

State of Wisconsin



2009 Assembly Bill 250

Date of enactment: **December 1, 2009**
Date of publication*: **December 15, 2009**

2009 WISCONSIN ACT 90

AN ACT to amend 20.115 (2) (j) and 93.21 (5) (a); and **to create** 173.41 and 778.25 (1) (a) 8. of the statutes; **relating to:** regulation of persons who sell dogs or operate animal shelters or animal control facilities, granting rule-making authority, making an appropriation, and providing a penalty.

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

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

20.115 (2) (j) *Dog licenses, rabies control, and related services.* All moneys received under ss. 95.21 (9) (c), 173.27, 173.41, and 174.09 (1) and (3), to provide dog license tags and forms under s. 174.07 (2), to perform other program responsibilities under ch. 174, to administer the rabies control program under s. 95.21, to help administer the rabies control media campaign, and to carry out activities under s. 93.07 (11) and ch. 173.

SECTION 2. 93.21 (5) (a) of the statutes is amended to read:

93.21 (5) (a) In this subsection, "license" means a permit, certificate, registration, or license issued by the department under chs. 91 to 100 ~~or chs. 126, or 173.~~

SECTION 3. 173.41 of the statutes is created to read:

173.41 Regulation of persons who sell dogs or operate animal shelters. (1) **DEFINITIONS.** In this section:

(a) "Animal control facility" means a facility for the care of animals operated under a contract with a political subdivision under s. 173.15 (1).

(b) "Animal shelter" means a facility that is operated for the purpose of providing for and promoting the wel-

fare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.

(c) "Dog breeder" means a person who sells 25 or more dogs in a year that the person has bred and raised, except that "dog breeder" does not include a person who sells 25 or more dogs in a year that the person has bred and raised if all of those dogs are from no more than 3 litters.

(d) "Dog breeding facility" means a place at which dogs are bred and raised and from which 25 or more dogs are sold in a year, except that "dog breeding facility" does not include a place at which dogs are bred and raised and from which 25 or more dogs are sold in a year if all of the dogs that are sold in a year are from no more than 3 litters.

(e) "Dog dealer" means a person, other than an out-of-state dog dealer, who sells, distributes, or trades, or offers for sale, distribution, or trade, 25 or more dogs in a year that the person has not bred and raised or who operates an auction at which 50 or more dogs are sold or offered for sale in a year.

(em) "Dog trial" means an organized competitive field event involving sporting dog breeds that is sanctioned, licensed, or recognized by a local, state, regional, or national dog organization.

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(f) "Out-of-state dog dealer" means a person who is not a resident of this state who brings 25 or more dogs into this state for sale in this state in a year.

(g) "Temporary dog market" means a place at which persons sell dogs, and may sell other items, from booths or other spaces that are rented from or provided at no cost by the person operating the place, except that "temporary dog market" does not include a dog trial.

(h) "Transfer" means to grant physical possession to another.

(2) LICENSE REQUIRED. (a) Except as provided in par. (e), (f), or (g), beginning on the first day of the 18th month beginning after the effective date of this paragraph ... [LRB inserts date], no person may do any of the following without an annual license from the department:

1. Operate an animal shelter.
2. Operate an animal control facility.
3. Operate as a dog breeder.
4. Operate a dog breeding facility.
5. Operate as a dog dealer.
6. Operate as an out-of-state dog dealer.

(b) A person operating as an out-of-state dog dealer shall obtain one license under this subsection. Any other person required to obtain a license under this subsection shall obtain one license for each premises at which the person operates an animal shelter, animal control facility, or dog breeding facility or operates as a dog breeder or dog dealer.

(c) A person shall apply for a license under par. (a) on a form provided by the department and shall provide information reasonably required by the department. An applicant shall submit the applicable fees required under sub. (3) with the application.

(d) The department shall grant or deny an application for an initial license within 30 days after the application is complete and the applicable fees have been submitted.

(e) A veterinarian licensed under ch. 453 practicing in the normal course of veterinary business within the scope of the license is not required to obtain a license under this subsection.

(f) An individual providing foster care to a dog in the individual's home at the request of a person operating an animal shelter that is licensed under this subsection is not required to obtain a license under this subsection.

(g) An individual is not required to obtain a license for the purpose of conducting a one-time kennel liquidation, if all of the following apply:

1. The individual sells no more than 30 dogs and makes all of the dogs initially available for sale at the same time.
2. The individual sells only dogs that he or she owns.
3. The individual does not intend to engage in activities for which a license is required under this subsection in the next year.
4. The individual was not licensed under this subsection during the previous year.

5. The individual notifies the department at least 30 days before offering the dogs for sale.

(h) A person licensed under par. (a) 1. to 5. shall post a copy of the license in a location visible to any person coming onto the licensed premises.

(3) LICENSE FEES. (a) Except as provided under par. (b) or (c), the annual fee for a license under sub. (2) is as follows:

1. For a person who sells or offers to sell at least 25 but fewer than 50 dogs per year, \$250.
2. For a person who sells or offers to sell at least 50 but fewer than 100 dogs per year, \$500.
3. For a person who sells or offers to sell at least 100 but fewer than 250 dogs per year, \$750.
4. For a person who sells or offers to sell 250 or more dogs per year, \$1,000.
5. For a person who operates an animal shelter or animal control facility, \$125.

(b) Except as provided under par. (c), the annual license fee for an out-of-state dog dealer is 150 percent of the fee determined under par. (a), based on the number of dogs sold in this state.

(c) The department may promulgate rules specifying fees for licenses under sub. (2) that are higher than the fees in pars. (a) and (b) if necessary to cover the costs of administering this section.

(4) LICENSE DENIAL OR REVOCATION. (a) The department may deny, refuse to renew, or revoke any license under sub. (2) if the applicant or licensee is not fit, qualified, or equipped to conduct the activity for which the license is required, has violated or failed to obey any applicable law, order, or regulation, or has misrepresented or intentionally failed to disclose a material fact in applying for the license.

(b) The department may issue any license under sub. (2) conditioned upon relevant circumstances or acts. If a license is conditioned upon compliance within a specified period and the condition is not met within the specified period, the license is void.

(5) SUMMARY LICENSE SUSPENSION. (a) The department may, by written notice, without prior notice or hearing, suspend a license issued under sub. (2) if, upon inspection of the licensed premises, the department finds any condition that imminently threatens the health, safety, or welfare of any animal on the licensed premises or there is evidence that an act of animal cruelty in violation of ch. 951 has been committed by the licensee or has occurred on the licensed premises.

(b) In the notice under par. (a), the department shall state the reasons for the suspension and specify conditions that must be met for reinstatement.

(c) The department shall specify in the notice under par. (a) a date after which a reinspection of the licensed premises may take place. The department may conduct a reinspection without notice to the licensee. The department may reinstate a license following a summary sus-

pension if the department finds, based upon reinspection or evidence presented by the licensee, that circumstances warrant reinstatement. The department may specify a reinstatement date that it considers appropriate.

(d) A licensee may request a hearing contesting a summary suspension under par. (a), by written appeal to the department, within 10 days of receiving the notice of summary suspension. The department shall describe the right of hearing in the notice to the licensee under par. (a). The department shall promptly initiate proceedings to hear the appeal.

(6) INSPECTIONS. (a) The department shall inspect the premises at which a person who is required to obtain a license under sub. (2) (a) 1. to 5. operates before issuing the initial license and at least once every 2 years after the year in which the person is first licensed. The department is not required to inspect the out-of-state premises at which an out-of-state dog dealer operates.

(b) The department may enter and inspect the premises for which a person is required to obtain a license under sub. (2) at any time during normal business hours to ensure compliance with this section.

(c) The department may charge a fee for an inspection that it undertakes to determine whether a previous violation of this section or rules promulgated under this section has been corrected.

(d) An inspection fee under par. (c) is due upon written demand from the department. Unless otherwise specified by the department by rule, the fee for an inspection under par. (c) is \$150.

(7) OUT-OF-STATE DEALERS. The department may not issue a license under sub. (2) to a person who is an out-of-state dog dealer unless the person provides to the department a copy of any license required by the person's state of residence and any license required under federal law.

(8) HEALTH REQUIREMENTS FOR SELLING DOGS. (a) No person who is required to be licensed under sub. (2) may sell a dog without providing all of the following to the purchaser:

1. A certificate of veterinary inspection from a licensed veterinarian stating that the veterinarian has examined the dog and found that it has no signs of infectious or contagious diseases as of the date of the examination.

2. A copy of all vaccination records for the dog showing the date the vaccine was administered and the name of the person who administered the vaccine.

(b) No person who is required to be licensed under sub. (2) may sell at auction a dog that is not spayed or neutered without providing written proof that the dog has tested negative for brucellosis using a test approved by the department that was conducted no more than 30 days before the day of sale.

(9) AGE FOR TRANSFER OF PUPPY. A person required to be licensed under sub. (2) may not transfer a dog to a buyer until the dog is 7 weeks of age.

(10) STANDARDS OF CARE. A person who is required to be licensed under sub. (2) shall do all of the following with respect to each dog kept by the person:

(a) Provide sufficient food to maintain the dog in good health.

(b) Provide sufficient water to maintain the dog in good health. If fresh water is not available to the dog at all times, the person shall provide fresh water daily and in sufficient quantity for the health of the dog.

(c) Ensure that necessary and standard veterinary care is provided in a timely manner.

(d) Ensure that the dog is not kept in an enclosure unless all of the following apply:

1. The enclosure is of an appropriate size, as determined by the department, based on the size, age, and number of dogs kept in the enclosure and the length of time the dog is kept in the enclosure.

2. The enclosure is structurally sound and maintained in good repair to protect the dog from injury.

3. If wire flooring is used, it is coated, is of a sufficient gauge to ensure that it will not cause injury to the dog, and is used only in the manner specified by the department.

4. The enclosure is maintained in a clean and sanitary condition.

(e) Ensure that the dog is not kept in an enclosure for a period that the department determines to be excessive, considering the size of the enclosure and any other factors that the department considers relevant.

(f) Ensure that the dog is kept outdoors only if all of the following apply:

1. The dog is of a breed or type that is typically kept outdoors.

2. The dog is acclimated to the outdoors.

3. The person provides adequate shelter from the sun and inclement weather.

(g) Ensure that all facilities in which the person keeps the dog have adequate lighting and ventilation and that a proper temperature is maintained for the dog, considering its type or breed.

(h) Ensure that the dog is provided adequate daily access to exercise, as determined by the department.

(i) Ensure that the dog is observed every day by the caretaker of the premises at which the person operates or an individual under the direct supervision of the caretaker to monitor the health and temperament of the dog and to provide care to the dog as needed.

(10m) VACCINATIONS. A person who is required to be licensed under sub. (2) may have a dog kept by the person vaccinated by an individual who is not a veterinarian unless that is prohibited by law.

(11) **RECORD KEEPING.** A person who is required to be licensed under sub. (2) shall keep a record of each dog that comes into the person's possession that includes all of the following information:

(a) A description of the dog including the dog's breed or type, sex, date of birth or approximate age, color, and any distinctive markings.

(b) The dog's official federal department of agriculture tag number or tattoo or microchip information, if any.

(c) A statement that the dog was born in the person's possession or the name and address of the person from whom the dog was acquired and that person's federal department of agriculture license or registration number or, if the person is not licensed or registered by the federal department of agriculture, the person's state of residence.

(d) If the dog was not born in the person's possession, the date on which the person acquired the dog.

(e) The date and method of disposition of the dog.

(f) Any other information required by the department.

(12) **TEMPORARY DOG MARKETS.** (a) *Operator responsibilities.* A person who operates a temporary dog market shall do all of the following:

1. Register with the department.

2. Take reasonable steps to ensure that all persons selling or offering to sell dogs at the temporary dog market comply with par. (b).

3. Obtain, review, and keep, for at least 5 years, copies of the information provided under par. (b) and make the information available to the department for inspection and copying upon request.

4. If persons sell or offer to sell dogs at the temporary dog market for 2 or more consecutive days, employ or contract with a veterinarian licensed under ch. 453 to conduct an examination of the dogs offered for sale at the temporary dog market on each day on which dogs are offered for sale and to review the information provided under par. (b).

(b) *Seller responsibilities.* A person who sells or offers to sell a dog at a temporary dog market shall provide all of the following information to the operator of the temporary dog market:

1. The person's name and address.

2. If the person is required to be licensed under sub. (2), the person's license number.

3. A description of each dog sold or being offered for sale, including the dog's breed or type, sex, date of birth or approximate age, color, and any distinctive markings, and either a statement that the dog was born in the person's possession or the name and address of the person from whom the dog was acquired.

4. Documentation showing that the person complied with s. 95.21 (2) and with any applicable rules of the department relating to bringing dogs into this state.

(c) *Inspection.* The department may inspect a temporary dog market and the information provided under par. (b) at any time during normal business hours.

(13) **REPORTING MISTREATMENT OF DOGS.** If the department has reasonable grounds to believe that a dog in the possession of a person required to be licensed under sub. (2) is being mistreated in violation of ch. 951, the department shall report the information that supports its belief to a humane officer or law enforcement agency with jurisdiction over the area in which the dog is located.

(14) **RULES.** (a) The department, in consultation with the advisory committee established under par. (b), shall promulgate rules to implement and administer this section.

(b) Before the department promulgates rules under par. (a), it shall establish an advisory committee to assist in writing the rules that consists of at least one representative from each of the following groups but that does not consist of more than 12 members:

1. Persons selling dogs at retail.

2. Dog breeders that sell large dogs and that sell fewer than 50 dogs per year.

3. Dog breeders that sell small dogs and that sell fewer than 50 dogs per year.

4. Dog breeders that sell large dogs and that sell 50 or more dogs per year.

5. Dog breeders that sell small dogs and that sell 50 or more dogs per year.

6. Sporting associations whose primary activities involve dogs.

7. Humane societies providing shelter to fewer than 500 dogs per year.

8. Humane societies providing shelter to 500 or more dogs per year.

9. Veterinarians.

10. Animal control facilities.

11. Breed rescue groups.

(c) The department shall select any member of an advisory committee under par. (b) who represents veterinarians from nominations made by the Wisconsin Veterinary Medical Association and shall select each other member from nominations made by one or more organizations representing the group that the member represents.

(d) An advisory committee under par. (b) does not expire until 12 months after the rules are promulgated and shall make recommendations to the department for amendments to the rules.

(15) **PENALTIES.** (a) A person who operates without a license required under sub. (2) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) 1. Except as provided under par. (a), a person who violates this section or a rule promulgated under this section may be required to forfeit not more than \$1,000 for

the first offense and may be required to forfeit not less than \$200 nor more than \$2,000 for the 2nd or any subsequent offense within 5 years.

2. If a violation under subd. 1. involves the keeping of animals, each animal with respect to which the statute or rule is violated constitutes a separate violation.

(c) In addition to the penalties under pars. (a) and (b), a court may order a person who violates this section to pay the expenses of caring for dogs that are removed from the person's possession because of mistreatment.

SECTION 4. 778.25 (1) (a) 8. of the statutes is created to read:

778.25 (1) (a) 8. Under s. 173.41 (15) (b).

SECTION 5. Nonstatutory provisions.

(1) POSITION AUTHORIZATION. The authorized FTE positions for the department of agriculture, trade and consumer protection are increased by 6.0 PR positions to be funded from the appropriation under section 20.115 (2) (j) of the statutes to inspect and respond to complaints concerning dog facilities.

(2) TEMPORARY LICENSE. The department of agriculture, trade and consumer protection may issue a temporary license to a person applying for a license under section 173.41 of the statutes, as created by this act, before the first day of the 30th month beginning after the effective date of this subsection. Notwithstanding section 173.41 (6) (a) of the statutes, as created by this act, the department is not required to conduct an inspection of the premises at which the person operates before issuing a temporary license under this subsection. A temporary license remains in force until the department takes final action on the person's license application, including conducting an inspection of the premises. The time limit in section 173.41 (2) (d) of the statutes, as created by this act, does not apply to the department in taking final action on a license application from a person to whom the department issues a temporary license under this subsection. The holder of a temporary license acquires no rights beyond those conferred by the temporary license under this subsection.