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HOUSE BILL 1332

By: Denney

AS INTRODUCED

An Act relating to animals; creating the Oklahoma Pet Quality Assurance and Protection Act; providing for administration; defining terms; providing scope of application of the Oklahoma Pet Quality Assurance and Protection Act; making it unlawful for certain persons to operate without a certain license; providing for application form; specifying certain applicants to submit certain protocol; limiting issuance of licenses; specifying certain requirements be met before license approval or renewal; specifying procedures for renewal; specifying certain late penalty; specifying requirements for out-of-state dealer/breeders; establishing fees; specifying display of license; exempting certain persons from the Oklahoma Pet Quality Assurance and Protection Act; providing for the promulgation of certain rules; specifying requirements for licensee; providing for the promulgation of rules consistent with USDA standards; listing standards; authorizing promulgation of certain rules regarding certain enforcement; providing for certain enforcement; providing for disclosure of records; providing for notice and hearing; establishing the Pet Quality Assurance Enforcement Fund; providing for revenues; providing for use of fund; providing for expenditures; providing for expenditure of certain additional monies to certain fund; providing for collection of penalties; specifying conditions justifying refusal of license; providing for written notice and hearing; authorizing seizure of animals upon certain circumstances; providing for forfeiture of animals; providing for retrieval of animals; establishing certain appellate procedures; providing procedures for notice of forfeiture; specifying burden of proof; specifying actions regarding forfeited animals; specifying certain transport requirement; mandating certain information for animals; requiring bill of sale for animals; specifying circumstance requiring immediate revocation; providing for official health certificates; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 4, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Pet Quality Assurance and Protection Act" and shall be administered by the Oklahoma Department of Agriculture, Food, and Forestry subject to available funds.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 4, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Pet Quality Assurance and Protection Act:

1. "Agent" means a person employed by the Department who has met requisite training requirements established by rule and is certified by the Department;

2. "Animal" means a domestic dog or cat;
3. "Animal rescue" means any person or organization that maintains twenty-five or more dogs, cats, or both for the purpose of collecting, accumulating, amassing, maintaining, or offering the dogs or cats for adoption and may or may not maintain a central facility but uses a system of fostering in private homes, boarding, or keeping in licensed animal facilities;
4. "Animal shelter" means a facility, excluding municipal and county shelters, which, minimally, houses animals for impoundment purposes; or a centralized private facility that accepts or houses animals for the purpose of finding permanent adoptive homes. Foster home sites and mobile adoption sites may be utilized in the operation of the animal shelter;
5. "Cat" means the genus and species known as *Felis catus*, a domestic cat;
6. "Consumer" means a person or organization that purchases dogs or cats;
7. "Dealer" means a breeder, person, firm, corporation, or other association that acquires dogs or cats from any source for resale;
8. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;
9. "Dog" means the genus and species known as *Canis familiaris*;
10. "Foster home" means a site that has a written agreement with a licensed rescue or shelter facility to house animals;
11. "Humane euthanasia" or "humanely euthanized" means the humane destruction of an animal accomplished by a method that produces rapid death or unconsciousness and subsequent death without evidence of pain or distress, or a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death;
12. "Mobile site" means a site other than the central facility at which dogs or cats may be offered to the public for a period not to exceed seventy-two (72) hours;
13. "Out-of-state dealer/breeder" means a person who does not reside in this state and who buys, receives, sells, exchanges, transfers, negotiates, barter or solicits the sale, resale, or exchange of an animal in this state for the purpose of transferring ownership or possession to another party;
14. "Person" means any individual, partnership, firm, joint stock company, corporation, mutual limited partnership, association, trust, estate, or other legal entity;
15. "Quality assurance license" means a certificate issued to any person, firm, corporation or other association that qualifies and is licensed as a breeder, dealer, animal rescue, out-of-state dealer/breeder, shelter, or retail pet store;
16. "Quality assurance licensee" means any breeder, person, firm, corporation or other association that qualifies and is certified as a breeder, dealer, animal rescue, out-of-state dealer/breeder, shelter, or retail pet store that sells, gives away, or transfers a cumulative total of twenty-five or more animals of any age in any one (1) calendar year directly to a consumer, co-breeder, retail pet store, to a person for research purposes, or to any person acting as a broker who has accepted animals for transfer to a third party and is licensed pursuant to the Oklahoma Pet Quality Assurance and Protection Act;
17. "Retail pet store" means any outlet where animals are sold or offered for sale solely at retail for use as pets;
18. "United States Department of Agriculture (USDA) Licensed facility" means a facility that is governed by the Animal Welfare Act, has passed a current inspection and provided written verification of licensure or certification

of inspection for pet quality assurance licensure; and

19. "Veterinarian" means a person currently licensed to practice veterinary medicine.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 703 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. The provisions of the Oklahoma Pet Quality Assurance and Protection Act shall apply to animals owned by but not in the possession of the dealer.

B. It shall be unlawful for a person to operate or represent himself or herself as a breeder, dealer, animal rescue, out-of-state dealer/breeder, shelter, retail pet store, or to otherwise sell, give away, or transfer a cumulative total of twenty-five or more animals of any age in any one (1) calendar year directly to a consumer, co-breeder, retail pet store, or for use in research or to any person acting as a broker who has accepted animals for transfer to a third party, without first obtaining a quality assurance license.

C. Each applicant for a quality assurance license shall apply on a form which shall include information pursuant to this section.

D. Each applicant for a quality assurance license shall submit a veterinary health care protocol as required by administrative rule.

E. The Oklahoma Department of Agriculture, Food, and Forestry shall issue only one license per location. The license shall be issued in the name of the quality assurance licensee or licensees for the specific premise of operation. Licenses are not transferable upon change of ownership and are not valid for a different location.

F. In no event shall a license be issued to a person or anyone in the household of the person who:

1. Held or applied for a USDA kennel license in this state or any other state; and
2. Whose license was suspended, revoked, or whose application was refused due to improper care of animals.

G. In no event shall a quality assurance license be issued to a person, or to a person who resides with an individual who has been convicted of or has pleaded guilty or nolo contendere to a violation of any federal, state, or local law or regulation pertaining to:

1. The humane treatment of animals;
2. Cruelty to animals;
3. Endangering the life or health of an animal;
4. The care, treatment, sale, possession, or handling of animals; or
5. Animal fighting.

H. Upon approval, the Department shall issue to the applicant a quality assurance license number and certification. The Department shall not approve a license application or a license renewal until the applicant' s:

1. Premises, facility, equipment, animals, and breeding operation, if applicable, are inspected by an agent and in compliance with the Oklahoma Pet Quality Assurance and Protection Act; and

2. Husbandry and breeding protocol, if applicable, veterinary health care protocol, and signed veterinarian of record affidavit, as required in the Oklahoma Pet Quality Assurance and Protection Act, have been reviewed by an agent and are found to be in compliance with the Oklahoma Pet Quality Assurance and Protection Act.

I. A license is renewable annually. Renewal applications shall be submitted to the Department prior to the commencement of the next license year.

J. Annual late renewals postmarked or received after the renewal date shall be subject to a late penalty not to exceed One Hundred Dollars (\$100.00).

K. Out-of-state dealer/breeders shall apply each year to the Department for an out-of-state license, and shall:

1. Comply with all provisions of the Oklahoma Pet Quality Assurance and Protection Act;
2. Have inspections performed by a veterinarian licensed in the state in which the breeder resides; and
3. Use an inspection protocol approved by the Department.

L. It shall be unlawful, without first obtaining an out-of-state dealer/breeder license, for an out-of-state dealer/breeder to:

1. Transport animals into or within this state; or
2. Operate, maintain, or deal in any manner with animals going into this state.

M. The State Board of Agriculture is authorized to establish, by rule, fees charged for the purpose of implementing and enforcing the Oklahoma Pet Quality Assurance and Protection Act. The nonrefundable fee shall accompany each application and each renewal application for a quality assurance license for dealers who sell or adopt the following number of animals per year:

Minimum Maximum

25-100 Class 1 \$ 25.00 \$100.00

101-300 Class 2 \$ 51.00 \$200.00

301-500 Class 3 \$101.00 \$300.00

501 and up Class 4 \$301.00 \$500.00

Nonprofit adoption/shelter/rescue Class NPS \$ 25.00 \$100.00

USDA Licensed Facility \$ 25.00 \$100.00

N. A licensed municipal or county shelter voluntary fee may be waived upon request. The State Board of Agriculture shall review and modify fees in accordance with this subsection on an as-needed basis.

O. Quality assurance licensees shall conspicuously display the license on the premises where the animals are kept and/or sold in a manner readily visible. Copies of licenses shall be included with the bill of sale.

P. All advertisements or information printed or posted on any media shall contain the number of the licensee issued by the Department readily visible to consumers. If the licensee has a USDA permit number it shall be posted in the same manner.

Q. Municipal animal shelters are exempt from the licensing provision of the Oklahoma Pet Quality Assurance and Protection Act. If the animal shelter desires to hold a license pursuant to the Oklahoma Pet Quality Assurance and Protection Act, a Class NPS license shall be issued upon compliance with all the provisions set forth in the Oklahoma Pet Quality Assurance and Protection Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 704 of Title 4,

unless there is created a duplication in numbering, reads as follows:

A. A quality assurance licensee shall:

1. Be at least eighteen (18) years of age; and
2. Meet the requirements of the Oklahoma Pet Quality Assurance and Protection Act.

B. The State Board of Agriculture shall promulgate rules consistent with USDA Standards pursuant to the Animal Welfare Act whenever possible including, but not limited to:

1. Minimum standards for breeding criteria and restrictions;
2. Housing and sanitation;
3. Nutrition and hydration;
4. Staffing and operating standards;
5. Management and staff operating plan;
6. Veterinarian of record and veterinary care;
7. Record keeping; and
8. Transportation of animals within a vehicle.

C. The Oklahoma Department of Agriculture, Food, and Forestry shall promulgate rules regarding the enforcement of personnel powers, training, certification, and inspections that shall include, but not be limited to:

1. Knowledge and understanding of state and federal laws pertaining to animal handling, care, treatment, and prohibited acts;
2. Specific training in the identification and investigation of cruelty to animals; and
3. Department enforcement personnel and inspectors of the Oklahoma Pet Quality Assurance and Protection Act shall comply with and have the authority as described in Section 6-310 of Title 2 of the Oklahoma Statutes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 705 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. A peace or animal control officer within the State of Oklahoma shall have the right to enter the premises of an individual or facility and conduct inspections, upon the officer:

1. Stating the purpose of the inspection; and
2. Presenting to the owner, operator, or agent in charge of the premises to be inspected appropriate credentials.

B. Nothing in the Oklahoma Pet Quality Assurance and Protection Act shall preclude any peace or animal control officer from enforcing cruelty laws and the provisions of the Oklahoma Pet Quality Assurance and Protection Act. Any such officer shall within forty-eight (48) hours of any investigation regarding cruelty action taken or contact made with an individual or facility covered under the Oklahoma Pet Quality Assurance and Protection Act, report the action or contact in writing to the Oklahoma Department of Agriculture, Food, and Forestry.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 706 of Title 4,

unless there is created a duplication in numbering, reads as follows:

A. All records received by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the Oklahoma Pet Quality Assurance and Protection Act shall be considered open records and available for public inspection pursuant to the Oklahoma Open Records Act.

B. At the discretion of the Department in the interest of protecting the health, safety, and welfare of the public, any information contained in the investigation files of the Department may, upon request, be provided to:

1. Any board or commission of the District of Columbia or any state or territory of the United States which exercises disciplinary authority; and

2. Any law enforcement agency which makes a proper showing that the information is necessary to conduct or complete a pending investigation of a crime not covered by the Oklahoma Pet Quality Assurance and Protection Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 707 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture shall promulgate rules regarding appropriate penalties based upon:

1. The gravity of the violation;

2. The good faith of the person being charged; and

3. The history of previous violations.

B. In addition to the applicable penalties contained in the Oklahoma Pet Quality Assurance and Protection Act, any violation of this section shall constitute a civil offense punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Thousand Five Hundred Dollars (\$2,500).

C. No penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the charge in accordance with the Oklahoma Pet Quality Assurance and Protection Act.

D. There is established in the State Treasury a revolving fund to be known as the "Pet Quality Assurance Enforcement Fund". The fund shall:

1. Be a continuing fund, not subject to fiscal year limitations, and shall consist of all fees, fines, penalties, goods, and other monies paid, donated, received, recovered, or collected under the provisions of the Oklahoma Pet Quality Assurance and Protection Act; and

2. Be available to the Department solely for the payment of all expenses incurred in issuing, processing, investigating, or supervising the issuance of quality assurance licenses, and the education of breeders and consumers about quality pet breeding, pet selection, and responsible ownership.

Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

E. Any penalty shall be collectible in any manner provided by law for the collection of debt and payable to the Department.

F. In cases of inability to collect a penalty or failure of any person to pay all or such portion of the penalty as the Department may deem proper, the Department shall:

1. Recover such amount by action in the appropriate court having jurisdiction; or

2. File a lien in favor of the State of Oklahoma upon the real and personal property of the person in the county where the property or person is located for the amount of the penalty with interest and any other costs that may accrue.

G. The failure of any person to comply with the requirements of the Oklahoma Pet Quality Assurance and Protection Act, or any rules promulgated pursuant thereto, shall constitute grounds for the denial of a license or license renewal, imposition of a fine, or for license suspension or revocation by the Department, as provided for in the Oklahoma Pet Quality Assurance and Protection Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Department of Agriculture, Food, and Forestry or designated agent may refuse to grant or renew, and may suspend or revoke a quality assurance license on any one of the following grounds:

1. Material misstatement, misrepresentation, or falsification in the license application or renewal, or in any matter relevant to the license;

2. Material misstatement, misrepresentation, or falsification in the records required to be kept herein, or under any rule promulgated pursuant thereto; or

3. Refusal to allow an inspector or peace or animal control officer to inspect the premises, facility, equipment, animals within the breeding operation, protocols, or records.

B. The Department or a designated agent may refuse to renew, and may suspend a quality assurance license for a violation of the Oklahoma Pet Quality Assurance and Protection Act, or failure to comply with any regulation promulgated pursuant thereto.

C. The Department or designated agent shall refuse to grant or renew, and may revoke a quality assurance license if the applicant for the license or a licensee:

1. Has been convicted of or pleaded guilty or nolo contendere to a violation of any local, state, or federal law relating to:

a. cruelty to animals,

b. the humane care, handling, or treatment of animals, or

c. animal fighting; or

2. Is currently on supervised probation by any state or federal department of corrections.

D. 1. The Department or designated agent shall provide written notice to the quality assurance licensee or applicant of the decision to fine, deny issuance or renewal of a license, or suspend or revoke the license.

2. Written notice of the denial of issuance or renewal of a license, suspension, or revocation shall be served by personal service or by certified mail, return receipt requested to:

a. the person or a resident of the person's dwelling house at the last known address as reported to the Department, or

b. the person or an employee of the person at the principal place of business.

3. A returned envelope showing refusal of the process by the person or an employee of the person shall constitute notice. Denial of renewal, suspension, or revocation shall commence upon service of the written notice. The notice shall:

- a. set forth the general factual and legal basis for the action, and
- b. advise the licensee or applicant of the right to file with the Department, within twenty (20) days of receipt of notice, a written request for an administrative hearing.

4. The administrative hearing shall be conducted in accordance with the Administrative Procedures Act. If found to be in violation of the Oklahoma Pet Quality Assurance and Protection Act, actual costs for the hearing may be imposed against the licensee or applicant.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 709 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection E of this section, whenever a quality assurance license is revoked, suspended, or a licensee denied renewal, a court order may be obtained to seize and impound animals in the possession, custody, or care of that quality assurance licensee if there is reason to believe that the health, safety, or welfare of the animals is endangered, or the animals are in imminent danger. The reasonable costs of transportation, care, and feeding of seized and impounded animals shall be paid by the quality assurance licensee from whom the animals were seized and impounded. Failure to pay costs may result in forfeiture of the animals to the state in accordance with subsection D of this section.

B. If the quality assurance licensee, whose license is revoked, suspended, or denied renewal and whose animals have been seized and impounded, provides the agent who revoked, suspended, or denied renewal of the license with satisfactory evidence of compliance with the provisions of the Oklahoma Pet Quality Assurance and Protection Act and has paid in certified funds all fines, costs of transportation, care, and feeding expenses related to the seizure and impoundment of the affected animals, the quality assurance licensee may retrieve seized and impounded animals.

C. The agent may allow animals to remain in the physical possession, custody, or care of the quality assurance licensee whose license is revoked, suspended, or denied while there is an appeal or reapplication for licensure pending. This process may be completed upon receipt of an affidavit from the veterinarian of record stating that there is no belief that the health, safety, or welfare of the animals is endangered or is in imminent danger and the animals are being provided with the care required by the Oklahoma Pet Quality Assurance and Protection Act.

D. Except as provided in subsection E of this section, the Oklahoma Department of Agriculture, Food, and Forestry may request that ownership of an affected animal, which is seized and impounded pursuant to subsection A of this section, be forfeited to the state.

1. The Department shall serve the quality assurance licensee with written notice of forfeiture. The notice shall indicate that:

- a. ownership of the affected animal may be forfeited to some entity approved by the Department. Owner requests for placement may be considered, and

- b. any proceeds from unlawful activities may be seized and subject to forfeiture in accordance with this section.

2. Notice of forfeiture shall be served by personal service or by certified mail, return receipt requested, to:

- a. the person or a resident of the person's dwelling house at the last known address as reported to the Department,

or

- b. the person or an employee of the person at the principal place of business.

3. A returned envelope showing refusal of the process by the person or an employee of the person shall constitute notice. The notice shall:

- a. specify an effective date of forfeiture, which shall not be less than twenty (20) days from service of the notice,

and

b. inform the quality assurance licensee of the right to request an administrative hearing on the issue of forfeiture by delivering a written request to the Department within twenty (20) days of service of the notice of forfeiture along with a security bond, with the amount to be determined by the Department. The security bond shall be used to care for the animals prior to the hearing.

4. At the administrative hearing, the Department shall have the burden of proving that:

a. the quality assurance licensee responsible for the affected animals did not comply with the provisions of the Oklahoma Pet Quality Assurance and Protection Act regarding the care to be provided to the animals, and

b. insufficient evidence has been given to the Department that the quality assurance licensee can provide the necessary care to the affected animals if the animals are returned to the breeder.

E. Any animal owned by a breeder that was being leased out for breeding purposes to the quality assurance licensee whose animals were seized and impounded shall be seized by the Department and returned to the breeder who has ownership of the seized animal.

F. No animal seized under this section shall be sold, transferred, or given freely for the purpose of vivisection or research, or be conveyed in any manner for these purposes or be conveyed to a dealer.

G. The Department may:

1. Transfer or sell forfeited animals to a quality assurance licensee other than the quality assurance licensee who forfeited the animals that were seized;

2. Transfer or sell forfeited animals to a duly incorporated humane society for adoption; or

3. Order the humane euthanasia of any forfeited animals by a licensed veterinarian when it is determined to be in the best interest of the animals.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 710 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. No quality assurance licensee shall transport for sale any animal, unless it is at least eight (8) weeks of age. All quality assurance animals shall be accompanied by a health record and shall be implanted with a microchip for identification purposes only that is able to be read with a universal reader or identified with any other form of permanent identification. A consumer or retail pet store shall be entitled to review the information contained in the health record prior to purchase of the animal from a quality assurance licensee.

B. No quality assurance licensee or retail pet store selling quality assurance animals shall sell, offer to sell, promote, advertise, or otherwise market or represent quality assurance animals unless the breeding and rearing of the animals is in compliance with the Oklahoma Pet Quality Assurance and Protection Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 711 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. All quality assurance licensees described in the Oklahoma Pet Quality Assurance and Protection Act shall be required to have in their possession a bill of sale for each animal purchased and transported. Any bill of sale which is fraudulent or indicates the theft of any animal shall be prima facie evidence for the immediate revocation of a license by the Oklahoma Department of Agriculture, Food, and Forestry. The bill of sale shall contain information required by the Oklahoma Pet Quality Assurance and Protection Act.

B. Official health certificates shall comply with current state and federal regulations.

SECTION 12. This act shall become effective November 1, 2009.