's Model Statute as our tactical tool, we appear to be alone among national animal protection organizations. To our knowledge, no other organization has the express goal of eliminating virtually all dog breeding in the United States.

But even if Congress will not enact ISAR's Model Statute, or a law closely similar to it, there is other recourse, legislative and legal.

First, as noted above, with minor modifications ISAR's Model Law can be adapted as state legislation.

Second, every one of the fifty states in America has animal cruelty laws which can, and should, be enforced by local prosecutors against every participant in the dog-trade pipeline who violates those laws. Many of the conditions of confinement and treatment of the dogs in that pipeline manifestly violate state and local cruelty laws.

Third, also as noted above, HSUS has made a monumental contribution to animal protection by engineering the *Petland* case. The plaintiffs' first amended complaint is literally a gold-standard template for civil litigation against at least commercial retail sales outlets, and perhaps others in the dog-trade pipeline. Animal protection advocates can take the *Petland* first amended complaint to competent, experienced civil litigators and bring similar actions against commercial retail sales outlets and others in the dog-trade pipeline. To facilitate that happening, the *Petland* First Amended Complaint is set forth in this Monograph as Appendix "B."

As ISAR did in *United States v. Stevens*,  
<http://house.ethersense.com/~isaronline/programs/animal-rights-law/friend-of-the-court/>,  
as we have done in other animal-related cases,

<http://house.ethersense.com/~isaronline/programs/animal-rights-law/>, and as we will do in the *Petland* case, we will support animal protection litigation, criminal and civil, with *amicus curiae* (“friend-of-the-court”) briefs as our resources allow.

All this, and more, ISAR does in the name of animal rights because it is a moral imperative ([www.isaronline.org](http://www.isaronline.org)).

Much has been written in the last two centuries about man’s relationship to animals and the rights of the latter, and scholarship on these related subjects has accelerated exponentially in the past thirty years. Now, joining legislative and legal efforts in behalf of animals, more and more voices of moral philosophers are being heard. Voices like Dr. Andrew Linzey, whose recent book has been reviewed by this Monograph’s author at the ISAR blog ([http://isaronline.blogspot.com/2009/10/why-animal-suffering-matters-by-andrew\\_14.html](http://isaronline.blogspot.com/2009/10/why-animal-suffering-matters-by-andrew_14.html)).

It is fitting to end this Monograph’s Conclusion with a quotation from that review:

In the end, the first paragraph of Dr. Linzey’s conclusion, sums up much of his book: “Concern for animal suffering, *like concern* for the suffering of young children, ought reasonably to arise from the following considerations: their inability to give or withhold their consent, their inability to verbalize or represent their interests, their inability to comprehend, their moral innocence or blamelessness, and, not least of all, their relative defenselessness and vulnerability. These considerations, and the sheer volume of animal suffering, are masked, minimized, or obfuscated by a range of powerful psychological and linguistic mechanisms that prevent us from directly confronting our treatment of animals *as a moral issue*” (emphasis supplied).

It is driven by this moral issue, by this moral imperative, that ISAR pledges to the powerless victims of the dog-trade: “We know your suffering, and we work to end it.”



## **Appendix**

### **ISAR's Model Statute Regulating Dog Breeding, Facilitation and Sales.**

#### **Preamble.**

Whereas, Congress finds that the dogs and dog-related activities regulated under this Act occur in interstate and foreign commerce, and substantially affect such commerce and the free flow thereof, and that regulation of the dogs and activities as provided in this Act is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce; and

Whereas, there have been and there are within the United States countless unwanted dogs lacking permanent homes, who are a major cause of canine overpopulation; and

Whereas, a major source of such dogs are commercial dog breeders who operate puppy mills, and other breeders; and

Whereas, many of the dogs used by breeders to produce puppies, and the puppies themselves, as well as the products used for their production and ultimate sale, are transported in, and affect, interstate and foreign commerce; and

Whereas, only approximately half of the states of the United States regulate breeders, facilitators or commercial retail sales outlets to any significant extent, and such regulation is inconsistent and mostly ineffective; and

Whereas, the Animal Welfare Act offers inadequate protection to dogs used for breeding, provides insufficient regulation of facilitators, and is inapplicable to those sold by commercial retail sales outlets; and

Whereas, the treatment of dogs and their physical conditions at breeders, puppy mills, facilitators and commercial retail sales outlets, are a matter of national concern affecting the public, health, safety, welfare, and environment; and

Whereas, although some of the dogs produced by breeders, puppy mills, and elsewhere, and sold by facilitators and commercial retail sales outlets are healthy, many are not; and

Whereas, many of the dogs produced by breeders, puppy mills, and elsewhere, and sold by facilitators and commercial retail sales outlets have an adverse impact on the public health, safety, welfare, and environment; and

Whereas, the social impact of these dogs includes, but is not limited to, the transmission of disease, the injury and sometimes death of humans and other animals and the drain on public finances; and

Whereas, many of these animals are eventually euthanized by shelters, humane societies, and similar organizations; and

Whereas, euthanizing dogs except for *bona fide* medical reasons is inhumane and abhorrent to the people of the United States; and

Whereas, euthanizing dogs except for *bona fide* medical reasons is not an effective, economical, humane, or ethical solution to the problem of dog overpopulation; and

Whereas, one of the most effective, economical, humane, and ethical solutions to the problem of dog overpopulation is to substantially reduce, if not entirely eliminate, their breeding, facilitation and commercial retail sale; and

Whereas, by such reduction or elimination the Congress seeks to promote the public health, safety, welfare, and environmental interests of its citizens;

## **Part I** **Definitions**

Section 1. Commercial. For purposes of this statute, the term “commercial” is defined as “relating to the buying or selling of goods, including animals generally and dogs in particular, or services in return for a monetary or non-monetary benefit.”

Section 2. Retail. For purposes of this statute, the term “retail” is defined as “the selling of goods, including animals, or services directly to purchasers.”

Section 3. Sale. For purposes of this statute, the term “sale” is defined as “the transfer of property to the ownership to someone else with or without consideration.”

Section 4. Seller. For purposes of this statute, the term “seller” is defined as “any person or legal entity that makes a “sale” as defined herein.

Section 5. Outlet. For purposes of this statute, the term “outlet” is defined “as the place where a “retail sale,” as defined herein, occurs.

Section 6. Purchaser. For purposes of this statute, the term “purchaser” is defined as “any person or legal entity who is the recipient of a sale.”

Section 7. Breeder. For purposes of this statute, the term “breeder” is defined as “any person or legal entity that intentionally, recklessly or negligently causes or allows a female dog to be inseminated by a male canine.”

Section 8. Puppy mill. For purposes of this statute “puppy mill” is defined as “a place where at the same time at least three female dogs are kept whose sole or major purpose is producing puppies for sale.”

Section 9. Facilitator. For purposes of this statute, the term “facilitator” is defined as “any person or legal entity, not a breeder, seller, sales outlet or purchaser as defined herein, who acts as a broker, dealer, wholesaler, agent, bundler, middleman or in any similar role in the sale, purchase, trade, auction, or other transfer of the ownership, custody or control of dogs, whether or not such animals are in the custody or control of the facilitator at the time of transfer.”

## **Part II** **Breeders**

### Section 1. Definitions.

(a) Part I of this statute is incorporated by reference herein.

### Section 2. Breeding licensees

(a) Breeding license. Other than as expressly provided below, no male dog may be used for insemination or female dog for breeding except by a person or entity holding a currently valid breeding license as provided in this Act.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

(c) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

(d) Issuance of licenses. No breeding license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

(e) Limitations on licensees. While a breeding license is valid, no subsequent breeding license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person

related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this Act, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

- (i) To make unannounced inspections of breeding facilities at least twice annually, and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.
- (ii) To commence civil actions for violation of this Act, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.
- (iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.
- (iv) To seize dogs from breeders which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere and in a manner, temporarily or permanently, a court shall direct, following notice to, and an opportunity to be heard by, the licensee.
- (v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of breeders, including complaints of non-compliant licensee conduct and operations by non-licensees.
- (vi) To enter upon breeder premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

### Section 4. License and other fees

(a) License and other fees. The licensing authority may establish fees as shall be necessary to implement its statutory duties.

### Section 5. Identification of dogs

(a) Identification of dogs. Each breeder licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

(b) Violation. Violation of subsection (a) of this Section shall be an offense.

## Section 6. Numbers of dogs

(a) Limitation on number of dogs. No breeder licensee shall possess at anyone one time in any calendar year more than three unneutered male dogs and three unspayed female dogs, except for unweaned litters which may be kept for no more than three months at which time the provisions of this statute will apply to them.

(b) Violation. Violation of subsection (a) of this Section shall be a felony.

## Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a breeder licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold by a breeder licensee must be free of disease, injuries, or abnormalities. If a dog is determined by a licensed veterinarian to be unfit to be bred, it must immediately be treated or relinquished to a shelter, breed-specific rescue group, or humane animal shelter.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.

## Section 8. Standards of care and treatment

(a) Standards of care and treatment. The licensing authority shall promulgate and enforce standards of care and treatment for all dogs in possession of control of breeder licensees, which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and well-being. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and well-being, to wit: not less than 55

degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals, except for same-species breeding purposes, unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, except for the limited period of breeding. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around. If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than 1/4-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but

freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall certify in writing before an animal is bred that it is in suitable health for breeding.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be bred while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care when necessary, and without delay.

(ix) Dogs shall be transported within or from a breeding facility subject to all the requirements of this subsection.

(xv) All dogs in a breeding facility shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a licensed veterinarian.

(xvi) Noise levels in a breeding facility shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

#### Section 9. Age considerations

(a) Insemination and breeding. The dogs covered by this Section regarding insemination and breeding shall be at least twenty-four months old, and no older than thirty-six months.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

#### Section 10. Sterilization responsibilities

(a) Sterilization of female dogs. Bred female dogs shall be sterilized promptly by a licensed veterinarian using customary medical procedures after delivery of the dogs' final litters.

(b) Sterilization of male dogs. Male dogs shall be sterilized promptly by a licensed veterinarian using customary medical procedures after they have twice inseminated females.

(c) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this Act shall constitute a defense to liability under the penalty provisions of this statute.

(v) If during the disqualification period the dog breeds, the person or entity in control of the animal shall be punished as a felony.

(d) Mandatory spay/neuter. No licensee shall release from its custody any live dog that has not been sterilized, except to provide temporary veterinary care or pursuant to the medical exemption provided in subsection (c) of this Section.

(e) Violation. Violation of subsections (a), (b), (c) and (d) shall be a misdemeanor.

#### Section 11. Recordkeeping and reports

(a) Recordkeeping and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all breeding licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a breeding licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) As to each dog received for breeding purposes between that time and date and 11:59 p.m. on December 31 of the reported year, its age, gender, breed and complete information as to whether and when it had been previously used for insemination or bred.



- (cc) As to each dog bred during that period, identification of the sire and dam, the date that puppies were born, the number of puppies in the litter, and their identifying information.
- (dd) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.
- (ee) As to all dogs in the custody or under the control of a breeding licensee during a reported year which were no longer as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.
- (ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(b) Retention. All records and reports shall be retained for five years.

(c) Violation. Violation of subsection (a) and (b) of this Section shall be a misdemeanor.

#### Section 12. Required disclosures

(a) Breeder licensees' duty to disclose. As to each dog offered for sale, prior to sale licensees shall provide the following information which shall be posted on the dog's housing and provided to the purchaser in writing at the time of sale:

- (i) The dog's date of birth, gender, breed, and weight.
  - (ii) The dog's color markings.
  - (iii) A complete record of vaccinations and veterinary care, including a record of sterilization certified by a veterinarian.
  - (iv) The name, address and telephone number of the breeder of the dog.
  - (v) Whether the dog was bred in a puppy mill, as defined herein, and, if so, its name, address and telephone number.
  - (vi) The name and contact information of any other person or entity who had custody, control of, or who owned the dog between its birth and purchase from the breeder licensee.
- (b) Proof of disclosure. After the aforesaid required written information is provided to the purchaser, the purchaser must acknowledge receipt of such information in writing.

(c) Violation. Violation of subsection (a) of this section shall be an offense.

### Section 13. Other laws

(a) Compliance with other laws. Breeding licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this statute shall be surrendered to any laboratory or similar facility which conducts experiments of any kind on animals, and provided, further, that in case of conflict between or among laws of this or any other jurisdiction this statute shall prevail.

### Section 14. Breeding limitations

(a) Male dogs. A breeding licensee may use a male dog only twice to inseminate a female, which second insemination must occur within a twelve month period from the first. No further insemination by the male dog is allowed thereafter.

(b) Female dogs. A breeding licensee may breed a female dog only twice, which must occur within a twelve month period, but no sooner than her first delivery. No further breeding is allowed thereafter.

(c) Puppies. The offspring of breeder licensee's dogs may be retained by the breeding licensee, but they shall be subject to the same restrictions as their sires and dams, as shall be succeeding generations.

(d) Placement of male and female dogs. Promptly after a male dog has twice inseminated a female, and promptly after a female dog has delivered her final litter, the breeder licensee shall either:

(i) Relinquish such animal to a shelter, humane society, rescue group, or similar organization for adoption only, or

(ii) Directly arrange for adoption, pursuant to the rules and regulations of the nearest shelter, humane society, rescue group, or similar organization; provided, however, that the breeder licensee shall under no circumstances transfer custody of a dog to any individual or entity as to whom the breeder licensee knows, has reason to know, or should know, that the animal will be used for insemination, breeding or experimental purposes of any kind.

(e) Violation. Violation of subsections (a), (b), and (c) of this Section shall be a felony.

### Section 15. Devocalization

(a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

### **Part III** **Facilitators**

#### Section 1. Definitions.

(a) Part I of this statute is incorporated by reference herein.

#### Section 2. Facilitator licensees

(a) Breeding license. Other than as expressly provided below, any person or entity acting as a facilitator, as defined herein, must possess a currently valid license as provided in this Act. No person or entity may act as a facilitator unless licensed under this Act.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

(c) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

(d) Issuance of licenses. No breeding license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

(e) Limitations on licensees. While a facilitator license is valid, no subsequent facilitator license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

#### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this Act, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

(i) To make unannounced inspections of facilitator facilities at least twice annually, and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.

(ii) To commence civil actions for violation of this Act, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.

(iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.

(iv) To seize dogs from facilitators which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere and in a manner, temporarily or permanently, a court shall direct, following notice to, and an opportunity to be heard by, the licensee.

(v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of facilitators, including complaints of non-compliant licensee conduct and operations by non-licensees.

(vi) To enter upon facilitator premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

#### Section 4. License and other fees

(a) License and other fees. The licensing authority may establish fees as shall be necessary to implement its statutory duties.

#### Section 5. Identification of dogs

(a) Identification of dogs. Each facilitator licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

(b) Violation of this section shall be an offense.

#### Section 6. Number of dogs

(a) Limitation on number of dogs. No facilitator licensee shall possess at any one time in any calendar year more than ten dogs, which shall have been spayed and neutered, except for unweaned litters which may be kept for no more than three months at which time the provisions of this Act will apply to them.

(b) Violation. Violation of subsection (a) of this Section shall be a felony.

#### Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a facilitator licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold by a facilitator licensee must be kept free of disease, injuries, or abnormalities. If a dog is determined by a licensed

veterinarian to be unfit to be sold, purchased, traded, auctioned or otherwise transferred, it must immediately be treated by a licensed veterinarian or relinquished to a shelter, breed-specific rescue group, or humane animal shelter.

(c) Violation of this subsection (a) and (b) of this Section shall be a misdemeanor.

#### Section 8. Standards of care and treatment

(a) Standards of care and treatment. The licensing authority shall promulgate and enforce standards of care and treatment for all dogs in possession or control of facilitator licensees which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and wellbeing. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and wellbeing, to wit: not less than 55 degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals, except for same-species breeding purposes, unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, except for the limited period of breeding. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around.

If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than ¼-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall certify in writing before an animal is bred that it is in suitable health for breeding.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be bred while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care when necessary, and without delay.

(ix) Dogs shall be transported subject to all the requirements of this subsection.

(xv) All dogs in the custody or control of a facilitator shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a veterinarian.

(xvi) Noise levels in a facilitator's facility shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

#### Section 9. Age considerations

(a) Insemination and breeding. No dog less than eight weeks old may be in the custody or control of a facilitator.

(b) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.

#### Section 10. Sterilization responsibilities

(a) Un-sterilized dogs. Upon coming into possession of an un-sterilized dog, the facilitator licensee shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or reasonably appears to be, less than three months old.

(b) Mandatory spay/neuter. No licensee shall release from its possession any dog that has not been sterilized, except to provide temporary veterinary care.

(c) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this Section shall constitute a defense to liability under the penalty provisions of this Act.

(v) If during the disqualification period the dog or cat breeds, the individual or entity in control of the animal shall be punished for a felony.

(d) Violation. Violation of subsections (a) and (b) of this Section shall be a felony.

#### Section 11. Recordkeeping and reports

(a) Recordkeeping and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all facilitator licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a facilitator licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) As to each dog received between that time and date and 11:59 p.m. on December 31 of the reported year, its age, gender, breed and complete information as to whether and when it had been previously used for insemination or bred.

(cc) As to each dog bred during that period, identification of the sire and dam, the date that puppies were born, the number of puppies in the litter, and their identifying information.

(dd) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.

(ee) As to all dogs in the custody or under the control of a facilitator licensee during a reported year which were no longer as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.

(ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(b) All records and reports shall be retained for five years.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a misdemeanor.



## Section 12. Compliance with other laws

(a) Compliance with other laws. Facilitator licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this Act shall be surrendered to any laboratory or similar facility which conducts experiments of any kind on animals, and provided, further, that in case of conflict between or among laws this statute shall prevail.

## Section 13. Breeding limitations

(a) No facilitator shall under any circumstances allow or cause a male dog to inseminate a female dog or a female dog to be inseminated.

(b) Violation of subsection (a) of this Section shall be a felony.

## Section 14. Devocalization.

(a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.

## **Part IV** **Commercial retail sales outlets**

As noted, the Animal Welfare Act exempts commercial retail sale outlets from the operation of that Act. Accordingly, ISAR's model statute plugs that loophole.

### Section 1. Definitions

(a) Part I of this statute is incorporated by reference herein.

### Section 2. Licensees

(a) Commercial retail sales outlet license. Other than as expressly provided below, no person or entity doing business as a commercial retail sales outlet shall sell any dog unless such person or entity holds a currently valid commercial retail sales outlet license as provided in this Act.

(b) Licensing discretion. Licenses shall be issued by the licensing authority in its absolute discretion, pursuant to rules and regulations it shall promulgate.

(c) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

(d) Issuance of licenses. No commercial retail sales outlet license shall be issued until the applicant shall have demonstrated that the proposed licensed facilities comply with the requirements of this Act and regulations promulgated by the Secretary.

(e) Limitations on licenses. While a commercial retail sales outlet license is valid, no subsequent license shall be issued to any individual related to the first licensee by blood or marriage, to any entity related to the original licensee by common officers, directors, stockholders, partners, or trustees, or to any entity controlled by the original licensee or any person related to him or her by blood or marriage. Any license issued in violation of this subsection shall be void *ab initio*.

### Section 3. Powers of the licensing authority

(a) Licensing authority's powers. In order to perform its statutory duty hereunder, including enforcement of this statute, the licensing authority shall have the following powers and those additional powers which by rule or regulation it shall deem necessary:

(i) To make unannounced inspections of commercial retail sales outlets at least twice annually, and at such other times and under such circumstances as the licensing authority shall, in its sole discretion, deem necessary.

(ii) To commence civil actions for violation of this statute, including but not limited to seeking relief in the form of administrative costs, injunctions, and cease and desist orders.

(iii) To apply for search and seizure warrants upon a showing consistent with the civil nature of the actions the licensing authority is empowered to commence.

(iv) To seize dogs from commercial retail sales outlets which the licensing authority deems are being treated or confined in violation of this statute and to place them elsewhere, temporarily or permanently, and in a manner a court shall direct, following notice to, and an opportunity to be heard by, the licensee.

(v) To provide a process for encouraging and processing information from other government agencies and the public concerning the conduct of commercial retail sales outlets, including complaints of non-compliant licensee conduct and operations by non-licensees.

(vi) To enter upon commercial retail sales outlet premises, without consent but with probable cause, for the purpose of making an administrative determination whether the operators of such premises are in compliance with the provisions of this statute.

### Section 4. License and other fees

(a) License fees. The licensing authority may establish license fees as shall be necessary to implement its statutory duties.

(b) Other fees. The licensing authority may establish fees other than those to obtain a license as shall be necessary to implement its statutory duties.

#### Section 5. Identification of dogs

(a) Identification of dogs. Each licensee shall identify each dog in its control or custody in a manner to be prescribed by the licensing authority.

(b) Violation. Violation of subsection (a) of this Section shall be an offense.

#### Section 6. Number of dogs

(a) Limitation on number of dogs. No commercial retail outlet licensee shall possess at one time in any calendar year more than ten dogs, except for unweaned litters which may be kept for no more than four months at which time the provisions of this statute shall apply to them.

(b) Violation. Violation of subsection (a) of this section shall be a felony.

#### Section 7. Veterinary examination and care

(a) Quality of care. Veterinary care shall be provided at a level consistent with that of privately owned pet dogs.

(b) Veterinary examination. All dogs in the custody or control of a commercial retail sales outlet licensee must be examined by a licensed veterinarian within five days of its receipt by the licensee, and every thirty days thereafter. All dogs sold must be free of disease, injuries, or abnormalities. If a dog is determined by a licensed veterinarian to be unfit to be sold, it must immediately be treated or relinquished to a shelter, breed-specific rescue group, or humane animal shelter. The licensee shall refund the dog's purchase price if it dies through normal causes within six months of being sold. If any dog is returned to the licensee due to disease, injury, or abnormality, the licensee shall immediately seek veterinary care prior to taking any other action.

(c) Violation. Violation of subsections (a) and (b) shall be a misdemeanor.

#### Section 8. Standards of care and treatment

(a) The licensing authority shall promulgate and enforce standards of care and treatment which shall include, but need not be limited to, the following:

(i) Consistent with the dogs' breed, size, gender, and age, they shall be provided with adequate nutrition, wholesome food, and fresh potable water which shall be available twenty-four hours each day. All food and water must be free from contamination, and of sufficient quality and nutritive value to meet normal daily requirements. Food and water containers shall be easily accessible, while reducing to a minimum any

contamination from excreta, and kept clean to prevent molding, deterioration, food caking, and other unwholesome conditions.

(ii) Shelter shall be provided which will protect the dogs from the elements. The degrees of cold and heat shall not be excessive or otherwise dangerous to the dogs' health and wellbeing. Floors and walls of interior facilities shall be impervious to moisture. If the dog is housed in a structure with a suspended floor, the floor shall not bend or sag beneath structural supports. Outdoor facilities must include a windbreak and protection from rain and snow. Indoor housing facilities shall be sufficiently heated and cooled when necessary to protect the dogs from temperature extremes and to provide for their health and well-being, to wit: not less than 55 degrees Fahrenheit and not more than 80 degrees Fahrenheit. Dogs shall be exposed to regular diurnal lighting cycle of either natural or artificial light. Enclosures shall be placed so as to protect the dogs from excessive light.

(iii) Dogs shall not be confined with other animals unless they are of the same breed and approximately the same size. Dogs shall be confined only with other dogs of approximately compatible temperaments. Dogs with vicious temperaments shall not be placed with other dogs under any circumstances. A female dog is not to be placed with an intact dog during periods of estrus, under any circumstances. An immature dog is not to be placed with an adult dog, except with its dam.

(iv) Puppies shall remain alone with their dams for at least 8-weeks, except in case of serious illness of either or both.

(v) All dogs shall be provided with sufficient space, plus twelve inches, to stand to their normal height, lie down fully extended to their normal length, and turn around. If multiple dogs are confined together, each must be provided with such space. Sufficient additional space shall be provided for nursing dogs.

(vi) Cages and other confinement spaces shall be clean and regularly disinfected using non-toxic substances. The dogs' housing shall be maintained in sanitary condition, including but not limited to the regular collection, removal and disposal of dog waste, spoiled food and water, soiled litter and bedding, other debris, and dead animals, in a manner that minimizes contamination and disease. Insects, ectoparasites and avian, mammalian and reptilian pests shall be eliminated immediately upon their discovery. Supplies of food, water, litter, and bedding material are to be stored in containers that afford protection from infestation or contamination by vermin. Excreta must be removed from enclosures at least twice daily. Toilet, washroom, and related facilities shall be provided for the use of persons responsible for care of the dogs.

(vii) Adequate daylight and fresh air must be consistently provided.

(viii) Flooring of cages and other confinement spaces shall consist of a solid surface or solid/slatted combination with no more than ¼-inch of space between slats. Wire flooring shall not be used as the base for any of the dog's housing.

(ix) Cages and other confinement spaces shall not be placed lower than 6-inches or higher than 42-inches above the floor.

(x) Cages and other confinement spaces shall not be stacked on top of each other.

(xi) An opportunity for exercise shall be provided each dog at least twice each day for not less than sixty-minutes each time. Such exercise shall include removing the dog from its cage or other confinement space and allowing it to walk restrained, but freely, for the entire exercise period. Such exercise shall not include use of a treadmill, jenny mill, slat mill, or similar device.

(xii) A licensed veterinarian shall be on call and readily accessible during business hours.

(xiii) Dogs suffering from painful injuries or life-threatening illnesses shall not be sold while such conditions exist. Dogs shall be observed daily by a person or persons directly responsible for their care. Dogs shall be provided with medical care by a licensed veterinarian when necessary, and without delay.

(ix) Dogs shall be transported within or from a commercial retail sales outlet subject to all the requirements of this subsection.

(xv) All dogs in a commercial retail sale outlet shall be given a reasonable opportunity for safe interaction with other dogs of similar breed and size, and with humans, including but not limited to adequate socialization with other dogs and humans, and regular exercise as recommended by a licensed veterinarian.

(xvi) Noise levels in a commercial retail sales outlet shall not be at a level to cause the dogs to experience discomfort, anxiety or fear.

(xvii) On all premises where dogs are confined there shall be maintained in good working order a water sprinkler system and fire sensors, which semi-annually shall be tested and certified as functional.

(xviii) All dogs entering or born in the breeding facility shall promptly and thereafter receive all inoculations necessary to maintain their optimal health. All inoculations shall be administered by a licensed veterinarian.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

### Section 9. Age considerations

- (a) Age at time of sale. Dogs less than eight weeks old may not be sold under any circumstances, nor transported elsewhere for sale.
- (b) Status at time of sale. No dog shall be sold or transported for sale unless it has been fully weaned.
- (c) Violation. Violations of subsections (a) and (b) shall be a misdemeanor.

### Section 10. Sterilization responsibilities

(a) Un-sterilized dogs. Upon coming into the possession of an un-sterilized dog, the licensee shall immediately present the animal to a licensed veterinarian who shall sterilize it; provided, however, that the animal need not be sterilized if it is, or reasonably appears to be, less than three months old.

(b) Medical exceptions to neutering.

(i) No dog need be neutered if a licensed veterinarian, exercising appropriate professional judgment, shall certify in writing and under oath that such dog is medically unfit for the neutering procedure because of a physical condition which would be substantially aggravated by such procedure or would likely cause the dog's death.

(ii) The dog's age shall not *per se* constitute medical unfitness.

(iii) As soon as the disqualifying medical condition ceases to exist, it shall be the duty of the person having custody or control of the dog to promptly comply with all provisions of this statute.

(iv) Possession of the certificate referred to in subsection (a) of this section shall constitute a defense to liability under the penalty provisions of this statute.

(v) If during the disqualification period the dog or cat breeds, the individual or entity in control of the animal shall be punished as a felony.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be a felony.

### Section 11. Recordkeeping and reports

(a) Required records and reports. The licensing authority shall promulgate recordkeeping and reporting requirements for all licensees as shall be necessary to implement its statutory duties, including but not limited to the following:

(i) As to all dogs in the custody or under the control of a licensee, an annual report shall be filed with the licensing authority which shall contain, but not be limited to, the following information:

(aa) The number, breed, gender, age, and identifying information of each dog as of 12:01 a.m. on January 1 of the reported year.

(bb) The number breed, gender, age and identifying information of each dog as of 11:59 p.m. on December 31 of the reported year.

(cc) As to all dogs in the custody or under the control of a breeding licensee during a reported year which were no longer under such custody or control as of 11:59 p.m., complete information as to how, when, to whom, under what circumstances, in what manner, and for what consideration they were disposed of, including but not limited to those which were euthanized.

(ii) Together with the annual report shall be filed a financial statement of the breeding licensee's assets, liabilities, profits and losses for the reported year certified by a public accountant.

(iii) The records required to be kept by this subsection shall be retained by the licensee for not less than three calendar years, and may be inspected by the licensing authority upon two days written notice.

(b) Violation. Violation of subsection (a) of this Section shall be a misdemeanor.

#### Section 12. Required disclosures

(a) Licensee's duty to disclose. As to each dog offered for sale, prior to sale licensees shall provide the following information which shall be posted on the dog's housing and provided to the purchaser in writing at the time of sale:

(i) The dog's date of birth, gender, breed, and weight.

(ii) The dog's color markings.

(iii) A complete record of vaccinations and veterinary care, including a record of sterilization certified by a licensed veterinarian.

(iv) The name and address of the breeder of the dog.

(v) Whether the dog was bred in a puppy mill and, if so, its name and contact information.

(vi) The name and contact information of any other person or entity who had custody, control of, or who owned the dog between its birth and purchase from the licensee.

(b) Proof of disclosure. After the required written information is provided to the purchaser, the purchaser must acknowledge receipt in writing.

(c) Consumer rights. A consumer rights notice which shall be prepared by the licensing authority shall be posted in close proximity to the dogs' housing, and a written copy shall be provided to the purchaser at the time of time of sale, which the purchaser shall acknowledge receipt of in writing. The licensee shall also provide written recommendations for the dog's future care and treatment. The purchaser shall be provided with a writing recommending regular veterinarian wellness visits, and emphasizing the legal necessity to comply with dog registration laws.

### Section 13. Other laws

(a) Compliance with other laws. Licensees shall be required to comply with all other federal and state statutes relating to the care and treatment of dogs, including but not limited to those relating to cruelty; provided, however, that no dog subject to this statute shall be surrendered to any laboratory or similar facility which conducts experiments of any kind on animals, and provided, further, that in case of conflict between or among laws of this or any other jurisdiction, this statute shall prevail.

### Section 14. Breeding limitations.

(a) No commercial retail sales outlet shall under any circumstances allow or cause a male dog to inseminate a female dog or a female dog to be inseminated.

(b) Violation of subsection (a) of this Section shall be a felony.

### Section 15. Complaints.

(a) Informational signs, creation. The licensing authority shall design and make available to licensees a sign informing the public of this statute's existence and who they can contact in connection with it.

(b) Informational signs, display. At least two such signs shall be posted prominently at all commercial retail sales outlets.

(c) Violation. Violation of subsections (a) and (b) of this Section shall be an offense.

### Section 16. Devocalization.

(a) Devocalization. No person or legal entity regulated by this Act shall cause or allow any dog in their possession, custody, or under their control to undergo the procedure known as devocalization.

(b) Violation. Violation of subsection (a) of this section shall be a misdemeanor.



**Part V**  
**Miscellaneous provisions**

Section 1. Enforcement

(a) Administration and enforcement of this statute shall be the responsibility of the Department of Agriculture of the United States.

Section 2. Transition

(a) Notification. Immediately upon the effective date of this statute, the licensing authority shall make reasonable efforts to inform the public of its enactment and major provisions, including but not limited to the creation of an Internet website.

(b) Issuance of licenses. Initial regulations contemplated by this statute shall be issued by the licensing authority within 90 days of its effective date.

(c) Applications for licenses. Applications for licenses shall be made to the licensing authority within 120 days of regulations becoming final.

(d) Granting of licenses. The licensing authority shall promptly process license applications.

(e) Pending license applications. The filing of an application for a license under this statute shall not suspend the applicant's duty to comply with its requirements, which compliance shall be completed within 90 days from this statute's enactment.

Section 3. Private Attorney General; standing to sue

(a) Definition. As used in this statute, the term "person" shall be defined to mean any individual, private legal entity, government or government agency, including but not limited to an entity concerned with the humane treatment of animals.

(b) Purpose of section. The purpose of this section is to confer legal standing to sue for violation of this statute upon any person.

(c) Jurisdiction and venue. All actions brought under this section shall be commenced in the United States District Court for the district and division, if any, in which the alleged violation of this statute occurred.

(d) Not exclusive remedy. The civil action provided in this section shall not be in lieu of, but in addition to applicable criminal and other civil proceedings provided elsewhere in this statute.

(e) Causes of action. The person bringing an action for violation of this statute may combine causes of action against one or more defendants.

(f) Civil procedure. The civil action provided in this section shall be governed by the Federal Rules of Civil Procedure.

(g) Available remedies. The court shall have the power to grant a temporary restraining order, a preliminary injunction, and a permanent injunction.

(i) Upon the filing of a civil action under this statute, the plaintiff or plaintiffs may, upon satisfactory proof by affidavit or testimony demonstrating by a preponderance of evidence that a temporary restraining order is necessary to prevent continued violation of this statute, obtain from the court *ex parte* a temporary restraining order not to exceed ten days in duration, ordering the defendant or defendants not to remove the animals and immediately cease such acts which are alleged in the complaint.

(ii) The temporary restraining order may also, if appropriate, give the plaintiff or plaintiffs the power, acting themselves and through their agents, to temporarily correct the statutory violations alleged in the complaint. This power may include plaintiff or plaintiffs entering on the premises where the alleged statutory violation has occurred, or is occurring, and, upon satisfactory proof that such violation is continuing and removal of dogs is necessary allowing plaintiff or plaintiffs to take temporary possession of such dogs subject to conditions of the order and subsequent ones which may be made.

(iii) After due notice, opportunity to be heard, and hearing, the court may issue a preliminary injunction containing the same terms ordered under subparagraphs (i) and (ii) above, and such other terms as shall be necessary under the circumstances.

(iv) The court shall decide the merits of the complaint's allegations sitting as the fact-finder.

(v) The plaintiff or plaintiffs must prove the complaint's allegations by a preponderance of the evidence.

(vi) The court's final order may:

(aa) Dismiss the case and dissolve any preliminary injunction.

(bb) Enter a permanent injunction with appropriate mandatory and preventative terms.

(cc) Upon a finding that even with the issuance of a permanent injunction there would exist a substantial risk that a dog would be subjected to

cruelty, as defined by the law of the state where the action was commenced, if it remained in the custody or control of the defendant or defendants, terminate the dogs ownership, custody, and control and transfer it to the plaintiff, plaintiffs, or such other person as the court shall direct.

(dd) In an action where a temporary restraining order or temporary injunction vested temporary possession of a dog in someone other than the owner, regardless of the outcome of the action order that the animal's maintenance be paid by the defendant or defendants to such person for the period of such temporary possession.

(ee) Make such other order or orders which shall be just and proper under the circumstances, including but not limited to retaining jurisdiction to make such subsequent orders as may be necessary.

#### Section 4. Penalties

(a) License suspension. The licensing authority in its discretion shall have the power to suspend any license issued under this statute for violation of any of its provisions.

(b) License revocation. The licensing authority shall have the power in its discretion to revoke any license issued under this statute for violation of any of its provisions.

(c) Future license prohibition. The licensing authority shall have the power in its discretion to permanently prohibit any licensee from receiving a license under this statute in the future.

(d) Permanent bar. Conviction of a criminal violation of this statute shall constitute a permanent bar to receiving a license under it.

(e) Offenses. Each offense shall be punished by a fine of \$500.00.

(f) Misdemeanors. Each misdemeanor shall be punished by a fine of \$1,000, 6 months in jail, or both.

(g) Felonies. Each felony shall be punished by a fine of \$10,000, 3 years in prison, or both.

#### Section 5. Further powers of the Secretary.

(a) Further powers of the Secretary. In addition to, but not in limitation of, the powers elsewhere granted in this Act to the Secretary of Agriculture, he shall have the following powers:

(i) Investigations and inspections. The Secretary shall make such investigations or inspections as he deems necessary to determine whether any person or entity subject to this Act, has violated or is violating, any provision of this Act, or any regulation or standard issued hereunder.

(ii) For such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities of such persons or entities, and to those records and reports required to be maintained hereunder.

(iii) The Secretary shall inspect each breeding and facilitator facility at least once each year each commercial retail sales outlet at least every two years, and, in the case of deficiencies or deviations from the standards promulgated under this Act, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected.

(iv) The Secretary shall promulgate such rules and regulations as he deems necessary to permit inspectors, after notice and a prompt opportunity to be heard, to confiscate or destroy in a humane manner any dog found to be suffering as a result of a failure to comply with any provision of this Act or any regulation or standard issued hereunder.

(b) Penalties for interfering with official duties. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than \$5,000, or imprisoned not more than three years, or both.

(i) Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both.

(ii) Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under sections 1111 and 1114 of Title 18, United States Code.

(c) Procedures. For the efficient administration and enforcement of this Act and the regulations and standards promulgated under this Act the provisions, including penalties, of sections 6, 8, 9, and 10 of the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,” approved September 26, 1914 and the provisions of Title II of the “Organized Crime Control Act of 1970” are made applicable to the jurisdiction, powers, and duties of the Secretary in administering and enforcing the provisions of this Act and to any person, firm, or corporation with respect to whom such authority is exercised.

(i) The Secretary may prosecute any inquiry necessary to his duties under this Act in any part of the United States, including any territory, or possession thereof, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) Temporary license suspension; notice and hearing; revocation. If the Secretary has reason to believe that any person or entity licensed under this Act has violated or is violating any provision of this Act, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and prompt opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(e) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order. Any person or entity that violates any provision of this Act, or any rule, regulation, or standard promulgated by the Secretary hereunder, may be assessed a civil penalty by the Secretary of not less than \$2,500, nor more than \$5,000, for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation.

(i) Each violation and each day during which a violation continues shall be a separate offense.

(ii) No penalty shall be assessed, or cease and desist order issued, unless such person or entity is given notice and prompt opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals.

(iii) Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person or entity is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

(iv) Any person or entity who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(v) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals. Any dealer . . . intermediate handler, carrier, or operator of an auction sale subject to section 12 of this Act, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of section 2341, 2343 through 2350 of title 28, United States Code, and such court shall have exclusive

jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

(f) Criminal penalties for violation; initial prosecution brought before United States magistrates; conduct of prosecution by attorneys of United States Department of Agriculture. Any person or entity subject to this Act who knowingly violates any provision of this Act shall, on conviction thereof, be subject to the penalty provided above.

(i) Prosecution of such crimes shall, to the maximum extent practicable, be brought initially before United States magistrates . . . as provided in section 636 of title 28, United States Code, and sections 3401 and 3402 of title 18, United States Code, and, with the consent of the Attorney General, may be conducted, at both trial and upon appeal to district court, by attorneys of the United States Department of Agriculture.

(g) Temporary restraining order; injunction. Whenever the Secretary has reason to believe that any person or entity is placing the life or health of any dog in serious danger in violation of this Act or the regulations or standards promulgated hereunder, the Secretary shall notify the Attorney General of the United States, who may apply to the United States district court in which such person or entity resides or conducts business for a temporary restraining order or injunction to prevent any such person from operating in violation of this Act or the regulations and standards prescribed under this Act.

(i) Issuance. The court shall, upon a proper showing, issue a temporary restraining order or injunction which shall remain in effect until the court shall otherwise direct.

(h) Attorneys of the Department of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action brought under this section.

#### Section 6. Multiple licenses.

(a) No person or legal entity shall hold at the same time more than one license under this statute.

#### Section 7. Preemption.

(a) It is the express intention of the legislature that to the extent any of the provisions of this statute shall be, or shall construed to be, incompatible or inconsistent with provisions of the Animal Welfare Act or regulations promulgated thereunder, the former shall be deemed to preempt the latter.

Section 8. Severability.

(a) If any provision of this statute shall be held unconstitutional, illegal, or unenforceable for any reason, the remaining provisions shall remain as if the offending provision had not existed.

Section 9. Effective date

This statute will be effective when it is approved according to law.