



# Ohio Legislative Service Commission

## Bill Analysis

Amanda George

### Sub S.B. 331

131st General Assembly  
(As Passed by the Senate)

**Sens.** Peterson, Eklund, Seitz

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## BILL SUMMARY

### Pet store and dog retailer regulations

- Prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store to a person unless the dog was obtained from one of the following sources:
  - An animal rescue for dogs;
  - An animal shelter for dogs;
  - A humane society;
  - A dog retailer, provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or
  - A qualified breeder.
- Prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog to a pet store in Ohio unless the dog was obtained from one of the following sources:
  - An animal rescue for dogs;
  - An animal shelter for dogs;
  - A humane society; or
  - A qualified breeder.

- Defines "qualified breeder" for purposes of the bill and revises the definitions of "pet store" in current law.
- Prohibits an owner, manager, or employee of a pet store from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog to any person that does not meet specified criteria.
- Prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog to a pet store that does not meet specified criteria.
- Prohibits an owner, manager, or employee of a pet store or a dog retailer from recklessly altering or providing false information on a written certification required by the bill to be given to a person acquiring a dog that was originally acquired by the pet store or dog retailer from a qualified breeder.
- Requires the Director of Agriculture to adopt rules establishing requirements and procedures governing pet stores, including requirements and procedures governing the licensing of pet stores.
- Specifies the procedure by which an applicant may obtain a pet store license.
- Prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store unless a pet store license has been issued for the pet store by the Director.
- Creates the Pet Store License Fund to be used by the Director to administer the bill's provisions governing pet stores.
- Specifies that whoever violates any of the bill's prohibitions is guilty of a fourth degree misdemeanor.
- Authorizes the Director to assess a civil penalty against a person who violates any of the bill's prohibitions and revises the existing civil penalty structure that applies to high volume dog breeders and dog retailers.
- Specifies that the regulation of pet stores is a matter of general statewide interest, that the bill constitutes a comprehensive plan with respect to all aspects of the regulation of pet stores, and that it is the intent of the General Assembly to preempt any local regulations governing dog sales from pet stores.

## Miscellaneous

- Eliminates the requirement that the Controlling Board approve the release of money from the existing High Volume Breeder Kennel Control License Fund.
- Revises the reasons for which the Director must deny an application for a dog retailer license or a high volume breeder license.
- Specifies that an applicant for the renewal of a high volume breeder license need not include with the renewal application specified photographic evidence as required under current law.
- Replaces the Director's authority to issue an order requiring a person to cease acts or practices that constitute a violation of the bill's provisions and the law governing high volume dog breeders and dog retailers with the authority to instead issue a notice requiring the person to cease such acts or practices.

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## CONTENT AND OPERATION

### Pet store and dog retailer regulations

#### Source of a dog sold from a pet store or from a dog retailer

The bill prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store to a person unless the dog was obtained from one of the following sources:



(1) An animal rescue for dogs;

(2) An animal shelter for dogs;

(3) A humane society;

(4) A dog retailer, provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or

(5) A qualified breeder.<sup>1</sup>

A pet store owner, manager, or employee who violates this provision is guilty of a fourth degree misdemeanor.<sup>2</sup>

The bill prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a live dog to a pet store in Ohio unless the dog was obtained from one of the following sources:

(1) An animal rescue for dogs;

(2) An animal shelter for dogs;

(3) A humane society; or

(4) A qualified breeder.<sup>3</sup>

A dog retailer who violates this provision is guilty of a fourth degree misdemeanor.<sup>4</sup>

Under the bill, a pet store is an individual retail store to which both of the following apply: (1) the store sells dogs to the public, and (2) with regard to the sale of a dog from the store, the sales person, the buyer of a dog, and the dog for sale are physically present during the sales transaction so that the buyer may personally observe the dog and help ensure its health prior to taking custody. A pet store does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a

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<sup>1</sup> R.C. 956.20(A).

<sup>2</sup> R.C. 956.99.

<sup>3</sup> R.C. 956.051(A).

<sup>4</sup> R.C. 956.99.

medical kennel for dogs, or a research kennel for dogs. Under current law, a pet store is a retail store that sells dogs to the public.<sup>5</sup>

A "qualified breeder" is a breeder that keeps, houses, and maintains female adult dogs that is not a high volume breeder.<sup>6</sup> A "qualified breeder" also is a high volume breeder located in or out of Ohio that meets all of the following requirements:

(1) The breeder is licensed by the United States Department of Agriculture (USDA) under federal law and, if applicable, a state agency;

(2) The breeder has not been issued a report of a direct noncompliance violation by the USDA under the federal Animal Welfare Act for a period of three years prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog;

(3) The breeder has not had three or more noncompliance violations documented in any report issued by the USDA under the federal Animal Welfare Act for a period of 12 months prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog; and

(4) The breeder has been issued a dog retailer license under Ohio law.<sup>7</sup>

The bill retains current law that states that a high volume breeder is an establishment that keeps, houses, and maintains adult breeding dogs that produce at least nine litters of puppies in any given calendar year and, in return for a fee or other consideration, sells 60 or more adult dogs or puppies per calendar year. The bill also retains current law that states that a dog retailer is a person who buys, sells, or offers to sell dogs at wholesale for resale to another or who sells or gives one or more dogs to a pet store annually. A dog retailer does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a medical kennel for dogs, a research kennel for dogs, a pet store, or a veterinarian.<sup>8</sup>

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<sup>5</sup> R.C. 956.01.

<sup>6</sup> R.C. 956.19(A).

<sup>7</sup> R.C. 956.19(B).

<sup>8</sup> R.C. 956.01.

## **Sale of a dog that does not meet specified criteria**

The bill prohibits an owner, manager, or employee of a pet store or a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring any of the following:

- (1) A dog that is less than eight weeks old;
- (2) A dog without a certificate of veterinarian inspection signed by an accredited veterinarian;
- (3) A dog that does not have a permanent implanted identification microchip that is approved for use by the Director of Agriculture; or
- (4) A dog to a person who is younger than 18 years of age as verified by valid photo identification.<sup>9</sup>

In the case of a dog retailer, the above prohibition applies only with regard to the sale, delivery, bartering, auction, brokering, giving away, or transfer of a dog to a pet store.<sup>10</sup>

The bill defines "accredited veterinarian" to mean a veterinarian accredited by the USDA. The bill also expands the definition of "veterinarian" to include a veterinarian licensed out of Ohio by an applicable state entity, in addition to a veterinarian licensed in Ohio as in current law.<sup>11</sup>

The bill prohibits an owner, manager, or employee of a pet store from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer unless all of the following information regarding the dog is available to the general public at the pet store:

- The name of the breeder that bred the dog;
- The address, if available, of the breeder that bred the dog;
- The USDA license number of the breeder that bred the dog, if applicable;
- The dog's birth date, if known; and

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<sup>9</sup> R.C. 956.20(B) and 956.051(B)(1) to (4).

<sup>10</sup> R.C. 956.051(B).

<sup>11</sup> R.C. 959.01.



--The breed of the dog.<sup>12</sup>

An owner, manager, or employee of a pet store also is prohibited from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer, unless the owner, manager, or employee provides to the person acquiring the dog, at a time prior to the transaction for the acquisition of the dog, a written certification that includes the following information:

--The name of the breeder that bred the dog;

--The address, if available, of the breeder that bred the dog;

--The USDA license number of the breeder that bred the dog, if applicable, and a copy of the most current USDA inspection report for the breeder;

--The dog's birth date, if known;

--The date that the pet store took possession of the dog;

--The breed, gender, color, and any identifying marks of the dog;

--A document signed by an accredited veterinarian that describes any known disease, illness, or congenital or hereditary condition that adversely affects the health of the dog at the time of examination; and

--A document signed by the owner, manager, or employee of the pet store certifying that all information required to be provided to the person acquiring the dog is accurate. A pet store must keep a copy of the certification for at least two years from the date of the acquisition. The owner, manager, or an employee of the pet store must make the copy of the certification available for inspection or duplication by the Department of Agriculture.<sup>13</sup>

A dog retailer is also prohibited from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder to a pet store unless it provides the written certification described above.<sup>14</sup>

A violation of any of the above prohibitions is a fourth degree misdemeanor.<sup>15</sup>

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<sup>12</sup> R.C. 956.20(B)(6).

<sup>13</sup> R.C. 956.20(B)(5).

<sup>14</sup> R.C. 956.051(B).

## **Prohibition against providing false information**

The bill prohibits an owner, manager, or employee of a pet store or a dog retailer from recklessly altering or providing false information on a written certification required to be given to a person acquiring a dog from the pet store or dog retailer, as applicable, when the dog was originally acquired from a qualified breeder.<sup>16</sup>

A pet store owner, manager, or employee or a dog retailer who violates this provision is guilty of a fourth degree misdemeanor.<sup>17</sup>

## **Application of bill**

The bill specifies that the prohibitions regarding dog sales by pet stores and dog retailers do not apply to any dog that is being sold, delivered, bartered, auctioned, given away, brokered, or transferred from the premises where the dog was bred and reared.<sup>18</sup>

## **Pet store license**

The bill prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store in Ohio unless a pet store license has been issued for the pet store by the Director of Agriculture.<sup>19</sup> The Director may issue a pet store license to a pet store owner or operator when the owner or operator does all of the following:

(1) Applies for a license in accordance with the bill's provisions and rules adopted under it;

(2) Affirms in writing that the owner or operator will maintain compliance with the bill's requirements; and

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<sup>15</sup> R.C. 956.99.

<sup>16</sup> R.C. 956.051(C) and 956.20(C).

<sup>17</sup> R.C. 956.99.

<sup>18</sup> R.C. 956.20(D) and 956.051(D).

<sup>19</sup> R.C. 956.21(E).





(3) Submits a \$500 fee along with the application for a pet store license.<sup>20</sup> The fee must be deposited into the Pet Store License Fund, which is created by the bill (see below).<sup>21</sup>

Under the bill, the Director may deny, suspend, or revoke a pet store license for a violation of the bill's prohibitions regarding pet store dog sales. However, the denial, suspension, or revocation of a license is not effective until the licensee is given a written notice of the violation, a reasonable amount of time to correct the violation, if possible, and an opportunity for a hearing. The Director also may refuse to issue a pet store license if the applicant has violated the bill's prohibitions regarding pet store dog sales during the 36-month period prior to submitting an application for the license.<sup>22</sup>

A pet store license is valid for one year from the date of issuance and must be renewed annually.<sup>23</sup>

A person who negligently operates a pet store in Ohio without a pet store license issued by the Director is guilty of a fourth degree misdemeanor.<sup>24</sup>

## **Rules**

The bill requires the Director of Agriculture to adopt rules establishing all of the following:

(1) Requirements and procedures governing pet stores, including requirements and procedures governing the initial licensing of pet stores and the renewal of pet store licenses;

(2) The application form for a pet store license and the information that is required to be submitted in the application; and

(3) Requirements governing permanent implanted identification microchips for dogs to be sold at a pet store and by a dog retailer.<sup>25</sup>

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<sup>20</sup> R.C. 956.21(A).

<sup>21</sup> R.C. 956.21(D).

<sup>22</sup> R.C. 956.21(B).

<sup>23</sup> R.C. 956.21(C).

<sup>24</sup> R.C. 956.99.

<sup>25</sup> R.C. 956.03(A)(11) to (13).



The bill also authorizes the Director to adopt rules establishing disease testing protocols and vaccination requirements for dogs to be sold at a pet store.<sup>26</sup>

### **Civil penalties**

The bill authorizes the Director to assess a civil penalty against a person who violates any of the bill's prohibitions governing the sale of a dog from a pet store or the sale of a dog from a dog retailer. A person is liable for a civil penalty as follows:<sup>27</sup>

Number of violations	Civil penalty
First violation	\$500 or less
Second violation	\$2,500 or less
Third or subsequent violation	\$10,000 or less

Any person assessed a civil penalty must pay the amount prescribed to the Department of Agriculture. The Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the Pet Store License Fund (see below) for violations involving a pet store.<sup>28</sup> For violations involving a dog retailer, the Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the existing High Volume Breeder Kennel Control License Fund.<sup>29</sup> However, a civil penalty for both pet store and dog retailer violations may be assessed by the Director only if all of the following occur:

(1) The person has received a notice and been notified of the violation by certified mail or personal service;

(2) After the time period for correcting the violation specified in the notice has elapsed, the Director or the Director's authorized representative has inspected the premises where the violation has occurred and determined that the violation has not been corrected, and the Director has issued a notice of an adjudication hearing;

(3) The Director affords the person an opportunity for an adjudication hearing to challenge the Director's determination that the person is not in compliance with the

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<sup>26</sup> R.C. 956.03(B).

<sup>27</sup> R.C. 956.22(A).

<sup>28</sup> R.C. 956.22(D).

<sup>29</sup> R.C. 956.13(C).



bill's provisions, the imposition of the civil penalty, or both. A person may waive the opportunity for an adjudication hearing.<sup>30</sup>

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation of the bill has occurred or is occurring, the Director may assess a civil penalty. The civil penalty may be appealed in accordance with Ohio's Administrative Procedure Law, except that the civil penalty may be appealed only to the Environmental Division of the Franklin County Municipal Court.<sup>31</sup>

The bill also revises the civil penalty structure for any violation of the existing law governing high volume dog breeders and dog retailers. Under current law, if a person operates as a high volume breeder without first obtaining a license or if a person acts as or performs the functions of a dog retailer without a dog retailer license, that person must be assessed a civil penalty in an amount that is established in rules, which is currently \$100 for the first offense and \$500 for each subsequent offense.<sup>32</sup> A person who has violated any other existing provision of that Law must pay a civil penalty of \$100.<sup>33</sup>

Under the bill, the civil penalty structure for these existing provisions is identical to the civil penalty structure for violations of the bill's prohibitions regarding sales of a dog from a pet store or by a dog retailer (see table, above).<sup>34</sup>

### **Pet Store License Fund**

As indicated above, the bill creates the Pet Store License Fund that consists of all of the following:

- (1) All money collected by the Director from pet store license fees;
- (2) All money collected by the Director from civil penalties assessed under the bill's provisions; and
- (3) Money appropriated to the Fund.

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<sup>30</sup> R.C. 956.13(A) and 956.22(A).

<sup>31</sup> R.C. 956.13(B) and 956.22(B).

<sup>32</sup> R.C. 956.13(C)(1) and O.A.C. 901:1-6-10.

<sup>33</sup> R.C. 956.13(C)(2).

<sup>34</sup> R.C. 956.13(C).



The Director must use the money in the Fund to administer the bill's provisions governing the sale of dogs from pet stores.<sup>35</sup>

### **Preemption**

The bill specifies that the regulation of pet stores is a matter of general statewide interest that requires statewide regulation and that the bill constitutes a comprehensive plan with respect to all aspects of the regulation of pet stores. Accordingly, the bill specifies that it is the intent of the General Assembly to preempt any local ordinance, resolution, or other law adopted to regulate the sale, delivery, barter, auction, broker, or transfer of a dog to a person from a pet store (see **COMMENT**, below).<sup>36</sup>

### **Release of money from the High Volume Breeder Kennel Control License Fund**

The bill eliminates the requirement that the Controlling Board approve the release of money from the existing High Volume Breeder Kennel Control License Fund. The bill also eliminates the cap on the amount of money that the Director of Agriculture may request the Controlling Board to release from the Fund in any biennium. Currently, the cap is \$2,500,000. Under current law, the Director must use money in the Fund to administer the laws governing dog breeders.<sup>37</sup> The bill does not eliminate any other provision of current law that requires the Controlling Board to approve expenditures made by a state agency.<sup>38</sup>

### **Revisions to the law governing dog breeders and dog retailers**

#### **Denial of dog retailer and high volume breeder licenses**

The bill revises the reasons for which the Director of Agriculture must deny an application for a dog retailer license or a high volume breeder license by removing the requirement that the Director deny such a license to an applicant that, in the past 20 years, has been convicted of or pleaded guilty to certain federal animal cruelty or domestic violence violations or certain animal cruelty or domestic violence violations in another state. The bill retains provisions of current law that require the Director of Agriculture to deny an application for a dog retailer license or a high volume breeder

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<sup>35</sup> R.C. 956.181.

<sup>36</sup> R.C. 956.23.

<sup>37</sup> R.C. 956.18.

<sup>38</sup> See, e.g., R.C. 127.16(B)(1), not in the bill.

license to an applicant that, in the past 20 years, has been convicted of or pleaded guilty to certain state or equivalent municipal animal cruelty or domestic violence violations.<sup>39</sup>

### **Photographic evidence for a high volume breeder license renewal**

Current law requires a person applying for the renewal of a high volume breeder license to submit along with the application photographic evidence documenting the facilities where the dogs will be kept, housed, and maintained by the applicant. The bill eliminates this requirement.<sup>40</sup>

### **Notification of violations**

The bill replaces the Director of Agriculture's authority to issue an order requiring a person to cease acts or practices that constitute a violation of the bill and the existing law governing high volume dog breeders and dog retailers or requiring the person to take corrective actions to eliminate the violation with the authority to instead issue a notice requiring the person to cease such acts or practices.<sup>41</sup> The bill also makes conforming changes.<sup>42</sup>

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## **COMMENT**

Under Article XVIII, Section 3 of the Ohio Constitution, municipal corporations "have the authority to exercise all powers of local self-government and adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws." Accordingly, a provision enacted by the General Assembly that purports to preempt a municipal corporation's constitutional authority may be invalid. See *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	05-17-16
Reported, S. Finance	05-25-16
Passed Senate (21-11)	05-25-16

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<sup>39</sup> R.C. 956.15(A).

<sup>40</sup> R.C. 956.04(D).

<sup>41</sup> R.C. 956.12.

<sup>42</sup> R.C. 956.13(A) and 956.14.

