

H2525 AS SIGNED INTO LAW

HB 2525 was created by the Administration to raise the standards for dogs in breeding kennels. However, there are provisions that apply to every dog owner.

Summary of existing law and changes

State dog wardens, employees of the Department of Agriculture (department), and the police are charged with enforcement of the Dog Law. State dog wardens are union employees of the Department of Agriculture. Wardens and employees of the department are authorized to enter upon the premises of any person for the purpose of investigation. They cannot enter into a home or other building without the permission of the owner or a search warrant. (Sec. 901(a))

State dog wardens and employees of the department are authorized to inspect all kennels and dogs within the Commonwealth to enforce the Dog Law and regulations. They can also enforce the provisions of the Rabies Law (Act 181 of 1986), which requires all dogs 3 months of age and older (and house cats) to be vaccinated for rabies.

Section 601(a) of the Dog Law declares dogs to be personal property and the subject of theft.

Current law requires a person who in some way handles 26 or more dogs per year to have a kennel license. There is a kennel class and fee structure in section 206 of the act. The current law has 5 kennel classes to encompass the realm of private kennels, pet-shop kennels, research kennels, rescue network kennels, and dealer kennels; 3 classes of boarding kennels; and one for non-profit kennels. The general kennel class V (the highest) that includes breeding kennels ends at 251 or more dogs (at a fee of \$500).

The new law adds 1 new kennel class and associated fee of \$750 per year for a kennel that handles more than 500 dogs. The law also adds 6 new kennel classes to encompass the new definition of "commercial kennel". The existing definition of "breeding kennel" is deleted.

The new law defines a "kennel" as an establishment "in or through which at least 26 dogs are kept or transferred in a calendar year, or a boarding kennel."

The minimum penalty for failing to obtain the proper individual dog license is raised from \$25 to \$50.

It also redefines "dealer" and requires a license for that type of activity, the fee for which is based on the number of dogs the dealer handles throughout the year, to coincide with the same fees established for Kennel Classes I-VI (\$75-\$750). A dealer with a dealer kennel license does not also need a separate dealer license.

The new law authorizes the issuance of vanity or collector tags, issued by the county treasurers (at no defined cost, but the cost must be in addition to any license fees and distributed equally between the department and the county). The bill also imposes new requirements for county treasurers related to the electronic reporting of licenses to the department and delinquent funds. Agents who sell dog licenses currently collect an additional \$1, or \$1.50 (depending on whether the agent is appointed by the county treasurer or the secretary) and House Bill 2525 would allow them to collect an additional sum equal to the cost of a postage stamp.

A "Commercial kennel" is now defined as a kennel that breeds or whelps dogs and sells or transfers any dog to a dealer or pet shop-kennel or sells or transfers more than 60 dogs per calendar year.

Unlicensed kennels:

Section 207 of the Dog Law prohibits a kennel from operating without first being inspected and obtaining a license, and the secretary can file a suit in Commonwealth Court to seek to enjoin a violator. The secretary may seek a fine of between \$100 and \$500 per day for every day of violation.

The new law adds civil penalties and remedies for unlicensed kennels, which are in addition to the other penalties sought under proposed section 903(c), to assess a civil penalty of between \$500 and \$1000 for each day of violation.

The secretary will be authorized to issue a cease and desist order for operating a kennel without a license, which may be appealed administratively within 10 days, and if appealed, the kennel is subject to certain prohibitions against operating the kennel as well as to having warrantless inspections by a dog warden.

If the department's action is upheld, the kennel will be required to divest of all dogs over 25 within 10 days and in a manner set forth by the department.

Failure to comply with the provisions of a final cease and desist order constitutes a misdemeanor of the third degree, punishable by a fine of up to \$2,500 and up to 1 year in jail, as well as administrative penalties from \$100 to \$500 per day per violation. These penalties are in addition to the civil penalties outlined above and further civil and/or criminal penalties under proposed section 903(c) could be applied.

Dogs may be seized from an unlicensed kennel to protect their health, safety or welfare. Any request for an administrative hearing to appeal the seizure of dogs must occur within 10 days and requires either: 1) a surety bond in an amount determined by the department, for the estimated costs of keeping the dogs for 31 days; or 2) a maximum of 10% cash deposit of the same determined amount.

If the department's action is upheld, the department shall collect the remainder of the amount determined. If the dogs are returned to the owner, the department shall return the deposit, or the reasonable costs of the bond, whichever is applicable.

The issue on appeal is limited to whether the department acted with justification in removing the dogs. If the department's action is upheld, dogs seized by order are forfeited without compensation to the owner.

All types of kennels, except the new "commercial kennels":

The new law requires all kennels except the new proposed commercial kennels to develop and follow a veterinarian-approved exercise plan and to be equipped with smoke alarms or fire extinguishers, but fire extinguishers are required for housing facilities. If you have attached outdoor runs and the dogs have unfettered access to them, the veterinarian only needs to certify that fact.

It provides a short period of time after the birth of a litter that causes a kennel to move from one class to another for a private kennel to apply for the new license class without being in violation of the law for not being licensed for the proper class.

Commercial kennels have additional requirements, and include:

Canine Health Board

o Establishes a Canine Health Board made up of 9 veterinarians with small animal medicine and caring-for-and-treating-canines expertise:

+ Purpose is to determine standards based on animal husbandry practices to provide for the welfare of dogs in commercial kennels on the following: auxiliary ventilation if the ambient air temperature is 85 degrees F or higher, lighting ranges, ammonia levels, relative humidity, additional flooring options that meet the conditions outlined in section 207(i)(3) and alternatives to unfettered access for exercise.

+ Three members appointed by the Governor, one member each appointed by the House Majority and Minority Leaders, the Senate Minority Leader, and the Senate President Pro Tempore, one member appointed by the president of the PA Veterinary Medical Association and one member appointed by the Dean of the University of PA's School of Veterinary Medicine. Chairman selected by the Governor.

+ Quorum of five members present required to make decisions, which shall be made by majority vote of a quorum of members. No proxy voting permitted. Four-year terms; initial terms of legislative appointees are two years.

+ Board must meet within 30 days of the immediate effective date of the act.

+ Board must determine the above-outlined standards within 45 days of that first meeting, and issue them as temporary guidelines, which shall be published in the Pennsylvania Bulletin.

+ Department of Agriculture shall promulgate the temporary guidelines as a regulation concurrently with publication in the Pennsylvania Bulletin.

Temperature requirements are 50 to 85 degrees F, except that the Canine Health Board can determine the type of auxiliary ventilation to be provided if the ambient air temperature rises above 85 degrees F.

Lighting sufficient to observe and clean the facility is required, with specific lighting ranges to be determined by the Canine Health Board.

Requirements for primary enclosures are outlined, which include provisions for protecting dogs from injury, temperature and weather conditions, requirements for at least daily cleaning, and for food and compatibility of dogs. Potable water must be available at all times unless otherwise directed by a veterinarian.

"Veterinary-Client-Patient-Relationship" is defined as that which is in the Veterinary Medicine Practice Act and commercial kennels where primary enclosures are located are required to establish such a relationship.

Commercial kennels shall have smoke alarms and fire suppression (extinguishers or sprinkler system) on the premises. Certain documentation is required to be kept in the kennel records and made available for inspection. Veterinary records must be kept for 2 years after a dog has left the kennel. No dog in commercial kennels may be euthanized except by a veterinarian.

There is a provision (immediate effective date) that specifies that all laws and regulations related to kennel conditions currently enforced for commercial kennels will continue to be effective until the new provisions of Section 207(h) become effective (one year, or longer, if provided by waiver).

For dogs under 12 weeks of age: Floors and walls of a primary enclosure of a dog must be impervious to moisture. Primary enclosures may not be stacked more than 2 rows high, and the bottom of the uppermost primary enclosure may not be more than 4.5 feet off the facility floor.

There are additional requirements for dogs over 12 weeks of age and over in commercial kennels:

- o The floor space required for each dog in a primary enclosure that exists in the current regulations is doubled.
- o This space is calculated based on the size of a dog, and the measurement of a dog shall be in a straight line from the tip of its nose to the base of its tail.
- o Primary enclosures cannot be stacked and must be no higher than 30 inches above the floor of the facility.
- o A veterinarian must examine every dog at least once every six months.
- o “Veterinary-Client-Patient-Relationship” is defined as that which is in the Veterinary Medicine Practice Act and commercial kennels where primary enclosures are located are required to establish such a relationship.
- o Specific information must be kept in the kennel record.
- o A dealer license is properly established; fees coincide with Kennel Classes C-I through C-VI (\$75-\$750 per year) depending on the number of dogs handled by the dealer. A dealer with a dealer kennel license does not also need a dealer license.

Flooring:

- o No floor can: bend or sag; be destroyed by the dogs; allow a dog’s feet to pass through; be metal strand, whether coated or not; be sloped more than ¼ inch/foot.
- o Flooring shall allow for the moderate drainage of fluids, which, in effect, prohibits solid flooring
- o Canine Health Board can approve additional flooring that meets the above provisions
- o Flat slatted flooring with specific spacing parameters is permitted

Exercise:

Each primary enclosure must allow unfettered access to a ground level outdoor exercise area, which shall be twice the size of the kennel, except as follows:

o For commercial kennels licensed on the effective date of this clause (immediately):

+ if a local zoning or other local decision prohibits the use of an outdoor exercise area, the commercial kennel may apply to the department within 180 days of the effective date of this clause (immediately) to construct the required exercise area indoors.

+ The department must notify the applicant of approval or disapproval within 30 days.

+ The department shall not require the kennel to appeal the local decision as a condition of application or approval.

+ Denial of an indoor exercise area is subject to administrative appeal.

+ During an appeal, a kennel is not in violation for failure to have a required exercise area.

+ A required exercise area shall be constructed within the latter of 90 days of the final appeal or within one year of the effective date of this clause (immediately).

+ The size of the exercise area shall be at least twice the size of a primary enclosure

+ The Canine Health Board may, within 60 days of each request, approve a request for an alternative to unfettered access to exercise if the kennel owner submits a plan that the board determines is verifiable, enforceable, and provides for the same or greater amount of exercise provided by unfettered clearance to an exercise area.

o For commercial kennels not licensed by the immediate effective date, exercise areas must be outdoors, regardless of zoning or local ordinances.

A veterinarian may determine and document that it is inappropriate for certain dogs in a commercial kennel to exercise and if it is not due to a permanent condition, that decision must be reviewed at least every 30 days.

Forced exercise shall not meet the exercise requirements for dogs in commercial kennels.

Waiver:

The new law provides for a waiver of applicability for the new requirements of commercial kennels (except that euthanasia can only be performed by a veterinarian regardless) if:

o The kennel owner has not been convicted of, pled guilty of or pled no contest to a violation of the act within three years preceding the effective date of the subsection (60 days), and the kennel owner has made substantial structural improvements to the kennel within the three years prior to the effective date (60 days), or

o The kennel owner has not been convicted of, pled guilty to or pled no contest to a violation of the act within three years preceding the effective date of the subsection (60 days), and the

kennel owner is making a good faith effort to comply with the requirements of the act but cannot because of a circumstance beyond his control, and the kennel owner makes a showing of reasonable expectation that compliance can be achieved through an extension granted by the secretary.

A waiver under the first set of circumstances applies for the lesser of a time period set by the secretary or for three years.

A waiver under the second set of circumstances applies for the time set by the secretary. The secretary may consider a request for an extension of a waiver granted under the second set of circumstances.

Initial applications for waivers must be made within one year and may only be granted under one or the other set of circumstances, but not both.

The waiver provisions have an immediate effective date.

Revocation, suspension or refusal of kennel licenses (applies to all kennels):

The current law gives the secretary the discretion to revoke or refuse to issue a kennel or out-of-state dealer license if the applicant or licensee has been convicted under any animal cruelty law. The new law requires the secretary to revoke a kennel license or out-of-state dealer license if a licensee is convicted of a violation of our state animal cruelty statute (Title 18 Section 5511), or a similar cruelty law of another state.

The secretary shall not issue a kennel license or out-of-state dealer license to a person that has been convicted of our animal cruelty law within the last 10 years.

The new law states that the secretary may revoke or refuse to issue a kennel license or out-of-state dealer license for several reasons, including:

- o Failure to comply with the act (current law requires a conviction of the act).
- o Making material misstatements or material misrepresentations in a license application or to the department in a matter relevant to the license (current law).
- o If a cruelty to animals conviction is more than 10 years old, but there is evidence that the person has not been rehabilitated and a license would jeopardize the health, safety and welfare of the dogs.
- o A person holding or applying for a license has been convicted of a felony.
- o A person holding or applying for a license has been convicted of certain violations of the "Puppy Lemon Law."
- o The location of a kennel for which a license is sought is subject to a final, binding order not subject to legal challenge that a kennel is not a permitted use under an applicable local zoning ordinance.
- o A person holding or applying for a license is acting in concert with someone who

has violated the Rabies Law.

- o A person holding or applying for a license has had a kennel license refused or revoked within the past 10 years.

- o A person holding or applying for a license has a person who does or will play a role in the ownership, financial interest, management or caring for dogs in a kennel and that person would be refused a kennel license.

In making a determination on whether to revoke or refuse a license, the secretary shall consider the gravity of any misstatement, gravity and number of violations and warnings, potential effect of violations on health and welfare of dogs, and length of time between violations.

Parameters for kennel operation in the event of a license refusal or revocation are provided. The kennel owner cannot board, buy, exchange, sell, offer for sale, give away or transfer dogs and shall divest of all dogs over 25, within a maximum of 10 days, in a manner to be determined by the department. If an appeal is filed, and the kennel would be required to have a license, the kennel is considered suspended. Either way, a person whose kennel license revocation or refusal has become effective must comply with the following provisions:

- o No more dogs may be acquired by any manner, including breeding, except by the birth of puppies from pregnant dogs already on the property and owned by the kennel.

- o The department shall be notified prior to the euthanization of any dog. No dog may be euthanized unless a veterinarian determines it will prevent suffering caused by a medical condition. There are provisions for emergencies. A signed copy of veterinary findings shall be provided to the department.

- o Language about divesting dogs to 25 or less as directed by the department, is repeated.

- o The kennel shall permit state dog wardens to inspect the kennel without a warrant.

- o If there are more than 25 dogs (or less, if directed) after the exhaustion of administrative appeals or other imposed time parameters, the kennel may select the number allowed to be kept and the remainder shall be forfeited to the entity set forth by the department or court without compensation to the owner.

- o Failure to meet conditions imposed may result in penalties of \$100 to \$500 per day of violation, in addition to other penalties in the proposal. Each dog in excess of the amount set forth shall count as one violation.

- o A violation of these provisions results in a misdemeanor of the third degree.

After service of an order to divest dogs, or during the duration of an administrative appeal, dogs may be seized from a kennel to protect their health, safety or welfare.

Any request for an administrative hearing to appeal the seizure of dogs must occur within 10 days and requires either: 1) a surety bond in an amount determined by the department, for the estimated costs of keeping the dogs for 31 days; or 2) a maximum of 10% cash deposit of the same determined amount.

If the department's action is upheld, the department shall collect the remainder of the amount determined. If the dogs are returned to the owner, the department shall return the deposit, or the reasonable costs of the bond, whichever is applicable. The issue on appeal is limited to whether the department acted with justification in removing the dogs. If the department's action is upheld, dogs seized by order are forfeited without compensation to the owner.

Inspections (applies to all kennels, except where noted)

The new law authorizes state dog wardens and employees of the department to inspect establishments operating as a kennel (26 or more dogs). Licensed kennels shall be inspected twice annually. The current law requires once per year, but for many years, the department has been making efforts to conduct 2 per year by policy).

The new law authorizes state dog wardens and other employees of the department to apply for a search warrant to inspect or examine any kennel, or for the purpose of removing any dog under section 207 or 211. The definition of "kennel" does mean an "establishment," which is defined to include a premise where dogs are kept. A "kennel" has at least 26 dogs per calendar year. The warrant shall be issued on probable cause. Sufficient probable cause is further defined as:

- The state dog warden or employee of the department has been refused entry under section 220(a) for an inspection or examination of the kennel, but this provision does not apply to private kennels. (Private kennels are generally defined as those that breed dogs for hunting or showing.) or
- The dog warden or employee has reasonable grounds to believe that a violation of the act or regulations has occurred.

Only employees of the department who have been trained as per the requirements of the Dog Law may issue inspection reports.

Refusal of entry:

The new law establishes a new section (Section 220) to say that it is a violation of the Dog Law to refuse entry to a Commonwealth agent acting to enforce the act. (Current law at section 401(c) says it is unlawful to interfere with someone enforcing the act.)

New language authorizes a warden or employee to post an order on an entrance to a kennel building demanding access within 36 hours when a person is not initially present to grant access to the warden to conduct an inspection.

Failure to permit an inspection within the 36-hour time period indicated shall be a violation of the act, unless no dogs are present in the kennel at the time the order was posted, or unless within the 36 hours, the owner and the inspector can agree to a time for inspection (which may be outside of the 36 hours).

Dogs at large:

The new law changes the penalty that is paid to a political subdivision from \$15 to \$50 if a licensed dog at large is seized and detained by the local police,. Existing law requires

seized unlicensed dogs to be held for at least 48 hours. The new law excludes from the 48-hour period weekends and days that the holding shelter/kennel is not open.

Housing that is not a kennel:

The new law makes it unlawful to house a dog for any period of time in a drum, barrel, refrigerator or freezer. (Current regulations prohibit housing of a dog in a drum or barrel.)

Dangerous Dogs:

The new law makes some clarifications to the sections related to dangerous dogs. The fine for dispensing of a dog during court proceedings in an unlawful manner is changed from \$200 to \$500. It is still a summary offense. An owner of a dangerous dog must pay court-ordered restitution to any victims. Dogs may now be declared dangerous for attacking other dogs or cats. This establishes in statute what has been applied through court decision.

If a dog is declared dangerous, it must be implanted with a microchip, which has to be done by a veterinarian. It must also be sterilized. It is a violation to have a dangerous dog outside of the dwelling of the owner or primary enclosure without a muzzle. The fee to register a dangerous dog is increased to \$500 per calendar year for the life of the dog, plus any additional amount determined by the department as necessary to cover the costs of issuing the registration and enforcing this section. The current fee to register a dangerous dog is a one-time fee of \$200, established by regulation.

Certain violations of the dangerous dog provisions constitute a third degree misdemeanor on the first occurrence. Subsequent violations constitute a 2nd degree misdemeanor with a fine not to exceed \$5,000 plus costs of quarantine, kennel charges and destruction of the dangerous dog. There is a reference to forfeiting a dangerous dog to a game warden.

Other provisions:

“Rescue kennel network” is defined and will be subject to regulation under the Dog Law. Rescue kennels will be subject to the provisions for releasing agencies, which require a deposit for sterilization prior to adoption. If they are non-profit, they may be obtain non-profit licenses once they are registered with the state.

Bomb, narcotics, and other scent detection dogs are now offered protection from taunting and torture.

Dogs cannot be bartered, traded, raffled, sold, offered for sale, auctioned or in any way transferred under 8 weeks of age. Current law is 7 weeks.

There are new provisions and exemptions related to tags worn by certain dogs in hunting and performance and transport. These require a copy of the kennel license or dog license be with the person transporting the dog, but eliminate the requirement that dogs wear collars and tags during transport to events, while hunting or at events.

There are provisions that provide access to facilities by detection and search and rescue dogs used by the police, fire department, search and rescue units or handlers under the supervision of those departments.

The maximum amount of damage claims for coyote damage to domestic animals is raised from \$30,000 to \$75,000, and if damage claims exceed that amount in a fiscal year, those unpaid claims are paid first in the following year.

The secretary is given the authority to employ all means of proper enforcement of the Dog Law, with new provisions to include issuing notices and orders, filing violations for criminal prosecution, seeking injunctive relief, imposing civil penalties and entering into consent agreements.

Training in “cruelty” will be included for dog wardens, as will instruction in biosecurity risks, techniques and protocol. There is a provision that training shall be conducted in accordance with humane society police officer training (Title 22, Chapter 37). Training for dog wardens is also required concerning breed and use differences.

A provision is added to authorize the secretary to refuse to employ a person as a dog warden if he has violated our animal cruelty law.

The secretary currently has discretion to allow dog wardens (who are properly trained) to carry firearms. By policy of the current and past Administration, dog wardens have not been authorized to carry firearms, regardless of training. The new law removes this discretionary authority altogether.

There are 17 members on the Dog Law Advisory Board, representing specific areas of the “dog interest” world. This board makes non-binding decisions to the Secretary of Agriculture on matters related to the Dog Law. The new law adds one representative for boarding kennels and 7 members representing the general public and recommended by the Governor.

Violations and penalties:

Current Dog Law violations constitute a summary offense for the first offense (up to \$300 and up to 90 days in jail, or both), and a misdemeanor of the third degree (up to \$2,500 and up to 1 year in jail, or both) if the offense occurs within one year of sentencing for the first offense.

The new law establishes criminal penalties as follows:

- o A summary offense will be charged for first violation with a fine of \$100 to \$500 and up to 90 days in jail.
- o For a subsequent offense that occurs within one year of sentencing for the first violation, the offense shall be a misdemeanor of the third degree with a fine of \$500 to \$1000 plus costs of prosecution and up to one year in prison.
- o To determine the amount of the penalty imposed, the court shall determine the gravity of the offense, the potential effect on the dog or dogs, the number of dogs involved, the violator’s criminal history, and the economic benefit to the violator for failing to comply.
- o Civil penalties may be assessed in addition to criminal penalties.
- o For the first violation by a licensee, a Notice of Violation (NOV) will be issued in lieu of a civil penalty. Assuming the violation is by a kennel owner, if the kennel owner takes action to correct the violation in the time period provided in the NOV, no civil penalty shall be issued for a

violation that has been corrected.

o If a kennel owner has not taken corrective measures to comply with an NOV, or where a kennel owner has already been issued one NOV in any calendar year and the department finds a subsequent violation, a civil penalty of \$100 to \$1000 per day of each offense may be assessed.

o Factors considered in determining the amount of civil penalty are:

- Gravity of violation
- Potential harm to the public
- Potential effect to the dog or dogs
- Willfulness of the violation
- Previous violations
- Economic benefit to the violator for failing to comply

Written notice of a civil penalty shall be issued to a violator and the person may within 20 days request an administrative hearing, which is subject to 2 PaCS, Chapter 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

o In the case of inability to collect a civil penalty, the Bureau of Dog Law Enforcement may refer the matter to the Office of General Counsel or the Office of Attorney General, which shall institute appropriate court action to recover the penalty.

Effective date:

The provisions related to physical facilities and requirements for commercial kennels shall take effect in 1 year.

The provision to prohibit the euthanization of dogs except by a veterinarian, for commercial kennels only, takes effect immediately.

The provision to authorize the secretary to grant a waiver for the 1 year time period for commercial kennels to comply takes effect immediately.

The provision authorizing a currently licensed commercial kennel to apply for an indoor exercise area because of local zoning takes effect immediately.

The establishment of the Canine Health Board takes effect immediately.

The remainder of the act shall take effect in 60 days.