

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 317

(Senator Pugh, *et al.*)

Finance

Economic Matters

Retail Pet Stores - Sales of Dogs - Required Records, Health Disclosures, and Purchaser Remedies

This bill establishes conditions and requirements for remedy when a dog sold at a “retail pet store” is found to have an undisclosed disease, illness, or prior condition. It also establishes certification, recordkeeping, and public disclosure requirements for retail pet stores that conduct business in the State, as well as penalties for noncompliance with the bill.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. To the extent that the division receives more than 50 complaints, additional funding may be necessary.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful impact for retail pet store businesses.

Analysis

Bill Summary: “Retail pet store” means a for-profit establishment open to the public that sells or offers for sale domestic animals to be kept as household pets. The bill does not apply to a *bona fide* nonprofit organization operating within a retail pet store.

Remedy for Undisclosed Disease, Illness, and Prior Conditions

A person who has purchased a dog from a retail pet store is entitled to a remedy if (1) a licensed veterinarian examines the dog within 7 days after the date of purchase and states in writing within 14 days after the date of sale that the dog suffers from or has died of a disease or illness adversely affecting the health of the dog that existed in the dog on or before the date of the delivery to the purchaser; *or* (2) within 180 days after the date of the sale, the dog possesses or has died of a congenital or hereditary condition adversely affecting the health of the dog or that requires hospitalization or a nonelective surgical procedure.

A person entitled to a remedy may (1) return the dog to the retail pet store for a full refund of the purchase price; (2) exchange the dog for another dog of comparable value chosen by the purchaser, if available; or (3) retain the dog and be reimbursed by the retail pet store for reasonable and documented veterinary fees, as specified by the bill, not exceeding the purchase price of the dog.

Unless the owner or operator of the retail pet store contests a required reimbursement, payment must be made to the purchaser no later than 10 business days after the retail pet store receives the veterinarian’s written statement.

The bill establishes procedures that a purchaser must follow to obtain a remedy and conditions under which he or she is not entitled to a remedy.

Recordkeeping Requirements

Retail pet stores that sell dogs in the State must keep detailed written records for each dog held in the store’s possession. Information that must be maintained includes:

- the breed, age, and birth date of the dog, if known;
- the gender, color, and any identifying markings of the dog;
- documentation and specific details pertaining to all inoculations, worming treatments, and other medical treatments;
- the name and address of the breeder or dealer who supplied the dog, and the facility where the dog was born, and the transporter or carrier of the dog, if any;

- the U.S. Department of Agriculture (USDA) license number of the breeder or dealer, if required;
- any identifier information, including a tag, tattoo, collar number, or microchip; and
- if the dog is being sold as registered or registrable, the names and registration number of the sire and dam and the litter number.

A dog's records must be kept for at least one year after the date of sale of the dog. Records must be made available for inspection by (1) the Consumer Protection Division upon reasonable notice; (2) any *bona fide* prospective purchaser on request; and (3) the purchaser at the time of sale.

Retail pet stores must also post specified information conspicuously on each dog's cage and maintain a written record of the health, status, and disposition of each dog purchased.

Certification Requirements

A retail pet store must provide a health certificate from a State-licensed veterinarian, issued within 30 days before the date of sale, to a purchaser at the time of a sale of a dog. The certificate must state that the dog (1) has no known disease, illness, or congenital or hereditary condition which is diagnosable with reasonable accuracy; and (2) does not appear to be clinically ill from parasitic infection at the time of the examination. The retail pet store must also include a copy of the written records required by the bill, and a statement notifying the purchaser of the specific rights available to the purchaser under the bill.

Penalties

Violation of the bill is an unfair or deceptive trade practice under MCPA and subject to MCPA's civil and criminal penalty provisions.

The bill does not limit (1) the rights or remedies otherwise available to a purchaser; (2) the ability of an owner or operator of a retail pet store to agree to additional terms and conditions that do not impair the rights granted to the purchaser by the bill; and (3) the ability of the State or a unit of local government to prosecute the owner or operator of a retail pet store for any other violation of the law.

Current Law: In general, a dog or cat younger than eight weeks of age may not be sold or distributed in the State unless it is accompanied by its female parent.

To determine if dogs are being treated inhumanely in violation of any law, an authorized director of a humane society, accompanied by a sheriff or a deputy sheriff, may inspect premises:

- where a person is engaged in the business of buying, selling, trading, or breeding dogs; or
- of a kennel where 25 or more dogs are kept.

A person who makes such an inspection must give prior written notice of the time and date of the inspection to the owner or occupant of the premises.

In Baltimore City, the Baltimore City Health Department is required to enforce these inspection provisions. Enforcement in Baltimore County is handled by the Baltimore County Department of Health, Division of Animal Control, or an organization approved by the Baltimore County government.

These premises inspection provisions do not apply to premises:

- where dogs are kept or bred solely for medical or related research or laboratory tests;
- operated by a licensed and regularly practicing veterinarian; or
- where hunting dogs are housed, if the buying, selling, trading, or breeding is incidental to the main purposes of housing, keeping, and using dogs.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that

may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: The federal Animal Welfare Act (AWA) of 1966 regulates certain animal activities, including commercial dog and cat breeding. AWA defines the minimum standards of care for dogs, cats, and certain other species of animals bred for commercial resale and exhibition. It also requires that certain commercial breeders be licensed and routinely inspected by USDA. H.R. 1 of 2008 (the “Farm Bill”), which was enacted in February 2009, prohibits the importation of puppies younger than six months of age for the purpose of resale.

Many dogs sold as pets in the United States are bred in commercial dog breeding facilities that mass-produce dogs for sale to pet stores (often called puppy mills). Substandard conditions are commonly reported at these facilities. Similar types of operations exist for other animals kept as pets or used as feed for other animals. Due to the frequently poor breeding conditions, puppies bred by commercial breeders can be ill-tempered and may suffer from poor health.

Recent legislative action has sought to address these concerns. Chapter 297 of 2011 requires a person to obtain a kennel license if (1) the person owns or has custody of 15 or more unspayed female dogs over six months old; (2) the dogs are kept for the purpose of breeding and selling their offspring; and (3) the person sells dogs from six or more litters per year. By January 15 of each year, each county must report the information collected for the preceding year to the Department of Labor, Licensing, and Regulation.

The Department of Legislative Services (DLS) notes that approximately 20 states, including Pennsylvania, Virginia, and Delaware, have enacted laws that provide specific recourse for the purchaser of a sick or diseased animal from a retail pet store. A similar number of states have established comparable recordkeeping requirements.

Small Business Effect: There is a potential meaningful impact for retail pet stores in the State due to the certification, recordkeeping, and disclosure requirements as well as purchaser remedies. DLS notes that hereditary diseases are common among purebred dogs. For example, the Labrador is subject to 37 hereditary diseases, while the Pug is subject to 15 hereditary diseases, according to a University of Cambridge Veterinary School database. To the extent that a retail pet store does not disclose all possible hereditary diseases for each dog, and purchasers seek remedy in the event of a diagnosed hereditary disease, retail pet stores will be affected.

Additional Information

Prior Introductions: HB 912 of 2011, a similar bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 131 (Delegate Kipke, *et al.*) - Economic Matters.

Information Source(s): Born Free USA; Michigan State University College of Law; University of Cambridge Inherited Diseases of Dogs Database; Caroline, Howard, and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division) Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2012
smr/mcr Revised - Senate Third Reader - April 2, 2012

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510