

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 825**

Introduced by Price, 26; Bruning, 3; Chambers, 11; Crosby, 29;  
Cudaback, 36; Dierks, 40; Hartnett, 45; Hudkins, 21;  
Janssen, 15; Kiel, 9; C. Peterson, 35; Preister, 5;  
Robak, 22; Schimek, 27; Schrock, 38; Suttle, 10;  
Thompson, 14; Tyson, 19; Wehrbein, 2

Read first time January 20, 1999

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to animals; to adopt the Commercial Dog and Cat
- 2 Operator Inspection Act; to provide an operative date;
- 3 and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 16 of this act shall be known  
2 and may be cited as the Commercial Dog and Cat Operator Inspection  
3 Act.

4           Sec. 2. For purposes of the Commercial Dog and Cat  
5 Operator Inspection Act:

6           (1) Adequate feed means the provision at suitable  
7 intervals of not more than twenty-four hours, or longer if the  
8 dietary requirements of the species so requires, of a quantity of  
9 wholesome foodstuff suitable for the species and age sufficient to  
10 maintain a reasonable level of nutrition in each dog or cat. The  
11 foodstuff shall be served in a clean receptacle, dish, or  
12 container;

13           (2) Adequate water means reasonable access to a supply of  
14 clean, fresh, potable water provided in a sanitary manner or  
15 provided at suitable intervals of not more than twenty-four hours  
16 for the species;

17           (3) Animal shelter means a facility which is used to  
18 house or contain dogs or cats and which is owned, operated, or  
19 maintained by an incorporated humane society, animal welfare  
20 society, society for the prevention of cruelty to dogs or cats, or  
21 other nonprofit organization or person devoted to the welfare,  
22 protection, and humane treatment of such dogs or cats. Such  
23 facility may include other animals;

24           (4) Boarding kennel means a facility which is primarily  
25 used to house or contain dogs or cats owned by persons other than  
26 the operator of such facility. The primary function of a boarding  
27 kennel is to temporarily harbor dogs or cats when the owner of the  
28 dogs or cats is unable to do so or to provide training, grooming,

1 or other nonveterinary service for a consideration before returning  
2 the dogs or cats to the owner;

3 (5) Cat means any animal which is wholly or in part of  
4 the species felis domesticus;

5 (6) Commercial breeder means any person (a) engaged in  
6 the business of breeding dogs or cats and (b) who sells, exchanges,  
7 or leases dogs or cats in return for consideration or who offers to  
8 do so, whether or not the dogs or cats are bred, raised, trained,  
9 groomed, or boarded by such person. A person who owns or harbors  
10 three or less unaltered dogs or cats for breeding purposes which  
11 are at least six months of age shall not be a commercial breeder.

12 A person who sells, exchanges, or leases thirty or less  
13 dogs or cats in a twelve-month period shall not be a commercial  
14 breeder if all such dogs or cats are sold, exchanged, or leased to  
15 a final owner rather than for later retail sale or brokered  
16 trading. A person knowingly selling, exchanging, or leasing any  
17 dogs or cats for later retail sale or for brokered trading shall be  
18 classified as a commercial breeder;

19 (7) Dealer means any person who is not a commercial  
20 breeder but is engaged in the business of buying for resale or  
21 selling or exchanging dogs or cats as a principal or agent or who  
22 claims to be so engaged. A person who purchases, sells, exchanges,  
23 or leases thirty or less dogs or cats in a twelve-month period is  
24 not a dealer;

25 (8) Department means the Bureau of Animal Industry of the  
26 Department of Agriculture with the State Veterinarian in charge,  
27 subordinate only to the director;

28 (9) Director means the Director of Agriculture or his or

1 her designated employee;

2 (10) Dog means any animal which is wholly or in part of  
3 the species canis familiaris;

4 (11) Housing facilities means any room, building, or area  
5 used to contain a primary enclosure;

6 (12) Inspector means any person who is employed by the  
7 department and who is authorized to perform inspections pursuant to  
8 the act;

9 (13) Licensee means a person who has qualified for and  
10 received a license from the department pursuant to the act;

11 (14) Pound means a facility operated by the state or any  
12 political subdivision of the state for the purpose of impounding or  
13 harboring seized, stray, homeless, abandoned, or unwanted dogs or  
14 cats or a facility operated for such a purpose by a private entity  
15 under a contract with the state or any political subdivision. Such  
16 facility may include other animals;

17 (15) Primary enclosure means any structure used to  
18 immediately restrict a dog or cat to a limited amount of space,  
19 such as a room, pen, cage, or compartment;

20 (16) Secretary of Agriculture means the Secretary of  
21 Agriculture of the United States Department of Agriculture; and

22 (17) Unaltered means any male or female dog or cat which  
23 has not been neutered or spayed or otherwise rendered incapable of  
24 reproduction.

25 Sec. 3. (1) Beginning January 1, 2000, a person shall  
26 not operate as a commercial breeder unless the person obtains a  
27 license as a commercial breeder. An applicant for a license as a  
28 commercial breeder shall submit an application to the department,

1 on a form prescribed by the department, together with a  
2 nonreturnable license fee. Such fee shall be one hundred dollars  
3 plus one dollar for each unaltered dog or cat of six months of age  
4 or older in the breeder's possession on November 15 of the previous  
5 year. The license fee shall be paid annually. Additionally, the  
6 department shall conduct an inspection of the housing facilities,  
7 primary enclosures, and other practices of the applicant pursuant  
8 to the Commercial Dog and Cat Operator Inspection Act. Upon  
9 receipt of the application and initial license fee and an  
10 inspection by the department demonstrating compliance with such  
11 sections and the rules and regulations adopted pursuant thereto, a  
12 license as a commercial breeder shall be issued by the department.  
13 Such license shall not be transferable to another person or  
14 location.

15 (2) A person shall not operate as a dealer unless the  
16 person obtains a license as a dealer. An applicant for such  
17 license shall submit an application to the department, on a form  
18 prescribed by the department, together with a nonreturnable license  
19 fee. Such fee shall be one hundred dollars plus twenty-five cents  
20 for each dog or cat of any age sold, exchanged, or leased in the  
21 previous year calculated from November 15. The license fee shall  
22 be paid annually. The department shall conduct an inspection of  
23 the housing facilities, primary enclosures, and other practices of  
24 the applicant pursuant to the act. Upon receipt of the application  
25 and initial license fee and an inspection by the department  
26 demonstrating compliance with such act and the rules and  
27 regulations adopted pursuant thereto, a license as a dealer shall  
28 be issued by the department. Such license shall not be

1 transferable to another person or location.

2 (3) A license to operate as a dealer or commercial  
3 breeder shall be renewed by filing with the department at least  
4 thirty days prior to January 1 of each year of a renewal  
5 application and the annual license fee. Failure to renew a license  
6 prior to the expiration of the license shall result in an  
7 additional fee of twenty dollars required upon application to renew  
8 such license.

9 Sec. 4. Beginning January 1, 2000, a person shall not  
10 operate as a boarding kennel unless the person has registered with  
11 the department. The registration form shall be prescribed by the  
12 director and shall include the name and address and description of  
13 the operation. Registration shall be due on January 1 and shall be  
14 renewed at least thirty days prior to January 1 of each year.  
15 There is an annual fee of ten dollars. No inspection shall be  
16 required unless the department or a law enforcement officer has  
17 cause to believe that the boarding kennel operation is in actuality  
18 a commercial breeder or dealer operation. Such registration shall  
19 not be transferable to another person or location. Failure to  
20 comply with the registration requirement shall be a Class II  
21 misdemeanor.

22 Sec. 5. (1) Beginning January 1, 2000, a private entity  
23 under a contract with the state or any political subdivision of the  
24 state shall not operate a pound unless such entity has obtained a  
25 license. An applicant for a license to operate a pound shall  
26 submit an application to the department on a form prescribed by the  
27 department for such license. The department shall inspect the  
28 applicant's housing facilities, primary enclosures, and other

1 practices pursuant to the Commercial Dog and Cat Operator  
2 Inspection Act. Upon receipt of the application and an inspection  
3 by the department demonstrating compliance with such sections and  
4 the rules and regulations adopted pursuant thereto, a license to  
5 operate a pound shall be issued by the department. No fee is  
6 required. Such license shall not be transferable to another person  
7 or location. A license to operate a pound shall be renewed by  
8 filing a renewal application with the department at least thirty  
9 days prior to January 1 of each year.

10 (2) Beginning January 1, 2000, a pound operated by the  
11 state or a political subdivision of the state shall not operate  
12 until registered with the department. The registration form shall  
13 be prescribed by the director and shall include the name and  
14 address and description of the operation. No inspection is  
15 required. Registration shall be due on January 1 and shall be  
16 renewed at least thirty days prior to January 1 of each year. No  
17 fee is required. Such registration shall not be transferable to  
18 another person or location.

19 Sec. 6. Beginning January 1, 2000, a person shall not  
20 operate an animal shelter unless the person has obtained a license.  
21 An applicant for a license to operate an animal shelter shall  
22 submit an application to the department on a form prescribed by the  
23 department together with a nonreturnable initial license fee. The  
24 license fee is twenty dollars annually. The department shall  
25 inspect the applicant's housing facilities, primary enclosures, and  
26 other practices pursuant to the Commercial Dog and Cat Operator  
27 Inspection Act. Upon receipt of the application and initial  
28 license fee and an inspection by the department demonstrating

1 compliance with such sections and rules and regulations adopted  
2 pursuant thereto, a license shall be issued by the department.  
3 Such license shall not be transferable to another person or  
4 location. A license to operate an animal shelter shall be renewed  
5 by filing a renewal application and the annual license fee with the  
6 department at least thirty days prior to January 1 of each year.

7           Sec. 7. The department shall establish an inspection  
8 program for applicants and licensees to determine whether the  
9 housing facilities and primary enclosures for dogs or cats are  
10 adequate, whether there is adequate feed and adequate water, and  
11 whether the cleaning and housing practices of applicants and  
12 licensees protect the health and safety of the dogs or cats of such  
13 applicants and licensees. The department shall adopt and  
14 promulgate rules and regulations to carry out this section  
15 prescribing the facilities and conditions which must be established  
16 and maintained by applicants and licensees. Such rules and  
17 regulations shall be no less restrictive than the rules and  
18 regulations of the Animal and Plant Health Inspection Service of  
19 the United States Department of Agriculture set out in 9 C.F.R.,  
20 part 3, subpart A, except that the department may provide notice of  
21 an inspection to the applicant or licensee if the notice is given  
22 no more than twenty-four hours prior to the inspection. When an  
23 inspection produces evidence of a violation of the Commercial Dog  
24 and Cat Operation Inspection Act or the rules and regulations of  
25 the department, a copy of a written report of the inspection and  
26 violations shown thereon, prepared by the inspector, shall be given  
27 to the applicant or licensee, together with written notice to  
28 comply within the time limit established by the department and set

1 out in such notice. The premises of the applicant or licensee  
2 shall be open for inspection during daylight hours.

3           Sec. 8. If alleged violations of the Commercial Dog and  
4 Cat Operator Inspection Act or the rules and regulations of the  
5 department pose a significant threat to the health or safety of the  
6 dogs or cats harbored or owned by an applicant or licensee, the  
7 department may request a law enforcement officer as defined in  
8 section 28-1008 to impound the dogs or cats pursuant to sections  
9 28-1011 and 28-1012.

10           Sec. 9. The department shall adopt and promulgate rules  
11 and regulations to carry out the Commercial Dog and Cat Operator  
12 Inspection Act. The rules and regulations may include provisions  
13 governing:

14           (1) Reasonable treatment of dogs or cats in the  
15 possession, custody, or care of an applicant or a licensee;

16           (2) Identification of dogs or cats handled;

17           (3) Primary enclosures;

18           (4) Housing facilities;

19           (5) Sanitation;

20           (6) Ambient temperatures;

21           (7) Feeding;

22           (8) Watering;

23           (9) Inspection of applicants or licensees consistent with  
24 the requirements of the act;

25           (10) Record keeping of persons required to have a  
26 license; and

27           (11) Any matter deemed necessary by the department to  
28 effectively carry out the act to guard against the inhumane care

1 and treatment of dogs or cats.

2           Sec. 10. Before the department approves an application  
3 for an initial license, an inspector of the department shall  
4 inspect the operation of the applicant to determine whether the  
5 applicant qualifies to hold a license pursuant to the Commercial  
6 Dog and Cat Operator Inspection Act. An applicant who qualifies  
7 shall be issued a license. An applicant who does not receive a  
8 license shall be afforded the opportunity of a hearing before the  
9 director or the director's designee to present evidence that the  
10 applicant is qualified to hold a license should a license be  
11 issued. All such hearings shall be in accordance with the  
12 Administrative Procedure Act.

13           Sec. 11. (1) A licensee issued a license under the  
14 Commercial Dog and Cat Operator Inspection Act shall comply with  
15 the act, the rules and regulations, and any order of the director  
16 issued pursuant thereto. The licensee shall not interfere with the  
17 department in the performance of its duties.

18           (2) A licensee may be put on probation requiring such  
19 licensee to comply with the conditions set out in an order of  
20 probation issued by the director after:

21           (a) The director determines the licensee has not complied  
22 with subsection (1) of this section;

23           (b) The licensee is given written notice to comply and  
24 written notice of the right to a hearing to show cause why an order  
25 of probation should not be issued; and

26           (c) The director finds that issuing an order of probation  
27 is appropriate based on the hearing record or on the available  
28 information if the hearing is waived by the licensee.

1 (3) A license may be suspended after:

2 (a) The director determines the licensee has not complied  
3 with subsection (1) of this section;

4 (b) The licensee is given written notice to comply and  
5 written notice of the right to a hearing to show cause why the  
6 license should not be suspended; and

7 (c) The director finds that issuing an order suspending  
8 the license is appropriate based on the hearing record or on the  
9 available information if the hearing is waived by the licensee.

10 (4) A license may be immediately suspended and the  
11 director may order the operation of the licensee closed prior to  
12 hearing when:

13 (a) The director determines that there is a significant  
14 threat to the health or safety of the dogs or cats harbored or  
15 owned by the licensee; and

16 (b) The licensee receives written notice to comply and  
17 written notice of the right to a hearing to show cause why the  
18 suspension should not be sustained. Within fifteen days after the  
19 suspension, the licensee may request in writing a date for a  
20 hearing, and the director shall consider the interests of the  
21 licensee when the director establishes the date and time of the  
22 hearing, except that no hearing shall be held sooner than is  
23 reasonable under the circumstances. When a licensee does not  
24 request a hearing date within the fifteen-day period, the director  
25 shall establish a hearing date and notify the licensee of the date  
26 and time of such hearing.

27 (5) A license may be revoked after:

28 (a) The director determines the licensee has committed

1 serious, repeated, or multiple violations of any of the  
2 requirements of subsection (1) of this section;

3 (b) The licensee is given written notice to comply and  
4 written notice to the right for a hearing to show cause why the  
5 license should not be revoked; and

6 (c) The director finds that issuing an order revoking the  
7 license is appropriate based on the hearing record or on the  
8 available information if the hearing is waived by the licensee.

9 (6) The operation of any licensee which has been  
10 suspended shall close and remain closed until the license is  
11 reinstated. Any operation for which the license has been revoked  
12 shall close and remain closed until a new license is issued.

13 (7) The director may terminate proceedings to suspend or  
14 revoke a license or subject a licensee to an order of probation at  
15 any time if the reasons for such proceedings no longer exist. A  
16 license which has been suspended may be reinstated, a person with a  
17 revoked license may be issued a new license, or a licensee may no  
18 longer be subject to an order of probation if the director  
19 determines the conditions which prompted the suspension,  
20 revocation, or probation no longer exist.

21 (8) Proceedings for suspension, revocation, or probation  
22 shall not preclude the department from seeking other civil or  
23 criminal actions.

24 Sec. 12. (1) Any notice or order provided for in the  
25 Commercial Dog and Cat Operator Inspection Act shall be properly  
26 served when it is personally served on the licensee or on the  
27 person authorized by the licensee to receive notices and orders of  
28 the department or when it is sent certified or registered mail,

1 return receipt requested, to the last-known address of the licensee  
2 or the person authorized by the licensee to receive such notices  
3 and orders. A copy of the notice and the order shall be filed in  
4 the records of the department.

5 (2) A notice to comply with the conditions set out in the  
6 order of the director provided in section 11 of this act shall set  
7 forth the acts or omissions with which the licensee is charged.

8 (3) A notice of the licensee's right to a hearing  
9 provided for in sections 10 and 11 of this act shall set forth the  
10 time and place of the hearing except as otherwise provided in  
11 section 11 of this act. A notice of the licensee's right to such  
12 hearing shall include notice that such right to a hearing may be  
13 waived pursuant to subsection (5) of this section. A notice of the  
14 licensee's right to a hearing to show cause why the license shall  
15 not be revoked shall include notice to the licensee that the  
16 license may be revoked or suspended, that the licensee may be  
17 subject to an order of probation, or that the license may be  
18 suspended and the licensee subject to an order of probation, if the  
19 director determines such action is more appropriate. A notice of  
20 the licensee's right to a hearing to show cause why the license  
21 should not be suspended shall include notice to the licensee that  
22 the license may be suspended or that the licensee may also be  
23 subject to an order of probation if the director determines such  
24 action is more appropriate.

25 (4) The hearings provided for in the act shall be  
26 conducted by the director at the time and place he or she  
27 designates. The director shall make a final finding based on the  
28 complete hearing record and issue an order. If the director has

1 suspended a license pursuant to subsection (4) of section 11 of  
2 this act, the director shall sustain, modify, or rescind the order  
3 after the hearing. All hearings shall be in accordance with the  
4 Administrative Procedure Act.

5 (5) A licensee waives the right to a hearing if such  
6 licensee does not attend the hearing at the time and place set  
7 forth in the notice described in subsection (3) of this section,  
8 without requesting the director at least two days before the  
9 designated time to change the time and place for the hearing,  
10 except that before an order of the director becomes final, the  
11 director may designate a different time and place for the hearing  
12 if the licensee shows the director that the licensee had a  
13 justifiable reason for not attending the hearing and not timely  
14 requesting a change of the time and place for such hearing. If the  
15 licensee waives the right to a hearing, the director shall make a  
16 final finding based upon the available information and issue an  
17 order. If the director has suspended a license pursuant to  
18 subsection (4) of section 11 of this act, the director may sustain,  
19 modify, or rescind the order after the hearing.

20 (6) Any person aggrieved by the finding of the director  
21 has ten days after the entry of the director's order to request a  
22 new hearing if such person can show that a mistake of fact has been  
23 made which affected the director's determination. Any order of the  
24 director becomes final upon the expiration of ten days after its  
25 entry if no request for a new hearing is made.

26 Sec. 13. In order to ensure compliance with the  
27 Commercial Dog and Cat Operator Inspection Act, the department may  
28 apply for a restraining order, temporary injunction, or mandatory

1 injunction against any person violating or threatening to violate  
2 the act or the rules and regulations adopted and promulgated  
3 thereunder. The district court of the county where the violation  
4 is occurring or is about to occur shall have jurisdiction to grant  
5 relief upon good cause shown. Relief may be granted  
6 notwithstanding the existence of any other remedy at law and shall  
7 be granted without bond.

8           The county attorney of the county in which such  
9 violations are occurring or about to occur shall, when notified of  
10 such violation or threatened violation, cause appropriate  
11 proceedings under this section to be instituted and pursued without  
12 delay.

13           Sec. 14. (1) It shall be unlawful for a person to  
14 operate without a valid license or operate while a license is  
15 revoked or suspended if a license is required by the Commercial Dog  
16 and Cat Operator Inspection Act. A licensee shall not operate in  
17 any manner which is not in conformity with the act or the rules and  
18 regulations adopted and promulgated pursuant thereto or interfere  
19 with the duties of the department or any final order of the  
20 director pursuant to the act.

21           (2) Any person who violates any provision of the act  
22 shall be guilty of a Class I misdemeanor except as provided in  
23 section 4 of this act.

24           Sec. 15. The Commercial Dog and Cat Operator Inspection  
25 Program Cash Fund is hereby created and shall consist of money  
26 appropriated by the Legislature, gifts, grants, costs, or charges  
27 from any source, including federal, state, public, and private  
28 sources. The funds shall be used to carry out the Commercial Dog

1 and Cat Operator Inspection Act. Any money in the fund available  
2 for investment shall be invested by the state investment officer  
3 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
4 State Funds Investment Act.

5           Sec. 16. The department may cooperate with the Secretary  
6 of Agriculture in carrying out applicable federal law and the  
7 regulations issued by the Secretary of Agriculture under such law.  
8 The department may enter into contracts with any person to  
9 implement any or all of the provisions of the Commercial Dog and  
10 Cat Operation Inspection Act.

11           Sec. 17. This act becomes operative on July 1, 1999.

12           Sec. 18. Since an emergency exists, this act takes  
13 effect when passed and approved according to law.