

PENNSYLVANIA DOG LAW: TAKING A BITE OUT OF PUPPY MILL CRIME

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I. Pennsylvania: The Puppy Mill Capital of the East

The request was simple: "Oprah: Please do a show on puppy mills. The dogs need you."¹ The innovative plea made on a bill board in the Spring of 2008 by Bill Smith, founder of Main Line Animal Rescue, led to a media frenzy that covered the operations of puppy mills in eastern Pennsylvania.² *Id.* The shocking and disturbing news stories and reports that followed Oprah's 2008 investigation dubbed Pennsylvania the "Puppy Mill Capital" of the East.³ Recent reports have gone further and have crowned Pennsylvania the "Puppy Mill Capital" of the United States.⁴ Current statistics report that 1,667 licensed commercial kennels, which are home to 156,534 dogs, are operating within the State of Pennsylvania.⁵

According to the Humane Society of the United States (HSUS), between two to four million dogs bred in puppy mills are sold each year.⁶ In general, puppy mills are commercial operations that breed purebred canine species on a large mass production

¹ See Oprah Winfrey, Investigating Puppy Mills, [http://www.oprah.com/oprahshow/ Investigating-Puppy-Mills/5#slide](http://www.oprah.com/oprahshow/Investigating-Puppy-Mills/5#slide) (last visited Feb. 27, 2010).

² See *id.*

³ See Discovery Press Web, Animal Planet Exposes Horrific Billion Dollar Industry in New Special Puppy Mill Exposed-Philadelphia Take Viewers Inside Puppy Mills in Pennsylvania and Beyond (Mar. 25, 2009), <http://press.discovery.com/us/apl/press-releases/2009/animal-planet-exposes-horrific-puppy-mill-industry/> (last visited Feb 27. 2010).

⁴ See ABC News: Nightline, Puppy Mill Capital, USA?, [http://abcnews.go.com/ Video/playerIndex?id=7194974](http://abcnews.go.com/Video/playerIndex?id=7194974) (last visited Feb. 27, 2010).

⁵ See United Against Puppy Mills (UAPM), What is a Puppy Mill <http://www.unitedagainstpupmills.org/> (last visited Feb. 27, 2010).

⁶ See The Humane Society of the United State (HSUS), Undercover Investigation by the HSUS Reveals Puppy Horror in Virginia, (Nov. 1, 2007), http://www.hsus.org/press_and_publications/press_releases/undercover_investigation_puppy_mills_virginia_110107.html (last visited Apr. 1, 2010).

scale.⁷ The operations are driven by consumer demand and high economic profit.⁸ The puppy mills market and sell their puppy litters directly to pet stores, pet owners, and dog breeders by using a variety of channels such as the Internet and newspapers.⁹ What these marketing strategies do not reveal, to the everyday consumer hoping to purchase a puppy mill pooch, is that the breeder dogs and their pups are subjected to overcrowding, malnutrition, disease, substandard care, and poor and lonely living conditions.¹⁰ For instance, a recent investigation that led to a successful civil suit against Almost Heaven Kennel in Lehigh County, Pennsylvania, found that the dogs bred and raised in the kennel were not provided with adequate water or food, were covered in urine and feces, had upper respiratory infections and kennel cough, and were infested with parasites.¹¹ There were even allegations that the bodies of at least 6 dogs were found in a freezer on the kennel's premises.¹²

While Pennsylvania's government had been working to regulate and improve the conditions at puppy mills even before the 2008 media blitz, the reality was that the laws regarding the humane treatment of dogs in puppy mills were still too lax and the puppy

⁷ See The American Society for the Prevention of Cruelty to Animals (APSCA), Puppy Mills, <http://www.asPCA.org/fight-animal-cruelty/puppy-mills/what-is-a-puppy-mill.html> (last visited Feb. 27, 2010).

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See Animal Abuse Case Details, <http://www.pet-abuse.com/cases/14641/PA/US/> (last visited Apr. 1, 2010).

¹² See *id.*

mills were not sufficiently regulated.¹³ Fortunately for Pennsylvania's dogs and animal aficionados, Governor Ed Rendell decided to take action to revamp and strengthen the Pennsylvania Dog Law.¹⁴

In order to understand the overhaul of the Pennsylvania Dog Law, Part II of this paper provides an overview of the origins of puppy mills and dogs laws in the United States and in particular, a historical overview of Pennsylvania's Dog Law. Part III of this paper goes on to discuss the various amendments that were made to the Pennsylvania Dog Law that deal with puppy mills and their constitutionality.¹⁵ In particular, it analyzes whether the amendments have been successful at reaching the Legislature's intended objectives. Part IV provides a comparison of dog laws currently in force in Missouri, Nebraska, Iowa, and Oklahoma—four of the seven states that are ranked along side Pennsylvania as having the highest concentration of puppy mills.¹⁶ Finally, this paper makes some observations and recommendations regarding the current and future state of puppy mills in the United States and the laws that regulate them.

¹³ See The American Society for the Prevention of Cruelty to Animals (ASPCA), ASPCA Applauds Gov. Rendell's Proactive Steps to Improve Animal Welfare in Pennsylvania (Oct. 17, 2006), <http://www.aspc.org/pressroom/press-releases/101706.html> (last visited Mar. 1, 2010).

¹⁴ See Governor's Office: Press Releases, Governor Rendell Acts to Strengthen State Dog Law Protect Animals Consumers (Oct. 17, 2006), http://www.bmc.state.pa.us/portal/server.pt?open=space&name=Dir&id=cached&psname=Dir&psid=1&in_hi_userid=2&cached=true&control=DirRepost&rangeFrom=20&rangeTo=39&subfolderID=83819&DirMode=1 (last visited Feb. 27, 2010) (describing the provisions of the proposed amendments which are aimed at protecting the health, safety, and welfare of dogs and consumers).

¹⁵ Please note that this paper covers a small portion of the long and detailed statute (81 pages). I will be focusing on the laws pertaining to commercial breeding kennels, which are commonly called puppy mills.

¹⁶ See Prisoners of Greed, Commercial Kennel Facts, <http://www.prisonersofgreed.org/Commercial-kennel-facts.html> (last visited Mar. 12, 2010). See also, Cori Menkin, Esq., Puppy Mills, <http://learningtogive.org/papers/paper351.html> (last visited Mar. 12, 2010).

II. A History of Puppy Mills and Dog Laws in the U.S. and Pennsylvania

A. Puppy Mills

The selective breeding of dogs began after the third millennium B.C.E., when humans moved away from a nomadic way of life to a more settled and agricultural one.¹⁷ To reiterate, a puppy mill is any location that breeds a lot of dogs,¹⁸ which receive pedigree papers from the American Kennel Club¹⁹ (AKC).²⁰ There was a boom in the number of puppy mills in the United States after World War II because the United States Department of Agriculture (USDA) created subsidies for farmers that invested in new cash crops like pedigreed puppies.²¹ As a result of the boom, AKC registered dogs became a common theme in American homes and the nation saw an increased number of pet stores that were established to sell the puppy mill litters.²² From the 1930's to the 1960's, the regulation of puppy mills was practically nonexistent as there were no federal or state laws regulating them.²³ In addition, farmers lacked

¹⁷ See Jordan Curnutt, *Animals and the Law: A Sourcebook*. Santa Barbara, CA: ABC-CLIO, 2001.

¹⁸ *Prof'l Dog Breeders Advisory Council v. Wolff*, 2009 WL 2948527 (M.D. Pa. Sept. 11, 2009). A general idea of what is meant by "a lot of dogs" can be gained by looking at the facts in this case. The facts indicate, "on average, a female dog in a kennel will be impregnated every seven to eight months, with at least fifteen percent of all female dogs...birthing at one time."

¹⁹ See American Kennel Club (AKC), Mission Statement, <http://www.akc.org/about/mission.cfm> (last visited Mar. 1, 2010). The American Kennel Club (AKC) was founded in 1884. It is a non-profit registry that promotes the sport of purebred dog, advocates for the purebred dog as a family companion, advances the health and function of the purebred dog, and works to protect dog owner's rights while encouraging responsible dog ownership.

²⁰ See Curnutt, *supra* note 14, at 115.

²¹ See Curnutt, *supra* note 14, at 118.

²² See Curnutt, *supra* note 14, at 118.

²³ See Curnutt, *supra* note 14, at 118.

formal training in the breeding of dogs so the dogs were raised and treated just like any other animal on the farm and were often housed in dirty chicken coops and small rabbit hutches.²⁴ The high cost of care and lack of regulation at the time caused farmers to neglect their dogs, as they were not required by law to provide proper veterinary care for their dogs.²⁵ Unfortunately, the neglect of dogs at puppy mills still continues across the country despite the existence of federal and state dog laws.²⁶

B. Dogs Laws

American dog law is derived from English law.²⁷ The early cases that dealt with the precursors to modern dog laws were analyzed in terms of the nature of the dog itself and property rights.²⁸ In 1863, the Wisconsin Supreme Court held that the regulation and licensing of those who kept dogs was a legitimate exercise of the state's police power.²⁹ In 1897, the U.S. Supreme Court held that one's ownership of a dog was

²⁴ See Curnutt, *supra* note 14, at 118.

²⁵ See Curnutt, *supra* note 14, at 119.

²⁶ See The Humane Society of the United State (HSUS), 90 Dogs Rescued from NJ Puppy Mill (Mar. 6, 2009), http://www.humanesociety.org/news/press_releases/2010/03/nj_puppy_mill_rescue_030610.html (last visited Apr. 1, 2010).

²⁷ See Curnutt, *supra* note 14, at 114.

²⁸ *Sentell v. New Orleans & Carrollton Railroad Co.*, 166 U.S. 693, 694 (1897). The Court explained that “property in dogs is of an imperfect or qualified nature, and that they stand, as it were, between animals ferre nature in which, until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect and complete. They are not considered as being upon the same plane with horses, cattle, sheep, and other domesticated animals, but rather in the category of . . . animals kept for pleasure, curiosity or caprice.”

²⁹ *Tenney v. Lenz* 16 Wisconsin 566, 567 (Wis. 1863) (An action was brought against defendant dog owner in order to recover damages for the killing of plaintiff's sheep by defendant's dog. The court held that state had power to regulate dog owners based on the idea that the property being regulated or the business being licensed possessed the ability to cause damage and therefore, restraints need to be established to protect the public.)

subject to a state's traditional police power and that such ownership could be destroyed or managed by laws if it was necessary to protect the public.³⁰ For years, the legal status of dogs was unclear, but with the increase in pet ownership after World War II, American courts started to view dogs as personal property.³¹

In 1966, Congress finally recognized the need for federal laws to regulate the commercial sale and breeding of dogs when it passed the Animal Welfare Act (AWA).³² The AWA is the main federal statute that protects animals intended for research, commercial breeding or sale, public exhibition, or commercial transportation.³³ The AWA was amended in 1970, 1976, 1985, 1990, and 2002.³⁴ With these amendments, Congress has generally tried to strengthen and expand the scope of the Act in order to provide more protection to animals and to minimize abusive practices.³⁵

In addition to having federal laws that regulate puppy mills, various states have implemented their own dog laws. The dog laws of multiple states cover a wide array of issues such as licensing, registration, leash laws, damages by dogs, dangerous and vicious dogs, disease control, kennels and breeding, sanitation, summary destruction, ownership

³⁰ *Sentell*, 166 U.S. 693 at 165.

³¹ *See* Curnutt, *supra* note 14, at 115.

³² *See* Geoffrey S. Becker, The Animal Welfare Act: Background and Selected Legislation (Dec. 8, 2009), www.nationalaglawcenter.org/assets/crs/RS22493.pdf (last visited Feb. 28, 2010) (explaining that the law was passed after years of lobbying and an increased public outcry against the sale of dogs to laboratories for medical research).

³³ *See* Animal Welfare Act, 7 U.S.C. §§ 2131-2159, 2131 (2006) (discussing the AWA's specific areas of regulation).

³⁴ *See* Becker, *supra* note 29.

³⁵ *See id.*

limitations, and dog fighting.³⁶

1. The Pennsylvania Dog Law

The precursors to the modern Pennsylvania Dog Law were enacted in 1921 and 1965 and 1982.³⁷ The Dog Law Enforcement Bureau under the Pennsylvania Department of Agriculture is charged with the enforcement of the Pennsylvania Dog Law.³⁸ Historically, the Department of Agriculture has always been involved with Pennsylvania's Dog Law.³⁹ The Department of Agriculture's involvement is rooted in a dog-licensing program that was implemented in the 1920's to provide a funding source to reimburse farmers for any damages dogs imposed upon their livestock.⁴⁰

After repeated reports of animal cruelty and neglect in 2006, Governor Rendell took the first step to overhaul the Pennsylvania Dog Law when he fired 14 members of the state's Dog Law Advisory Board.⁴¹ Unfortunately, tragedy struck again in Puppy Mill Capital when two puppy mill owners shot and killed 80 of their dogs only two months before the proposed changes to the Dog Law were finalized and adopted by the

³⁶ See Erik W. Neilsen, *Is the Law of Acquisition of Property by Find Going to the Dogs?*, 15 T.M. COOLEY L. REV. 479, 502 (1998).

³⁷ See Dog Law of 1921, 3 P.S. §§ 461-500 (repealed). See Dog Law of 1965, 3 P.S. §§ 460-101 (repealed). See also, 2008 Pa. ALS 119.

³⁸ See 7 Pa. Code §§ 21.1-28.3 (2009) (Pennsylvania Dog Law Enforcement Bureau duties and powers).

³⁹ See, Bucks County Society for the Prevention of Cruelty to Animals, *What is the Dog Law?* <http://www.bcsPCA.org/20090203127/latest/why-you-should-buy-your-dog-a-license.html> (last visited March 2, 2010).

⁴⁰ See *id.*

⁴¹ See Tracie Mauriello and Tom Barnes, *Rendell fires state's dog law advisory panel-Seeks to reverse image as puppy mill capital of the East Coast*, POST GAZETTE, May 13, 2006, available at <http://pittsburghdogs.wordpress.com/2006/05/13/rendell-fires-states-dog-law-advisory-panel-seeks-to-reverse-image-as-puppy-mill-capital-of-east-coast/> (last visited Mar. 13, 2010).

state.⁴² On October 9, 2008, Governor Rendell signed House Bill 2525 (now Act 119) which dramatically increased the standard of care dogs living in kennels in Pennsylvania would be required to receive from kennel owners or keepers.⁴³

Today, Pennsylvania Dog Law regulates the licensing and activities of commercial breeding kennels and establishes minimum standards for dogs that spend most or part of their lives in commercial kennels.⁴⁴ The short title of Pennsylvania's Dog Law provides that Act 119 is an act amending the December 7, 1982 act (P.L. 784, No.225) and relating to dogs, regulating the keeping, sale, and transportation of dogs; providing for the licensing of dogs and kennels; providing for the protection of dogs; further providing for definitions, for issuance of dog licenses, for kennels, for requirements for kennels, for out-of-State dealer license, for revocation, suspension or refusal of kennel licenses, for inspections of premises and dogs and for additional duties of the Department of Agriculture and for the Canine Health Board.⁴⁵

III. Analysis of the newly amended Pennsylvania Dog Law

Pennsylvania is one of the states with the highest concentration of puppy mills.⁴⁶

⁴² *See id.* *See also*, Pa. Dog Law Action: Press Releases, Secretary Wolf: Pending Legislation Would Have Saved Dogs by Berks Kennel Owners (Aug. 12, 2008), <http://doglawaction.com/PressReleases.aspx?PRID=199> (2 Berks County kennel owners shoot 80 dogs after a Bureau investigation that required owners to seek veterinary medical treatment for dogs suffering from flea and tick infestations)(last visited Mar. 15, 2010). *See also*, ABC News, Pa Official Says 2 Kennel Operators Shot 80 Dogs, <http://abcnews.go.com/TheLaw/wireStory?id=5572228> (last visited Mar. 15, 2010).

⁴³ *See* The American Society for the Prevention of Cruelty to Animals (APSCA), Puppy Mill Timeline, <http://www.aspc.org/fight-animal-cruelty/puppy-mills/puppy-mill-timeline.html> (last visited Feb. 27, 2010).

⁴⁴ *See* Comprehensive Amendment to the Pennsylvania Dog Law Summary, <http://www.doglawaction.com/files/2525summary.pdf> (last visited Apr. 4, 2010).

⁴⁵ *See* H.B. 2525, 2008 Leg., 192nd Sess. (Pa. 2008). *See also*, 2008 Pa. ALS 119.

⁴⁶ *See id.*

In particular, Lancaster County, Pennsylvania has been found to be the county with the highest concentration of operating puppy mills in the United States.⁴⁷ Given the current economic crisis facing the country, it is feared that more individuals will engage in the mass production of puppies, as it is a quick way of making money.⁴⁸

However, in Pennsylvania this fear may currently be reduced or even eliminated due to the recently amended Dog Law and stricter enforcement coming from the Bureau of Dog Law Enforcement.⁴⁹ In response to the passage of House Bill 2525 in 2008, State Representative James E. Casorio, Jr., stated that “[the bill was] a victory not just for the thousand of dogs who have been suffering under inhumane conditions for so long in some of Pennsylvania’s worst commercial kennels, but also for the people who have been trying to enforce the state’s dogs laws...”⁵⁰

A. The Amendments to Pennsylvania’s Dog Law under Act 119⁵¹

Pennsylvania is attempting to reduce the number of puppy mills that are

⁴⁷ See Brian T. Murray, *Puppy farms under fire*, (Nov. 27, 2005), available at <http://ww.columbusdogconnection.com/PuppyMillArticles.htm> (explaining that there are over 200 puppy mills in and around Lancaster that churn out more than 200,000 puppies annually) (last visited Mar. 13, 2010).

⁴⁸ See Stephanie K. Savino, *Puppy Lemon Laws: Think Twice before Buying that Doggy in the Window*, 114 PENN. ST. L. REV. 643, 647 (2009).

⁴⁹ Associated Press, *New system may help Pa. crack down on ‘puppy mills,’* PITTSBURGH TRIBUNE REVIEW, Jul. 5, 2008, available at http://www.pittsburghlive.com/x/pittsburghtrib/news/rss/s_515822.html. (discussing optimistic view about Pennsylvania making a dent in puppy mills with new regulations and new inspectors) (last visited Apr. 2, 2010).

⁵⁰ See State Rep., James E. Casorio Jr., News Release available at <http://www.pahouse.com/pr/056091708.asp> (last visited Apr. 4, 2010).

⁵¹ See Pennsylvania Department of Agriculture, *Kennel Licensing Description*, http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/AgWebsite/ProgramDetail.aspx?name=Kennel-Licensing&navid=12&parentnavid=0&palid=62& (Act 119 was enacted to help Pennsylvania shed the title of “Puppy Mill Capitol of the East.” The new laws aims to better the living conditions and treatment dogs receive at commercial kennels) (last visited Apr. 9, 2010).

negligent in their treatment and breeding of dogs through the enactment of stiffer license, kennel, and investigation requirements.⁵² The new law is revolutionary and is one of the most comprehensive law that covers commercial kennels and establishes anti-cruelty provisions for the licensing and regulation of commercial kennels.⁵³ Under the old Dog Law, kennel owners could let dogs spend their whole lives in small wire cages that were stacked one on top of another, giving the dogs little to no opportunity for exercise, and providing substandard or little veterinary care.⁵⁴ Some of the improvements made to the Dog Law address and attack these very issues.⁵⁵

The improvements made to the Dog Law under Act 119 require commercial breeding kennels to increase kennel cage sizes to ensure dog mobility and comfort, to provide dogs with access to exercise areas, to obtain annual veterinary health examinations for their dogs, and to maintain a reasonable kennel temperature to ensure dog health and comfort.⁵⁶ Furthermore, the amendments set forth new heating and cooling requirements,⁵⁷ ventilation requirements,⁵⁸ lighting standards,⁵⁹ smoke alarm and

⁵² See 3 Pa. Stat. Ann. §§ 459-101 to 459-1205 (2009), amended by Act 119 (Oct. 2008) (Pennsylvania state kennel licensing and enforcement laws); *See also*, 7 Pa. Code §§ 21.1- 28.3 (2009) (Pennsylvania Dog Law Enforcement Bureau duties and powers).

⁵³ See Melissa Towsey, *Something Stinks: The Need for Environmental Regulation of Puppy Mills*, 21 VILL. ENVTL. L. J. 159, 167 (2010).

⁵⁴ See Pa. Department of Agriculture *supra* note 47.

⁵⁵ See 3 Pa. Stat. Ann. § 459-207 (g), (h) (2009) (provisions on requirements for kennels) *See also*, Summary of House Bill 2525 available at <http://www.doglawaction.com/files/2525summary.pdf> (last visited Apr. 13, 2010).

⁵⁶ *See id.*

⁵⁷ 3 Pa. Stat. Ann. § 459-207 (h)(6) (2009) (when dogs are inside housing facilities the temperature of the facilities must not fall below 50° F or rise above 85° F).

⁵⁸ 3 Pa. Stat. Ann. § 459-207 (h)(7) (2009) (dog housing facilities must be ventilated at all times dogs are present to maintain their health and well being and to minimize odors, drafts, ammonia levels, and to prevent moisture condensation).

fire extinguisher requirements,⁶⁰ dog euthanasia requirements,⁶¹ and cage stacking limitations.⁶²

Act 119 also establishes a new Canine Health Board, which is responsible for developing guidelines for the commercial dog kennels.⁶³ The new law defines a “kennel” as any establishment “in or through which at least 26 dogs are kept or transferred in a calendar year, or a boarding kennel.”⁶⁴ A “commercial kennel” is a kennel that breeds or whelps dogs and sells or transfers any dogs to a dealer or pet shop kennel or that sells or transfers more than 60 dogs per calendar year.⁶⁵

The new law also provides the Bureau of Dog Law Enforcement with clear and express authority to enforce the Dog Law against unlicensed kennels just like it does for licensed kennels and it allows for the citation of kennels, the removal of dogs, and the imposition of civil penalties when a violation of the law is discovered.⁶⁶ In order to protect and maintain the welfare of dogs, the amendments state that the Bureau

⁵⁹ 3 Pa. Stat. Ann. 459 § 207 (h)(8) (2009) (dogs must be provided with a regular daily lighting cycle of either natural or artificial light while primary enclosures must be situated so that dogs are also protected from excessive light. The housing facilities must be well lit in order to allow for the routine inspection and cleaning of the kennels and for the observation of the dogs).

⁶⁰ 3 Pa. Stat. Ann. § 459-207 (g)(2) (2009).

⁶¹ 3 Pa. Stat. Ann. § 459-207 (h)(17) (2009) (a dog must be euthanized by a veterinarian). *See also*, §§ 459-207(a.2)(c)(iii); 207(h)(5); 211(a.1)(c)(iii).

⁶² 3 Pa. Stat. Ann. § 459-207(h)(12), (i)(2) (2009).

⁶³ 3 Pa. Stat. Ann. § 459-221 (2009), *See also*, Pa. Department of Agriculture *supra* note 47.

⁶⁴ 3 Pa. Stat. Ann. § 459-102 (2009).

⁶⁵ 3 Pa. Stat. Ann. § 459-102 (2009).

⁶⁶ 3 Pa. Stat. Ann. §§ 459-218(a); 901(a); 207(a.2); 211 (d); 903 (2009).

“shall inspect” the commercial breeding kennels at least two times a year in order to ensure that the regulations are being adhered to by the commercial breeding kennels.⁶⁷

The State dog wardens are allowed to enter on the premises of a commercial breeding facility for

the purpose of conducting an investigation, but they are not able to enter a home or other building without first obtaining the consent of the owner or a search warrant.⁶⁸ The new

law also makes it a violation of the Dog Law for anyone to refuse the entry of a

Commonwealth agent who is attempting to enforce Act 119.⁶⁹ Under the new law, civil penalties may be imposed in addition to criminal penalties.⁷⁰

B. Constitutionality of the recently amended Dog Law

In general those opposed to the new Dog Law argue that the more stringent requirements were not necessary and unfair as they would place a severe hardship on their businesses.⁷¹ In 2009, the Professional Dog Breeders Advisory Council (PDBAC) challenged the constitutionality of Act 119 and argued that commercial breeders and their facilities should be immune from inspection.⁷² The Middle District of Pennsylvania held that the Commonwealth of Pennsylvania had a rational basis for enacting the Dog Law as

⁶⁷ 3 Pa. Stat. Ann. § 459-218(a) (2009).

⁶⁸ 3 Pa. Stat. Ann. § 459-901(a) (2009).

⁶⁹ 3 Pa. Stat. Ann. § 459-220 (2009).

⁷⁰ 3 Pa. Stat. Ann. § 459-903 (2009).

⁷¹ See Jeff Cobb, Rendell names Main Line women to Dog Law Advisory Board (Jan. 1, 2007), Main Line Times available at http://www.zwire.com/site/news.cfm?newsid=17666142&BRD=1676&PAG=461&dept_id=43786&rfti=6 (also explaining that some of the dog breeders from Amish and Mennonite communities have different perspectives on what constitutes the proper treatment of dogs) (last visited Apr. 14, 2010).

⁷² See Prof'l Dog Breeders Advisory Council v. Wolff, 2009 WL 2948527 (M.D. Pa. Sept. 11, 2009).

well as the amendments under Act 119 because the law serves to regulate the state's lucrative commercial breeding industry and as such the amendments were not in violation of the Equal Protection Clause or the Fourth Amendment.⁷³ The court's ruling reinforces the idea that dogs should be provided with basic humane standards such as sanitary living conditions and veterinarian care. However, the court did find that 3 P.S. § 459-209(a) was unconstitutional and as such could not be enforced.⁷⁴ This particular Dog Law provision was found to be a violation of the dormant commerce clause because it was facially discriminative as out-of-state dealers were being charged a \$300.00 licensing fee while the same fee was not being imposed on in-state dealers.⁷⁵

C. Successes and Failures of the new Dog Law

Some of the 2008 highlights that have been reported by the Bureau of Dog Law Enforcement include the seizure of 98 dogs under the Dog Law, the revocation of 14 kennel licenses, a 30% increase in citations imposed on kennel owners who continued to provide substandard living conditions for their dogs.⁷⁶ On March 19, 2010, the Department of Agriculture announced that the Bureau of Dog Law Enforcement under the authority of the new Dog Law had shut down five of the state's most notorious

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *See* Pennsylvania Department of Agriculture, Bureau of Dog Law Enforcement, 2008 Dog Law Annual Report available at http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/http%3B/10.41.0.36/AgWebsite/PublicationDetail.aspx?name=2008-Dog-Law-Annual-Report&navid=11&parentnavid=0&pubid=411&L (last visited Apr. 16, 2010).

commercial breeding kennels.⁷⁷

Pennsylvania's dedication to stopping puppy mill crime through increased and aggressive inspection of the commercial breeding kennels in 2009-2010 has led to the shutdown of 61 out of 130 commercial kennels and 1 suspension alone in Lancaster

County.⁷⁸ Furthermore, the Bureau has inspected the remaining 69 of 130 commercial kennels that have stayed in operation from 2008-2009 no less than two times per year and in some cases even more.⁷⁹ Hundreds of dogs have been removed from inhumane living conditions while large commercial breeding kennels have been cited and penalized due to the changes made in the Dog Law.⁸⁰

In addition, the success and popularity of Act 119 has allowed Governor Rendell to go beyond Act 119 as is evidenced by the recent passage of House Bill 39.⁸¹ While House Bill 39 does not amend the Dog Law itself it does amend Pennsylvania's animal cruelty laws.⁸² The new law imposes criminal penalties for certain medical procedures

⁷⁷ See Justin Fleming, Bureau of Dog Law Enforcement Actions Ridding Pennsylvania of Problem Commercial Kennels available at http://www.redorbit.com/news/business/1839056/bureau_of_dog_law_enforcement_actions_ridding_pennsylvania_of_problem/ (last visited Apr. 14, 2010).

⁷⁸ See Pennsylvania Department of Agriculture, Kennel Inspection Search available at <https://www.padogs.state.pa.us/PublicKennels/SearchKennelInspections.aspx> (last visited Apr. 14, 2010).

⁷⁹ See *id.*

⁸⁰ See Pa. Department of Agriculture *supra* note 77.

⁸¹ See Pennsylvania General Assembly, House Bill 39 Information available at <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=H&type=B&BN=0039> (last visited Apr. 13, 2010).

⁸² 18 Pa. Cons. Stat § 5511(h) (2009).

that are not completed by a licensed veterinarian.⁸³ The medical procedures that must be performed by a licensed veterinarian include debarking, c-sections, declawing, ear cropping, and tail docking.⁸⁴ This is a great success as many puppy mill owners have performed these same surgeries themselves in the past with disastrous results for the dogs.⁸⁵ Overall, the Dog Law appears to be proving a success in providing dogs in puppy mills with healthier and safer living conditions while at the same time enforcement appears to be cracking down on those puppy mills that refuse to comply with the law.

However, some of the perceived failures that exist despite the comprehensive overhaul of Pennsylvania's Dog Law include the fact that breeders who claim not to sell or transfer more than 26 dogs are excluded from the licensing requirements that allow the state's Dog Wardens to inspect the commercial breeding kennels.⁸⁶ This results in the ability of these smaller breeders known as "backyard" breeders to escape the scrutiny of the Bureau.⁸⁷ Another identified problem lies in the fact that the Dog Wardens work for the Department of Agriculture, which is believed to take a pro-farmer stance since agriculture is Pennsylvania's largest industry.⁸⁸ Some critics believe that this conflict of

⁸³ *See id.*

⁸⁴ *See* WGAL, New Pa. Dog Law Bans 5 Surgeries, <http://www.wgal.com/politics/20586275/detail.html> (last visited Apr. 7, 2010).

⁸⁵ *See* Associated Press, *Pennsylvania's Main Line Animal Rescue takes on puppy mills, one dog at a time*, LOS ANGELES TIMES, Jan. 19, 2010, available at <http://latimesblogs.latimes.com/unleashed/2010/01/main-line-animal-rescue-takes-on-pennsylvania-puppy-mills.html> (explaining how a botched Caesarean can leave mummified puppies in the dog's belly which then leads to bleeding and severe infection) (last visited Apr. 14, 2010).

⁸⁶ *See* Main Line Animal Rescue, Protecting the Dogs of Pa? USDA Inspectors, Pa Dog Wardens, and Humane Officers, http://www.mlar.org/puppy-mills/protecting_dogs_of_PA (last visited Apr. 14, 2010).

⁸⁷ *See id.*

⁸⁸ *See id.*

interest keeps Dog Wardens from being objective and effective in their prosecution of farmers who also engage in commercial dog breeding.⁸⁹ Another identified shortcoming in the law is the fact that the Dog Wardens inspecting the commercial breeding kennels are unable to file charges of animal cruelty against kennel operators, but instead are required only to contact the Humane Society or a local shelter and as such dogs are not being protected as well as they could be under the law.⁹⁰

In terms of the kennel requirements that must be provided for the dogs living in the commercial breeding kennels, one shortcoming can be seen in the provision regarding cage stacking which only apply to specific kennel license holders.⁹¹ While Act 119 prohibits stacking of cages at certain heights and requires that dogs be provided with a more solid flooring, kennel owners are still able to stack cages at least two rows high which means that at least one dog in the stacked column of cages may still be exposed to daily urine and fecal matter if any form of wire or open cage flooring is still being used by the kennels or if the collecting trays are ineffective at preventing the waste from passing to the cage below.⁹² Currently, the Canine Health Board is considering whether it should allow kennel owners to use alternative cage flooring like steel mesh hog

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ 3 Pa. Stat. Ann. § 459-207(h)(12), (i)(2) (2009).

⁹² *See* Laura Allen, Insist on Solid Flooring in PA Puppy Mills, Animal Law Coalition, <http://www.animallawcoalition.com/companion-animal-breeding/article/1288> (last visited Apr. 16, 2010) (describing the harms suffered by dogs who spend most or their entire lives in wire cages which includes paw sores, splayed toes, bowed legs, broken limbs, and the inability to walk on solid ground).

flooring.⁹³ Animal welfare advocates argue that dogs are not pigs and are concerned that the Health Board will be forced to live on flooring that was similar to the wire cage flooring that was banned under Act 119 and as such the living conditions for dogs will revert to what they were before the changes were made to the law.⁹⁴

IV. Comparison of Pennsylvania’s Dog Law with other U.S. dog laws

States have the authority to establish laws that set forth higher standards of care for commercial breeding kennels than are mandated by the federal Animal Welfare Act.⁹⁵ As more people continue to denounce the neglect that has been revealed in the puppy mill industry, more and more states have adopted new and more stringent dog laws.⁹⁶ According to the American Society for the Prevention of Cruelty for Animals (ASPCA), over thirty states introduced bills aimed at improving and regulating puppy mills in 2009.⁹⁷

Today, there are seven states that are commonly referred to as the “puppy mill

⁹³ See Jennifer White, Pennsylvania Sets An Example With PuppyFarming...Rest of The World Should Follow, K9 Magazine, available at <http://www.dogmagazine.net/archives/5236/pennsylvania-sets-an-example-with-puppy-farming-rest-of-the-world-should-follow/> (last visited Apr. 16, 2010).

⁹⁴ See *id.*

⁹⁵ See The American Society for the Prevention of Cruelty to Animals (APSCA), Puppy Mills FAQ: How are Puppy Mills Regulated at the State Level?, <http://www.aspc.org/fight-animal-cruelty/puppy-mills/puppy-mill-faq.html> (last visited Apr. 8, 2010).

⁹⁶ See *id.*

⁹⁷ See *id.*

states” because they have the highest concentration of commercial breeding kennels in the country.⁹⁸ The notorious puppy mill states of the country are: Missouri, Nebraska, Kansas, Iowa, Arkansas, Oklahoma, and Pennsylvania.⁹⁹

A. Missouri’s Dog Law

Missouri is widely recognized as the "Puppy Mill Capital of the Nation" because it is reported to have the highest number of commercial breeding kennels than any other state.¹⁰⁰ Missouri has four times as many USDA-licensed breeders as Nebraska, the next highest state with commercial breeding kennels.¹⁰¹ In 2008, there were 1,525 USDA licensed commercial breeder facilities operating within the state and at least 10 operating illegally without a license.¹⁰² The Humane Society of the United States indicates that today, Missouri is home to an estimated 3,000 puppy mills which send thousands of puppies each month throughout the country and overseas.¹⁰³

Like Pennsylvania, Missouri gives its department of agriculture the power to govern the state’s dog laws.¹⁰⁴ Missouri’s dog laws are similar to the Pennsylvania Dog

⁹⁸ See Puppymill Rescue, What is a Puppy Mill?, http://www.puppymillrescue.com/what_is_a_puppy_mill.htm (last visited Apr. 10, 2010).

⁹⁹ See *id.*

¹⁰⁰ See Missouri Alliance for Animal Legislation, Missouri’s Puppy Mill Problem, <http://www.maal.org/Puppy-Mills.asp> (last visited Apr. 10, 2010).

¹⁰¹ See Robert H. Teuscher, St. Louis Better Business Bureau, Study of the Puppy Industry in Missouri (Mar. 2010) available at <http://stlouis.bbb.org/Storage/142/Documents/Puppy%20Mills%20study.pdf> (last visited Apr. 17, 2010).

¹⁰² See *id.*

¹⁰³ See The Humane Society of the United State (HSUS), Campaign Launched to Tackle Puppy Mills in Missouri (Dec. 14, 2009), http://www.humanesociety.org/news/press_releases/2009/12/missouri_ballot_initiative_launch_121409.html (last visited Apr. 9, 2010).

¹⁰⁴ See Missouri Department of Agriculture, Animal Care Facilities Act Program (ACFA), <http://mda.mo.gov/animals/ACFA/> (last visited Apr. 9, 2010).

Law because they contain a variety of provisions that range from dogs at large, dangerous dogs, and licensing requirements.¹⁰⁵ Missouri's dog laws also contain the Animal Care Facilities Act (ACFA), which is the authority on the regulation of commercial breeding kennels.¹⁰⁶ Missouri's ACFA was promulgated on August 28, 1992.¹⁰⁷ The goal of the ACFA is to ensure that dogs and cats are provided with adequate care, treatment, and living conditions by breeders, dealers, intermediate handlers and others who supervise their care.¹⁰⁸

Missouri's ACFA is not comparable to Pennsylvania's recently amended Dog Law, but it is more similar to the old law because it imposes licensing requirements on commercial breeding kennels and sets forth general standards of care for food and water, exercise, sanitation, and living conditions that the commercial breeding kennels must provide to their dogs.¹⁰⁹ The current provisions of the ACFA are in the same state that Pennsylvania's Dog Law found itself in before Act 119 came into existence in 2008, meaning that Missouri's current ACFA is outdated and ineffective.¹¹⁰ For instance, a recent study found that the lack of more aggressive enforcement of the laws and

¹⁰⁵ See Mo. Stat. Ann. tit. 17, §§ 273.010 to 273.405 (2010).

¹⁰⁶ See Mo. Stat. Ann. tit. 17, §§ 273.325 to 273.357 (2010).

¹⁰⁷ See Missouri Department of Agriculture, Animal Care Facilities Act Program (ACFA), <http://mda.mo.gov/animals/ACFA/> (last visited Apr. 9, 2010).

¹⁰⁸ See *id.*

¹⁰⁹ See Mo. Stat. Ann. tit. 17, §§ 273.325 to 273.357 (2010). See also, §273.344 that provides that facilities and persons subject to the ACFA provide adequate shelter, food and water, proper conditions of sanitation and ventilation. Other than providing general definitions for what is considered to adequate food and water, and shelter, the statute does not provide specific details like those found in the Pennsylvania Dog Law that the facilities must comply with.

¹¹⁰ See Robert H. Teuscher, St. Louis Better Business Bureau, Study of the Puppy Industry in Missouri (Mar. 2010) available at <http://stlouis.bbb.org/Storage/142/Documents/Puppy%20Mills%20study.pdf> (last visited Apr. 17, 2010).

regulations has allowed many breeders to continue operating substandard kennels.¹¹¹

Further, the lack of enforcement appears to have created a laissez-faire attitude toward the laws and as a result most violators consider the warnings and penalties as part of the normal cost of doing business instead of a deterrent for violating the law.¹¹²

Unlike the current Pennsylvania Dog Law, Missouri's dog laws allow commercial breeding kennels to confine their dogs in small, wire cages that are stacked one on top of the other, and the kennels get away with providing minimal exercise and veterinary care to their dogs.¹¹³

Fortunately, hope may be in the horizon for the dogs in Missouri's puppy mills because an unprecedented ballot initiative designed to strengthen the ACFA, is currently underway in Missouri.¹¹⁴ The ballot initiative is seeking to have the Puppy Mill Cruelty Prevention Act approved.¹¹⁵ The Act proposes changes to the ACFA in order to ensure that dogs are treated humanely in commercial breeding kennels. Some of the changes include requirements that the dogs receive sufficient and sanitary nutrition, adequate cage space to ensure mobility, appropriate housing conditions, regular exercise, and appropriate veterinary care, and adequate rest between breeding cycles.¹¹⁶ The proposed amendments also prohibit the use of stacked cages and the use of cages with wire

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ *See* Missourians for the Protection of Dogs, Puppy Mill Cruelty Prevention Act Q&A, <http://tamepetmag.com/Puppy-Mill-Initiative> (last visited Apr. 9, 2010).

¹¹⁴ *See* The American Society for the Prevention of Cruelty to Animals (APSCA), MO Puppy Mill Cruelty Prevention Act Ballot Initiative <https://secure2.convio.net/aspca/site/Advocacy?id=2621&pagename=homepage> (last visited Apr. 9, 2010).

¹¹⁵ *See id.*

¹¹⁶ *See id.*

flooring.¹¹⁷ The initiative also seeks to limit a commercial breeder to 50 adult breeding dogs.¹¹⁸ If this initiative is successful Missouri’s dog laws significantly change the way puppy mills operate in the state.

B. Nebraska’s Dog Law

In 2008, there was a total of 176 puppy mills that were reported to be operating in Nebraska.¹¹⁹ In Nebraska the law regulating puppy mills is known as the Commercial Dog and Cat Operator Inspection Act.¹²⁰ The Act sets for the law pertaining to licenses, inspections, and the obligations of commercial breeders within the state of Nebraska.¹²¹ The Act is also enforced by the Nebraska Department of Agriculture through the Bureau of Animal Industry.¹²² Like Missouri, Nebraska gives the state veterinarian under the Department of Agriculture authority to regulate puppy mills and requires commercial breeders to be licensed.¹²³ Unlike Pennsylvania, Nebraska law does not have various kennel classifications, but instead provides a definition to identify, which individuals qualify as commercial breeders.¹²⁴ In Nebraska a “commercial breeder” is defined as any person who sells, exchanges, leases, or transfers 31 or more dogs or cats in a year; any person who owns or harbors four or more dogs or cats for

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See* Tara Beres, *The Truth About Oklahoma Puppy Mills: A State by State Comparison* (2008) <http://www.okpuppymilltruth.org/comparison.html> (last visited Feb. 27, 2010).

¹²⁰ *See* Neb. Rev. Stat. § 54-625 (2008).

¹²¹ *See* Neb. Rev. Stat. §§ 54-625-643 (2008).

¹²² *See* Neb. Rev. Stat. § 54-625 (7), (8) (2008).

¹²³ *See* Neb. Rev. Stat. § 54-625 (7), (8) (2008); *See* Mo. Stat. Ann. tit. 17, §§ 273.331, 348.

¹²⁴ *See* Neb. Rev. Stat. §§ 54-626 (2008).

breeding purposes in a year; any person whose dogs or cats produce a total of four or more litters within a year; or any person who sells, exchanges or leases dogs or cats for later retail sale or brokered trading.¹²⁵

Like Missouri and Pennsylvania, Nebraska has recently been flooded by lobbyists pushing for and against several proposed state laws aimed at puppy mills.¹²⁶ For example, in January 2009, Legislative Bill 677 was introduced and called for stricter regulation of Nebraska's puppy mills.¹²⁷ The bill that was put indefinitely on hold after it was considered by Nebraska's Senate Agricultural Committee would have limited the breeding of pedigreed dogs to dogs between the ages of 18 months and 8 years and it would also have imposed rigid requirements for kennel climate and living conditions.¹²⁸

Despite the failure of Legislative Bill 677 in the Nebraska Senate, only three months later, on May 29, 2009, Legislative Bill 241 was adopted and the Commercial Dog and Cat Operator Act was amended.¹²⁹ The new amendments aim at cracking down on Nebraska's puppy mills.¹³⁰ Some of the changes that were made to the Commercial Dog and Cat Operator Inspection Act include the provision of additional definitions

¹²⁵ *See id.*

¹²⁶ *See* Art Hovey, Farm Bureau wary of potential pet, livestock linkage, LINCOLN JOURNAL STAR, Feb. 21, 2009, available at http://journalstar.com/news/local/govt-and-politics/article_795d0a6b-fc54-5ee9-a17a-c105b5c057e7.html (discussing the Nebraska Farm Bureau's fear of a slipper slope if commercial breeding laws for dogs and cats are amended as proposed by the new Legislative Bill 241) (last visited Apr. 9, 2010)

¹²⁷ *See* American Kennel Club (AKC), Nebraska Alert: Strict Breeders Bill to Be Heard Tues., Feb. 3!, (Jan. 29, 2009) http://www.akc.org/news/index.cfm?article_id=3720 (last visited Apr. 9, 2010).

¹²⁸ *See id.*

¹²⁹ *See* Best Friends Animal Society, Nebraska Animal Laws 2009, http://network.bestfriends.org/groups/advocacy_for_animals/pages/Nebraska-animal-laws-2009.aspx (last visited Apr. 11, 2010).

¹³⁰ *See id.*

regarding the premises of a commercial dog operation, the allowance of the Department of Agriculture to issue stop-movement orders,¹³¹ and the requirement that all commercial dog operations maintain a veterinary care health plan.¹³²

One difference between Pennsylvania's Dog Law and Nebraska's Act is that Pennsylvania's statute provides that all commercial breeding kennels shall be inspected at least twice a year whereas in Nebraska their statute requires that all licensed commercial breeding kennels shall be inspected at least once every two years.¹³³ In this sense, Pennsylvania's Dog Law takes a stronger stance than Nebraska does. Another difference is seen in the provision in the Nebraska law that sets forth the duties of the commercial breeders.¹³⁴ Unlike the Pennsylvania Dog Law, Nebraska's law does not set forth any specific lighting or ventilation, euthanasia, or temperature requirements. Instead the commercial duties are described in nonspecific narrative terms such as providing shelter from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs.¹³⁵

Under Nebraska law, the Department of Agriculture is allowed to impose a fine no more than \$5,000.00 and violations under the act are considered to be misdemeanors.¹³⁶ Similar to Pennsylvania's Dog Law, the Nebraska law considers the refusal of a

¹³¹ See Neb. Rev. Stat. §§ 54-625 (18), 628.01 (2008) (a stop-movement order is a directive preventing the movement or removal of any dog or cat from the premises).

¹³² See Jeanne Glenn, Nebraska Legislature Floor Docs, LB 241 Fiscal Note available at <http://www.nebraskalegislature.gov/FloorDocs/Current/PDF/FN/LB241.pdf> (last visited Apr. 21, 2010).

¹³³ See Neb. Rev. Stat. § 54-628 (2008).

¹³⁴ See Neb. Rev. Stat. § 54-640 (2008) (describing the kennel requirements which must be maintained by all commercial dog breeders).

¹³⁵ See Neb. Rev. Stat. § 54-640 (4) (2008).

¹³⁶ See Neb. Rev. Stat. §§ 54-633-634 (2008).

commercial breeder to allow entry of an officer for purposes of inspection to be a direct violation of the Act other direct violations include the hindrance of a stop-movement order, the failure to disclose all locations of the dogs controlled by the commercial breeder, and the failure to pay any administrative fines that have been imposed on the commercial breeder.¹³⁷ The amendments to Nebraska's dog law also added The Dog and Cat Purchase Protection Act that requires commercial breeders and sellers of puppy mill dogs to provide specific information to purchasers regarding the dogs.¹³⁸ This type of legislation is referred to as a puppy lemon law and it is similar to Pennsylvania's puppy lemon law, which is also meant to protect consumers who purchase dogs from puppy mills.¹³⁹

C. Iowa's Dog Law

In Iowa there are at least 400 commercial breeding kennels, which alone house over 23,000 adult breeding dogs.¹⁴⁰ Iowa's dog laws provide regulatory statutes and licensing requirements, but unlike Pennsylvania, which provides one comprehensive dog law statute, Iowa's dog laws are found in different sections of the state code.¹⁴¹ Commercial breeders that are licensed by the state of Iowa are governed by the laws codified in the Iowa Code in a chapter entitled the "Care of Animals in Commercial

¹³⁷ See Neb. Rev. Stat. § 54-634.01 (2008).

¹³⁸ See Best Friends Animal Society, Advocacy for Animals: Nebraska Animal Laws 2009, http://network.bestfriends.org/groups/advocacy_for_animals/pages/nebraska-animal-laws-2009.aspx (last visited Apr. 9, 2010).

¹³⁹ See Savino, *supra* note 45, (discussing what puppy lemon laws are and analyzing the current law in Pennsylvania and comparing it with other states).

¹⁴⁰ See Iowa Voters for Companion Animals, http://www.iavotersforcompanionanimals.org/puppyMills_map.html (last visited Apr. 9, 2010).

¹⁴¹ See Iowa Code Ann. §§ 162.1-162.20 (2008), Iowa Admin. Code r. 21-67.1-12(162) (2008).

Establishments.”¹⁴² The purpose of the chapter is to “[i]nsure that all dogs and cats handled by [state licensed] commercial establishments are provided with humane care and treatment.”¹⁴³ The other source of dog laws governing commercial dog breeders is found in the Iowa Administrative Code.¹⁴⁴ It is the administrative code that provides the requirements, which commercial breeders must adhere to in order to pass inspection by the Iowa Department of Agriculture.¹⁴⁵ Similar to Pennsylvania’s Dog Law, Iowa’s animal welfare laws under the administrative code set forth lighting, ventilation, temperature, housing, and exercise requirements.¹⁴⁶ However, unlike Pennsylvania, Iowa law does not provide any limitations on the stacking of cages.

As of February 2010, Iowa was only one of two states with dog laws that prohibited state inspection of federally licensed commercial breeding facilities.¹⁴⁷ The USDA reported that from January 2007 to August 2009, fifty-nine percent of Iowa commercial dog breeders were in violation of the Animal Welfare Act, which is the federal law USDA commercial dog breeders must adhere to.¹⁴⁸ On March 9, 2010, Iowa House Bill

¹⁴² Iowa Code Ann. §§ 162.1-162.20 (2008).

¹⁴³ Iowa Code Ann. §§ 162.1 (1)(a) (2008).

¹⁴⁴ Iowa Admin. Code r. 21-67.1-12(162) (2009). *See also*, the Iowa Legislature: Ia. Administrative Code available at <http://www.legis.state.ia.us/asp/ACODocs/ruleList.aspx?pubDate=6-3-2009&agency=21&chapter=67> (last visited Apr. 16, 2010).

¹⁴⁵ *See id.*

¹⁴⁶ Iowa Admin. Code r. 21-67.2(162) (2009).

¹⁴⁷ *See* The Humane Society of the United State (HSUS), Iowa Gov. Culver Signs Bill to Combat Puppy Mills, (Mar. 9, 2010), http://www.humanesociety.org/news/press_releases/2010/03/iowa_puppy_mill_bill_signed_030910.html (the other state that has a law that does not allow state inspection of USDA licensed commercial breeding kennels is Kansas)(last visited Apr. 9, 2010).

¹⁴⁸ *See* Iowa Voters for Companion Animals, Iowa VCA Informational Brochure <http://www.iavotersforcompanionanimals.org/Documentation/TrifoldBrochure.pdf> (last visited Apr. 9, 2010).

2280 was signed by Governor Chet Culver.¹⁴⁹ The new law permits state inspectors to immediately inspect commercial kennels that are USDA licensed when complaints are submitted.¹⁵⁰ In addition, the new law requires continuing education for breeders with violations of the Animal Welfare Act and it imposes higher fines and licensing fees.¹⁵¹ On the one hand, the opposition to the new law is worried that the legislation will lead to more stringent regulation of farm animals.¹⁵² On the other hand, proponents indicate while the new law is a step in the right direction, the new law is still lacking because it was not drafted with enough precision.¹⁵³

D. Oklahoma's Dog Law

In 2008, Oklahoma was reported to have 475 USDA licensed commercial breeders operating within the state and an additional 600 to 1,000 unlicensed breeders also doing business.¹⁵⁴ However, the Oklahoma laws protecting dogs have not kept up with the growing number of puppy mills and as such are ineffective.¹⁵⁵ According to the

¹⁴⁹ See O. Kay Henderson, *Governor signs puppy mill bill as first dog looks on*, AGRICULTURE, POLITICS, & GOVERNMENT, Mar. 9, 2010, available at <http://www.radioiowa.com/2010/03/09/governor-signs-puppy-mill-bill-as-first-dog-looks-on/> (last visited Apr. 9, 2010).

¹⁵⁰ See Senator Herman Quirmbach, *The Quirmbach Report: Puppy mill legislation signed by Governor Culver* (Mar. 22, 2010), http://boonecountydem.com/Quirmbach_Report_March_22nd_2010.pdf (last visited Apr. 9, 2010).

¹⁵¹ See The Humane Society of the United State (HSUS), *Iowa Gov. Culver Signs Bill to Combat Puppy Mills*, (Mar. 9, 2010), http://www.humanesociety.org/news/press_releases/2010/03/iowa_puppy_mill_bill_signed_030910.html (last visited Apr. 12, 2010).

¹⁵² See Tony Eliseuson, *Iowa House and Senate Pass Improved Puppy Mill Legislation*, <http://www.aldf.org/article.php?id=1263> (last visited Apr. 12, 2010).

¹⁵³ See *id.*

¹⁵⁴ See Central Oklahoma Humane Society, *Say No to Puppy Mills: Oklahoma Commercial Pet Breeder's Act (SB 1712)* (Feb. 1, 2010) <http://www.okhumane.org/news/say-no-to-puppy-mills-oklahoma-commercial-pet-breeders-act-sb-1712> (last visited Apr. 16, 2010).

¹⁵⁵ See *id.* See also, 4 Okl. Stat. Ann. §§ 31-602 (2009) (provisions dealing with dogs and cats, but no provisions are included with regard to commercial breeding kennels).

Humane Society of Central Oklahoma, commercial breeders who want to escape the stringent puppy mill laws and requirements that are being enacted and enforced in other states, relocate to Oklahoma to avoid the risk of being shut down.¹⁵⁶ According to the Humane Society of the United States, as of 2009, Oklahoma is one of 18 states that does not have any state regulation of commercial kennels in terms of licensing, welfare, or inspections.¹⁵⁷ During a legislative interim hearing on the state of commercial dog breeders in Oklahoma, those in favor of the creation of new dog laws agreed that the main problem in Oklahoma is that there is no regulation of breeders selling directly to the public and while there are animal cruelty laws and the AWA which regulate USDA licensed commercial breeders, the laws are not being enforced.¹⁵⁸

In response to the growing number of abuses by commercial breeders, the Oklahoma Legislature is now considering a legislation, which targets puppy mills.¹⁵⁹ Senate Bill 1712 also known as The Commercial Pet Breeders Act if enacted would be codified in the Oklahoma Statutes as Section 5000 of Title 59.¹⁶⁰ Similar to Pennsylvania and other state laws, the Act would require commercial breeders to register

¹⁵⁶ See Central Oklahoma Humane Society, *supra* note 153.

¹⁵⁷ See The Humane Society of the United State (HSUS), State Puppy Mill Laws <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf> (last visited Apr. 16, 2010).

¹⁵⁸ See Mick Hinton, *Breeders wary of plan for rules*, TULSA WORLD, Nov. 7, 2007, available at http://www.tulsaworld.com/news/article.aspx?articleID=071107_1_A1_spanc88160 (last visited Apr. 16, 2010).

¹⁵⁹ See Hailey Branson, *New legislation attempts to regulate Oklahoma's many puppy mills*, TULSA WORLD, Nov. 7, 2007, available at http://www.tulsaworld.com/news/article.aspx?articleID=071107_1_A1_spanc88160 (last visited Apr. 16, 2010).

¹⁶⁰ See The Oklahoma Reporter, SB-1712 available at <http://www.theoklahomareporter.com/about29.html> (last visited Apr. 16, 2010).

with the state and pay a licensing fee.¹⁶¹ The bill aims to regulate those who own 11 or more adult female dogs for the purposes of breeding or selling them.¹⁶² In addition, the bill would create a board to regulate and conduct inspections of the breeding facilities and also implement minimum standards of care, as currently, no state minimum standards exist.¹⁶³ Violations of the law would be misdemeanors that would be punishable with fines or incarceration.¹⁶⁴ In addition, state inspectors would be able to inspect USDA licensed facilities when complaints are made against them.¹⁶⁵

E. A Short Reflection on the New and Amended State Dog Laws

Overall, the current dog breeding laws in the U.S., set forth minimum standards of care for dogs at the puppy mills to ensure a healthy and sanitary living environment and establish limitations on the number of dogs a commercial breeder is allowed to possess in order to prevent overcrowding and allow for better care and monitoring of the dogs and puppy mills.¹⁶⁶ Although the changes adopted or created by the states make a significant difference in how puppy mills operate, critics still argue that the laws do not extend enough protection to the dogs and their consumers.¹⁶⁷ While others argue that the requirements imposed on the kennel are too harsh, costly, and they

¹⁶¹ *See id.*

¹⁶² *See id.*

¹⁶³ *See id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See* Central Oklahoma Humane Society, *supra* note 153.

¹⁶⁶ *See* Rebecca F. Wisch, Overview of Recent Dog Breeding Laws, Animal Legal & Historical Center, 2010, <http://www.animallaw.info/articles/ovuspupmills2010.htm> (last visited Apr. 12, 2010).

¹⁶⁷ *See id.*

interfere with their business.¹⁶⁸

One of the major flaws in most of the new and existing laws is the lack of adequate inspection systems that ensure compliance.¹⁶⁹ This can be seen in the variation in inspection requirements that exist between the different states such as between Pennsylvania and Nebraska. The comparison of commercial dog breeding laws between Pennsylvania, Missouri, Nebraska, and Iowa demonstrate how and why some laws are either more effective or ineffective than others.

Another flaw that should be pointed out comes from the public's misperception that puppy mill type operations only happen on farm-like settings. The reality is that puppy mill operations do not just occur in kennels, but they also exist in the basements and backyards of America's homes.¹⁷⁰ The laws need to find better ways to regulate these smaller operations too as the dogs living in these settings also need protection. Despite the variations of state dog laws, what is important is that more and more states and their constituents are pushing for new and stricter dogs laws which will inevitably lead to better conditions for the dogs at puppy mills and ultimately provide purchasers with healthy pets.

V. Conclusion: Continuing the Fight for Puppy Mill Dogs

The puppy mill problem is not just confined to Pennsylvania or the East Coast and as such all state's should be addressing and fighting the problem. Other state legislatures

¹⁶⁸ See Hinton, *supra* note 157.

¹⁶⁹ See *id.*

¹⁷⁰ See Robyn F. Katz, Detailed Discussion of Commercial Breeders and Puppy Mills, Animal Legal & Historical Center, 2008, <http://www.animallaw.info/articles/dduscommercialbreeders.htm> (last visited Apr. 12, 2009).

should follow Pennsylvania's lead and begin by either enacting commercial breeding dog laws or restructuring and reinforcing the laws that currently exist. As is evidenced in Pennsylvania, stricter kennel requirements make it harder for puppy mills that are interested in only turning a profit to operate and stay open. Actual enforcement of the law must occur if any change in puppy mill operations is going to take place. Inspection requirements and the actual physical inspections of the facilities need to be strictly adhered to and conducted in order to prevent puppy mills from being able to hide from the law or from becoming too confident that the inspectors will be lenient if violations are found at the breeding facilities. License fees and penalties which fund the inspections of puppy mills need to be imposed and collected as necessary and should be adjusted on a yearly basis in order to allow for better enforcement of the dog laws. The key to effective change is to give the State's dogs laws teeth so they can actually bite.

Other key players in the fight against puppy mills are the consumers themselves. Authorities like the departments of agriculture and humane societies need to find ways to better educate and inform the public about the problem of puppy mills in their states. The authorities should also get the public more involved in the reporting of puppy mills that are neglecting their dogs or violating the law. Some programs that other states can emulate include the online kennel databases, online reporting systems, and call-in hotlines that have been initiated by the Departments of Agriculture in Pennsylvania and Missouri.¹⁷¹ These programs have been successful as is evidenced by a recent surrender of 17 dogs that were being transferred to Vermont and New York, to the Pennsylvania

¹⁷¹ See Pennsylvania Department of Agriculture, Kennel Inspection Database available at <https://www.padogs.state.pa.us/PublicKennels/SearchKennelInspections.aspx> (last visited Apr. 23, 2010). See also, Missouri Department of Agriculture, Operation Bark Alert available at <http://mda.mo.gov/animals/ACFA/barkalert/> (last visited Apr. 23, 2010).

Bureau of Dog Law Enforcement by an out-of-state transporter, which resulted from a confidential tip received by the Bureau's free tip line.¹⁷² It is through programs like the tip line and online databases that another loophole found in dog laws can be closed and that is the ability of puppy mills and dog dealers to evade the strict dog laws by traveling and moving across state lines.

Another way to make the dog laws more effective at combating puppy mill crime is for consumers to take action by being responsible purchasers who do the research about where their puppy is coming from and by refusing to purchase a puppy from facilities who have had recent violations of the law or who do not want to share any information about their commercial breeding operations. If States and their citizens can continue to cooperate in the work and share information with one another as they are doing in Pennsylvania, then and only then, will the future of dogs living and being bred at puppy mills improve. If states do not take a stronger stance, puppy mills will just continue to thrive in backyards and in those states with less stringent laws and little enforcement.

¹⁷² See Justin Fleming, PA Bureau of Dog Law Enforcement Cites North Carolina Dog Transporter for Multiple Violation; 17 Dogs Surrendered to SPCA, (Apr. 19, 2010), available at <http://www.prnewswire.com/news-releases/pa-bureau-of-dog-law-enforcement-cites-north-carolina-dog-transporter-for-multiple-violations-17-dogs-surrendered-to-sPCA-91485959.html> (explaining that the 17 dogs were stacked in cramped and dirty conditions in a panel van and had not been provided with adequate food or water) (last visited Apr. 20, 2010).