



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 130

129th General Assembly

(As Reported by H. Agriculture and Natural Resources)

**Sens.** Hughes and Cates, Lehner, Seitz, Skindell, Turner, Hite, Beagle, Burke, Gentile, Jones, LaRose, Niehaus, Patton, Sawyer, Schiavoni, Tavares, Wagoner

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## BILL SUMMARY

- Revises the definition of dog kennels that are required to be registered under the Dogs Law, distinguishing them from high volume breeders that are required to be licensed under the bill.
- Defines "high volume breeder," requires a person who operates such an establishment to obtain a license from the Director of Agriculture, and specifies information that must be included with an application for a high volume breeder license.
- Defines "dog retailer," and requires a person acting as or performing the functions of a dog retailer to obtain a license from the Director.
- Defines "animal rescue for dogs," prohibits a person from operating an animal rescue for dogs without first registering with the Director, and requires the Director to maintain a database of all persons registered to operate an animal rescue for dogs in Ohio.
- Exempts medical kennels for dogs, research kennels for dogs, animals shelters for dogs that are operated by counties or municipal corporations (pounds), and veterinarians from the bill.
- Establishes license application fees for high volume breeders and dog retailers, and requires the money to be credited to a new High Volume Breeder Kennel Control License Fund with a portion of breeder application fees transferred to the applicable county dog and kennel fund.

- Requires the Director to deny an application for a license under specified circumstances, and authorizes the Director to suspend or revoke a license for violation of any of the bill's provisions or a rule adopted or order issued under it if the violation materially threatens the health or welfare of a dog.
- Requires the Director to adopt rules establishing requirements and procedures that are necessary to administer and enforce the bill, including standards governing housing and nutrition for high volume breeders, requires the Director to take into consideration at least specified factors when establishing those standards, and prohibits high volume breeders and dog retailers from failing to comply with applicable standards.
- Requires the Director to conduct inspections under certain circumstances and authorizes the Director to do so under other circumstances, establishes authority for and procedures and requirements governing inspections, authorizes the Director to enter into contracts or agreements with veterinarians to conduct inspections, and establishes parameters for those inspections.
- Authorizes the Director to impound a dog if the Director or the Director's authorized representative determines that the dog is being kept by a high volume breeder or dog retailer in a manner that materially violates the bill or the rules adopted under it, and establishes procedures governing such an impoundment.
- Provides for enforcement of its provisions through civil penalties, citations and orders, and injunctive relief.
- Creates the Commercial Dog Breeding Advisory Board, and requires the Board to review rules that have been or are proposed to be adopted under the bill and advise the Director on the administration of the bill and rules adopted under it.
- Creates the High Volume Breeder Kennel Control Fund, states that the Fund consists of money collected by the Director from license fees under the bill and from civil penalties imposed under the bill and of any money appropriated to it, and requires the Director to request the Controlling Board to release not more than \$2.5 million per biennium from the Fund.
- Requires the Director of Agriculture to use money in the Fund to administer the bill and rules adopted under it.

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## CONTENT AND OPERATION

### Dogs Law provisions governing kennels

Under current law, the owner of a kennel of dogs must apply for the registration of the kennel and pay to the county auditor a \$10 registration fee for the kennel unless a greater fee has been established by the applicable board of county commissioners.<sup>1</sup> The fees are deposited into the county's dog and kennel fund.<sup>2</sup> Current law defines "kennel owner" as a person, partnership, firm, company, or corporation professionally engaged in the business of breeding dogs for hunting or for sale. The bill instead defines "dog kennel" or "kennel" for purposes of the Dogs Law as an establishment that keeps, houses, and maintains adult dogs for the purpose of breeding the dogs for a fee or other consideration received through a sale, exchange, or lease and that is not a high volume breeder that is licensed under the bill.<sup>3</sup> Thus, while retaining county registration of certain dog kennels, the bill distinguishes those kennels from high volume breeders that must be licensed under the bill's new regulatory program (see "**High volume**

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<sup>1</sup> R.C. 955.04 and 955.14, not in the bill.

<sup>2</sup> R.C. 955.20.

<sup>3</sup> R.C. 955.02.

**breeders,"** below). It also incorporates high volume breeders in certain provisions of the Dogs Law as discussed below.

Current law prohibits the owner of a dog, except a dog constantly confined to a registered kennel, from failing to require the dog to wear, at all times, a valid tag issued in connection with a certificate of registration. The bill applies that exception also to a dog that is constantly confined to a high volume breeder that is licensed under the bill.<sup>4</sup>

Similarly, under current law, a county dog warden and the warden's deputies must seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag. Exceptions include any dog that wears a valid registration tag and is kept constantly confined in a registered dog kennel. The bill applies that exception also to a dog that is kept constantly confined in a high volume breeder that is licensed under the bill.<sup>5</sup>

### **High volume breeders**

Under the bill, a person is prohibited from operating a high volume breeder in Ohio without a license issued by the Director of Agriculture in accordance with the bill and rules adopted under it.<sup>6</sup> The Director is precluded from issuing a license unless the Director determines that the applicant will operate or will continue to operate the high volume breeder in accordance with the bill and rules adopted under it.<sup>7</sup>

The bill defines "high volume breeder" as 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.<sup>8</sup> It defines "adult dog" as a dog that is 12 months of age or older and "puppy" as a dog that is under 12 months of age.<sup>9</sup> Under the bill, "breeding dog" means an unneutered, unspayed dog that is primarily harbored or housed on property that is the dog's primary residence.<sup>10</sup>

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<sup>4</sup> R.C. 955.10.

<sup>5</sup> R.C. 955.12.

<sup>6</sup> R.C. 956.04(A)(1).

<sup>7</sup> R.C. 956.04(A)(3).

<sup>8</sup> R.C. 956.01(F).

<sup>9</sup> R.C. 956.01(A) and (L).

<sup>10</sup> R.C. 956.01(E).

In determining whether an establishment is a high volume breeder requiring a license under the bill, the Director must determine if, in any given year, the establishment is a high volume breeder as defined by the bill. All facilities that are located at an individual postal address must be licensed as one high volume breeder. Not more than one license must be issued for any given postal address.<sup>11</sup>

A person who is proposing to operate a new high volume breeder must submit an application for a license to the Director at least 90 days before commencing operation. The application must be submitted in the form and with the information required by rules adopted under the bill and must include with it at least all of the following:

(1) An affidavit signed under oath or solemn affirmation of the number of adult dogs that are kept, housed, and maintained by the applicant at the location that is the subject of the application;

(2) An estimate of the number of puppies to be kept, housed, and maintained and of the number of litters of puppies or total number of puppies to be produced during the term of the license;

(3) Photographic evidence documenting the facilities where dogs will be kept, housed, and maintained by the applicant. The Director may conduct an inspection of the facilities that are the subject of an application in addition to reviewing photographic evidence submitted by an applicant for a license.

(4) A signed release permitting the performance of a background investigation regarding the applicant in accordance with rules adopted under the bill; and

(5) Proof that the applicant has established a veterinary-client-patient relationship as described in the Veterinarians Law.

During the month of December, but before January 1 of the next year, a person who is proposing to continue the operation of a high volume breeder must obtain a license for the kennel from the Director for the following year. The person must apply for the license in the same manner as for an initial license.<sup>12</sup>

The bill requires the owner or operator of a high volume breeder that is in operation on the bill's effective date to submit to the Director an application for a high volume breeder license not later than three months after that date. The Director must

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<sup>11</sup> R.C. 956.04(B).

<sup>12</sup> R.C. 956.04(D).

issue or deny the application within 90 days after the receipt of the completed application.<sup>13</sup>

A person who has received a high volume breeder license under the bill, upon sale or other disposition of the high volume breeder, may have the license transferred to another person with the consent of the Director, provided that the transferee otherwise qualifies to be licensed as a high volume breeder under the bill and rules adopted under it and does not have a certified unpaid debt to the state.<sup>14</sup>

An applicant for a high volume breeder license must demonstrate that the high volume breeder that is the subject of the application complies with standards established in rules adopted under the bill (see "**Standards of care**," below).<sup>15</sup>

## **Dog retailers**

The bill prohibits a person from acting as or performing the functions of a dog retailer in this state without a dog retailer license issued by the Director in accordance with the bill and rules adopted under it.<sup>16</sup> The Director is precluded from issuing a license unless the Director determines that the applicant will act as or perform the functions of a dog retailer in accordance with the bill and rules adopted under it.<sup>17</sup>

Under the bill, "dog retailer" means 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. It does not include an animal rescue for dogs (see "**Animal rescues for dogs**," below), an animal shelter for dogs, a humane society established under state law, a medical kennel for dogs, a research kennel for dogs (see "**Exemptions**," below), a pet store, or a veterinarian.<sup>18</sup> The bill defines "animal shelter for dogs" as a facility that keeps, houses, and maintains dogs such as a dog pound operated by a municipal corporation, or by a county under the Dogs Law, or that is operated by a humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization that is devoted to the welfare, protection, and humane treatment of dogs and other animals.<sup>19</sup> It defines "pet store" as a retail store that sells dogs to the

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<sup>13</sup> R.C. 956.04(E).

<sup>14</sup> R.C. 956.04(F).

<sup>15</sup> R.C. 956.04(G).

<sup>16</sup> R.C. 956.05(A)(1).

<sup>17</sup> R.C. 956.05(A)(3).

<sup>18</sup> R.C. 956.01(H).

<sup>19</sup> R.C. 956.01(C).

public.<sup>20</sup> Under the bill, "veterinarian" means a veterinarian who is licensed under state law.<sup>21</sup>

A person who is proposing to act as or perform the functions of a dog retailer must submit an application for a license to the Director. During the month of December, but before January 1 of the next year, a person who is proposing to continue to act as or perform the functions of a dog retailer must obtain a license from the Director for the following year.<sup>22</sup>

A person who is acting as or performing the functions of a dog retailer on the bill's effective date must submit to the Director an application for a dog retailer license not later than three months after that date. The Director must issue or deny the application within 90 days after the receipt of the completed application.<sup>23</sup>

### **Animal rescues for dogs**

The bill prohibits a person from operating an animal rescue for dogs without first registering to do so with the Director of Agriculture in accordance with rules adopted under the bill.<sup>24</sup> The bill defines "animal rescue for dogs" as an individual or organization recognized by the Director that keeps, houses, and maintains dogs and that is dedicated to the welfare, health, safety, and protection of dogs, provided that the individual or organization does not operate for profit, does not sell dogs for a profit, does not breed dogs, and does not purchase more than nine dogs in any given calendar year unless the dogs are purchased from a dog warden, a humane society, or another animal rescue for dogs. "Animal rescue for dogs" includes an individual or organization that offers spayed or neutered dogs for adoption and charges reasonable adoption fees to cover the costs of the individual or organization, including, but not limited to, costs related to spaying or neutering dogs.<sup>25</sup>

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<sup>20</sup> R.C. 956.01(K).

<sup>21</sup> R.C. 956.01(N).

<sup>22</sup> R.C. 956.05(B).

<sup>23</sup> R.C. 956.05(C).

<sup>24</sup> R.C. 956.06.

<sup>25</sup> R.C. 956.01(B).

Under the bill, no registration fee must be charged to an animal rescue for dogs. The Director must maintain a database of all persons that are registered to operate an animal rescue for dogs in Ohio.<sup>26</sup>

## **Exemptions**

Medical kennels for dogs, research kennels for dogs, animal shelters for dogs that are operated by a municipal corporation, or by a county under the Dogs Law, and veterinarians are not required to obtain a license under the bill or comply with any other requirements of the bill and rules adopted under it.<sup>27</sup> The bill defines "medical kennel for dogs" as a facility that is maintained by a veterinarian and operated primarily for the treatment of sick or injured dogs and "research kennel for dogs" as a facility housing dogs that is maintained exclusively for research purposes.<sup>28</sup>

## **Application fees**

Under the bill, a person who is applying for a license to operate a high volume breeder or to act as or perform the functions of a dog retailer must include with the application for a license a nonrefundable license application fee. For the purpose of calculating the application fee for a high volume breeder, the sale of one dog from a litter constitutes the sale of a litter. The application fees are as follows:

For a high volume breeder:

- (1) \$150 if the breeder annually sells at least nine, but not more than 15 litters;
- (2) \$250 if the breeder annually sells at least 16, but not more than 25 litters;
- (3) \$350 if the breeder annually sells at least 26, but not more than 35 litters;
- (4) \$500 if the breeder annually sells at least 36, but not more than 45 litters; or
- (5) \$750 if the breeder annually sells 46 or more litters.

For a dog retailer, \$500.<sup>29</sup>

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<sup>26</sup> R.C. 956.06.

<sup>27</sup> R.C. 956.02.

<sup>28</sup> R.C. 956.01(J) and (M).

<sup>29</sup> R.C. 956.07(A).

The Director must transmit money collected by the Director from each application fee to the Treasurer of State to be credited to the High Volume Breeder Kennel Control License Fund created by the bill (see "**High Volume Breeder Kennel Control License Fund**," below). The Treasurer of State must transfer to the county auditor of the county in which a high volume breeder is or will be located \$50 of the application fee submitted by the breeder or an amount equal to the fee charged in that county for the registration of a kennel under the Dogs Law (see above), whichever is greater. The county auditor must deposit the money in the county's dog and kennel fund.<sup>30</sup>

### **Application denial; license suspension and revocation**

The bill requires the Director to deny an application for a license that is submitted under the bill for either of the following reasons:

(1) The applicant for the license has violated any provision of the bill or a rule adopted under it if the violation materially threatens the health or welfare of a dog; or

(2) The applicant, in the past 20 years, has been convicted of or pleaded guilty to violating any of specified statutes prohibiting animal cruelty or animal fighting or an equivalent municipal ordinance, law of another state, or federal law or, in the past 20 years, has been convicted of or pleaded guilty to violating more than once the statute prohibiting domestic violence or an equivalent municipal ordinance, law of another state, or federal law.<sup>31</sup>

Additionally, the Director may suspend or revoke a license issued under the bill for violation of any provision of the bill or a rule adopted or order issued under it if the violation materially threatens the health or welfare of a dog.<sup>32</sup>

An application or a license cannot be denied, suspended, or revoked without a written order of the Director stating the findings on which the denial, suspension, or revocation is based. A copy of the order must be sent to the applicant or license holder by certified mail or may be provided to the applicant or license holder by personal service. In addition, the person to whom a denial, suspension, or revocation applies may request an adjudication hearing under the Administrative Procedure Act; the Director must comply with such a request. The determination of the Director at an adjudication hearing may be appealed in accordance with the Administrative Procedure

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<sup>30</sup> R.C. 956.07(B).

<sup>31</sup> R.C. 956.15(A).

<sup>32</sup> R.C. 956.15(B)

Act, except that the determination may be appealed only to the Environmental Division of the Franklin County Municipal Court.<sup>33</sup>

## Rules

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act establishing all of the following:

(1) Requirements and procedures governing high volume breeders, including the licensing and inspection of and record keeping by high volume breeders, in addition to the requirements and procedures established by the bill;<sup>34</sup>

(2) Requirements and procedures for conducting background investigations of each applicant for a high volume breeder license issued under the bill in order to determine if the applicant has been convicted of or pleaded guilty to any of the offenses specified in the bill the violation of which precludes a person from being licensed (see above);<sup>35</sup>

(3) Requirements and procedures governing dog retailers, including the licensing of and record keeping by dog retailers, in addition to the requirements and procedures established by the bill;<sup>36</sup>

(4) The form of applications for licenses issued under the bill and the information that is required to be submitted in the applications and the form for registering as an animal rescue for dogs under the bill and the information that is required to be provided with a registration, including the name and address of each foster home that it utilizes;<sup>37</sup>

(5) A requirement that each high volume breeder submit to the Director, with an application for a high volume breeder license, evidence of insurance or, in the alternative, evidence of a surety bond payable to the state to ensure compliance with the bill and rules adopted under it. The face value of the insurance coverage or bond must be in the following amounts:

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<sup>33</sup> R.C. 956.15(C).

<sup>34</sup> R.C. 956.03(A).

<sup>35</sup> R.C. 956.03(B).

<sup>36</sup> R.C. 956.03(C).

<sup>37</sup> R.C. 956.03(D).

(a) \$5,000 for high volume breeders keeping, housing, and maintaining not more than 25 adult dogs;

(b) \$10,000 for high volume breeders keeping, housing, and maintaining at least 26 adult dogs, but not more than 50 adult dogs; and

(c) \$50,000 for high volume breeders keeping, housing, and maintaining more than 50 adult dogs.

The rules must require that the insurance be payable to the state or that the surety bond be subject to redemption by the state, as applicable, upon a suspension or revocation of a high volume breeder license for the purpose of paying for the maintenance and care of dogs that are seized or otherwise impounded from the high volume breeder in accordance with the bill.<sup>38</sup>

(6) Procedures for inspections conducted under the bill in addition to the procedures established by the bill (see "**Inspectors and inspections**," below), and procedures for making records of the inspections;<sup>39</sup>

(7) Both of the following:

(a) A requirement that an in-state retailer of a puppy or adult dog provide to the purchaser the complete name, address, and telephone number of all high volume breeders, dog retailers, and private owners that kept, housed, or maintained the puppy or adult dog prior to its coming into the possession of the retailer or proof that the puppy or adult dog was acquired through an animal rescue for dogs, animal shelter for dogs, or humane society, or a valid health certificate from the state of origin pertaining to the puppy or adult dog; and

(b) A requirement that an out-of-state retailer of a puppy or adult dog that is conducting business in this state provide to the purchaser a valid health certificate from the state of origin pertaining to the puppy or adult dog and the complete name, address, and telephone number of all breeders, retailers, and private owners that kept, housed, or maintained the puppy or adult dog prior to its coming into the possession of the retailer or proof that the puppy or adult dog was acquired through an animal rescue for dogs, animal shelter for dogs, or humane society in this state or another state;<sup>40</sup>

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<sup>38</sup> R.C. 956.03(E).

<sup>39</sup> R.C. 956.03(G).

<sup>40</sup> R.C. 956.03(H).

(8) A requirement that a high volume breeder or a dog retailer who advertises the sale of a puppy or adult dog include with the advertisement the vendor number assigned by the Tax Commissioner if the sale of the puppy or dog is subject to the Sales Tax Law (sales of animals by nonprofit animal adoption services or county humane societies are not subject to the sales tax);<sup>41</sup>

(9) A requirement that a licensed high volume breeder and a licensed dog retailer comply with the Sales Tax Law. The rules must authorize the Director to suspend or revoke a license for failure to comply with that Law. The Director must work in conjunction with the Tax Commissioner for the purposes of those rules;<sup>42</sup>

(10) Any other requirements and procedures that are determined by the Director to be necessary for the administration and enforcement of the bill and rules adopted under it. However, those rules cannot establish additional requirements and procedures governing animal rescues for dogs other than those adopted regarding the form for registering animal rescues for dogs.<sup>43</sup>

### **Standards of care**

The bill requires the Director, in addition to the rules discussed above, to adopt rules in accordance with the Administrative Procedure Act establishing standards of care governing all of the following for high volume breeders:

- (1) Housing;
- (2) Nutrition;
- (3) Exercise;
- (4) Grooming;
- (5) Biosecurity and disease control;
- (6) Waste management;
- (7) Whelping; and

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<sup>41</sup> R.C. 956.03(I).

<sup>42</sup> R.C. 956.03(J).

<sup>43</sup> R.C. 956.03(K).

(8) Any other general standards of care for dogs.<sup>44</sup>

In adopting the rules, the Director must consider the following factors, without limitation:

(1) Best management practices for the care and well-being of dogs;

(2) Biosecurity;

(3) The prevention of disease;

(4) Morbidity and mortality data;

(5) Generally accepted veterinary medical standards and ethical standards established by the American Veterinary Medical Association; and

(6) Standards established by the U.S. Department of Agriculture under the Federal Animal Welfare Act.<sup>45</sup>

It prohibits any person operating a high volume breeder or acting as or performing the functions of a dog retailer from failing to comply with applicable standards established by the Director.<sup>46</sup>

## **Inspections**

At least once annually, the Director or the Director's authorized representative must inspect a high volume breeder that is subject to licensure under the bill and rules adopted under it to ensure compliance with the bill and rules adopted under it, including the standards of care established in rules (see above). The Director or the Director's authorized representative must inspect a boarding kennel when the Director or the Director's authorized representative has received information that the boarding kennel is breeding dogs and may be subject to licensure under the bill and rules adopted under it.<sup>47</sup> Under the bill, "boarding kennel" means an establishment operating for profit that keeps, houses, and maintains dogs solely for the purpose of providing shelter, care, and feeding of the dogs in return for a fee or other consideration.<sup>48</sup>

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<sup>44</sup> R.C. 956.03(F)(1).

<sup>45</sup> R.C. 956.03(F)(2).

<sup>46</sup> R.C. 956.04(G) and 956.08.

<sup>47</sup> R.C. 956.10(A).

<sup>48</sup> R.C. 956.01(D).

In addition, the bill authorizes the Director or the Director's authorized representative to do any of the following:

(1) Upon receiving a complaint, inspect a high volume breeder that is subject to licensure to ensure compliance with the bill and rules adopted under it;

(2) Upon the request of a member of the public, a public official, or an animal shelter for dogs, inspect any facility at which a person is acting as or performing the functions of a dog retailer to ensure such compliance;

(3) Upon receiving a complaint, inspect an animal rescue for dogs to ensure compliance with the bill's registration requirement and applicable rules; and

(4) Conduct an inspection during regular business hours without providing advance notice.<sup>49</sup>

Inspections must be conducted in accordance with rules adopted under the bill. A record of each inspection must be made by the Director or the Director's authorized representative who is responsible for the inspection in accordance with those rules.<sup>50</sup>

Under the bill, the Director or the Director's authorized representative, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times on any public or private property, real or personal, to inspect or investigate and to examine or copy records in order to determine compliance with the bill and rules adopted under it. The Director, the Director's authorized representative, or the Attorney General upon the request of the Director may apply to the appropriate court in the county in which the inspection will occur for an appropriate court order or search warrant as necessary to achieve the purposes of the bill and rules adopted under it.<sup>51</sup>

The bill prohibits an owner or operator of a high volume breeder, person acting as or performing the functions of a dog retailer, owner or operator of an animal rescue for dogs, or owner or operator of a boarding kennel from interfering with an inspection or refusing to allow the Director or the Director's authorized representative full access to all areas where dogs are kept or cared for. If entry is refused or inspection or investigation is refused, hindered, or thwarted by a high volume breeder or dog

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<sup>49</sup> R.C. 956.10(B).

<sup>50</sup> R.C. 956.10(C).

<sup>51</sup> R.C. 956.10(D).

retailer, the Director may suspend or revoke the breeder's or retailer's license in accordance with the bill.<sup>52</sup>

If entry that is authorized by the bill is refused or if an inspection or investigation is refused, hindered, or thwarted by intimidation or otherwise and if the Director, an authorized representative of the Director, or the Attorney General applies for and obtains a court order or a search warrant to conduct the inspection or investigation, the owner or operator of the premises where entry was refused or inspection or investigation was refused, hindered, or thwarted, if found guilty of violating the bill or rules adopted under it, is liable to the Director for the reasonable costs incurred by the Director for the regular salaries and fringe benefit costs of personnel assigned to conduct the inspection or investigation from the time the court order or search warrant was issued until the court order or search warrant is executed; for the salary, fringe benefits, and travel expenses of the Director, an authorized representative of the Director, or the Attorney General incurred in obtaining the court order or search warrant; and for expenses necessarily incurred for the assistance of local law enforcement officers in executing the court order or search warrant. In the application for a court order or a search warrant, the Director, the Director's authorized representative, or the Attorney General may request and the court, in its order granting the court order or search warrant, may order the owner or operator of the premises, if found guilty of violating the bill or rules adopted under it, to reimburse the Director for any of those costs that the court finds reasonable. From money so recovered, the Director must reimburse the Attorney General for the costs incurred by the Attorney General in connection with proceedings for obtaining the court order or search warrant, must reimburse the political subdivision in which the premises is located for the assistance of its law enforcement officers in executing the court order or search warrant, and must deposit the remainder in the state treasury to the credit of the High Volume Breeder Kennel Control License Fund created by the bill.<sup>53</sup>

The bill requires a dog warden or an agent of a humane society entering on public or private property to make investigations and inspections under their authorizing statutes to report any violations of the bill and rules adopted under it to the Director or the Director's authorized representative.<sup>54</sup>

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<sup>52</sup> R.C. 956.10(E).

<sup>53</sup> R.C. 956.10(G).

<sup>54</sup> R.C. 956.10(H).

## Inspections by veterinarians

The bill authorizes the Director to enter into a contract or agreement with a veterinarian to conduct the inspections discussed above. The veterinarian must be considered the Director's authorized representative for the purposes of those inspections. The bill authorizes such a veterinarian to inspect a high volume breeder with whom the veterinarian has established a veterinarian-client-patient relationship as described in the Veterinarians Law only every other year. Additionally, if the Director determines that a veterinarian who is conducting inspections under the bill has falsified any information submitted to the Director pursuant to an inspection, the Director must inform the Veterinary Medical Licensing Board of the falsification.<sup>55</sup>

## Impoundment

Under the bill, the Director may impound a dog if the Director or the Director's authorized representative determines that the dog is being kept by a high volume breeder or dog retailer in a manner that materially violates the bill or rules adopted under it. The bill authorizes the Director, for purposes of the bill's provisions regarding impoundment, to enter into contracts or agreements with an animal rescue for dogs, an animal shelter for dogs, a boarding kennel, a veterinarian, a board of county commissioners, or a humane society. If the Director impounds a dog, the Director may order it to be seized by such an entity or individual with which the Director has entered into a contract or agreement. Upon receiving the order, the entity or individual must seize the dog and keep, house, and maintain it.

The Director or the Director's authorized representative must give written notice of the impoundment by posting a notice on the door of the premises from which the dog was taken or by otherwise posting the notice in a conspicuous place at the premises from which the dog was taken. The notice must provide a date for an adjudication hearing, which must take place not later than five business days after the dog is taken and at which the Director must determine if the dog should be permanently relinquished to the custody of the Director.<sup>56</sup>

The owner or operator of the applicable high volume breeder or the person acting as or performing the functions of a dog retailer may appeal the determination made at the adjudication hearing in accordance with the Administrative Procedure Act,

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<sup>55</sup> R.C. 956.10(F).

<sup>56</sup> R.C. 956.11(B).

except that the appeal may be made only to the Environmental Division of the Franklin County Municipal Court.<sup>57</sup>

If, after the final disposition of an adjudication hearing and any appeals from that adjudication hearing, it is determined that a dog must be permanently relinquished to the custody of the Director, the dog may be adopted directly from the animal rescue for dogs, animal shelter for dogs, boarding kennel, veterinarian, county dog pound, or humane society where it is being kept, housed, and maintained, provided that the dog has been spayed or neutered unless there are medical reasons against spaying or neutering as determined by a veterinarian. That entity or individual may charge a reasonable adoption fee, which must be at least sufficient to cover the costs of spaying or neutering the dog unless it is medically contraindicated. Impounded dogs must be returned to persons acquitted of any alleged violations.<sup>58</sup>

## **Enforcement**

### **Citations and orders**

Under the bill, if the Director or the Director's authorized representative determines that a person has violated or is violating the bill or rules adopted under it, the Director may issue and cause to be served by certified mail or personal service a citation of violation and an order requiring the person to cease the acts or practices that constitute a violation or requiring the person to take corrective actions to eliminate the conditions that constitute a violation. The order must state specifically the provision or provisions of the bill or the rule or rules adopted under it that have been violated and the facts constituting the violation, the actions that the person must take to correct the deficiencies, and the time period within which the person must correct the violations.<sup>59</sup>

### **Civil penalty**

The bill also authorizes the Director to assess a civil penalty against a person violating the bill or rules adopted under it if all of the following occur:

(1) The person has received an order and been notified of the violation by certified mail or personal service as required by the bill;

(2) After the time period for correcting the violation specified in the order has elapsed, the Director or the Director's authorized representative has inspected the

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<sup>57</sup> R.C. 956.11(C).

<sup>58</sup> R.C. 956.11(D).

<sup>59</sup> R.C. 956.12.

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 as discussed below; and

(3) The Director affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the person is not in compliance with the bill or rules adopted under it, the imposition of the civil penalty, or both. A person may waive the opportunity for an adjudication hearing.

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation of the bill or a rule adopted under it has occurred or is occurring, the Director may assess a civil penalty. The civil penalty may be appealed in accordance with the Administrative Procedure Act, except that the civil penalty may be appealed only to the Environmental Division of the Franklin County Municipal Court.

Civil penalties must be assessed in the following amounts:

(1) A person who has operated a high volume breeder or acted as or performed the functions of a dog retailer without the required license must pay a civil penalty in an amount that is established by the Director in rules adopted under the bill.

(2) A person who has violated any other provision of the bill or rules adopted under it, including the standards of care established by the Commercial Dog Breeding Oversight Board under the bill, must pay a civil penalty of \$100.

Each day that a violation continues constitutes a separate violation.<sup>60</sup>

## **Injunctions**

The Attorney General, upon the request of the Director, may bring an action for injunction against a person who has violated or is violating the bill, rules adopted under it, or an order issued under it. An action for injunction must be filed in the appropriate court in the county in which the violation is alleged to have occurred. That court must grant such injunctive relief upon a showing that the person against whom the action is brought has violated or is violating the bill, rules adopted under it, or an order issued under it. The court must give precedence to such an action over all other cases.<sup>61</sup>

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<sup>60</sup> R.C. 956.13.

<sup>61</sup> R.C. 956.14.

## Hearings – witnesses, subpoenas

The bill authorizes the Director, the Director's authorized representative, or the Attorney General to require the attendance of witnesses and the production of books, records, papers, and dogs that are needed either by the Director or the Attorney General or by any party to a hearing before the Director and for that purpose may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or dogs. The subpoena must be served by personal service or by certified mail. If the subpoena is returned because of inability to deliver, or if no return is received within 30 days after the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within 30 days after the date of mailing, service must be deemed to have been made. If the subpoena is returned because of inability to deliver, the Director or the Attorney General may designate a person or persons to effect either personal or residence service on the witness. The person so designated may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena must be the same as those allowed by the courts of common pleas in criminal cases and must be paid from the funds of the Department of Agriculture. Fees and mileage for the witness must be the same as those allowed for witnesses by the courts of common pleas in criminal cases and, upon request of the witness following the hearing, must be paid from the money in the High Volume Breeder Kennel Control Fund created by the bill (see "**High Volume Breeder Kennel Control Fund**," below).<sup>62</sup>

## Commercial Dog Breeding Advisory Board

The bill creates the Commercial Dog Breeding Advisory Board consisting of the State Veterinarian in the Department of Agriculture and the following six members appointed by the Governor, with the advice and consent of the Senate:

- (1) One member representing a humane society;
- (2) One member who is a county dog warden;
- (3) One member who is a veterinarian;
- (4) One member representing animal rescues for dogs in Ohio;
- (5) One member who is a member of a professional dog breeding association in Ohio; and
- (6) One member representing the public.

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<sup>62</sup> R.C. 956.16.

Initial appointments to the Board must be made not later than 60 days after the bill's effective date. The bill provides for staggered three-year terms for the appointed members. Members may be reappointed. The bill establishes standard procedures for the filling of vacancies.

The Director of Agriculture must select a chairperson from among the Board's members. A majority of the members constitutes a quorum. The Board must meet at least four times a year in Columbus or at other locations selected by the chairperson. The chairperson must determine the agenda for each meeting.

Members of the Board must serve without compensation for attending Board meetings, but must be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the Board.

The bill requires the Board to do both of the following:

(1) Review rules that have been or are proposed to be adopted under the bill;  
and

(2) Advise the Director on the administration of the bill and rules adopted under it.<sup>63</sup>

### **High Volume Breeder Kennel Control License Fund**

All money collected by the Director from license fees under the bill and from civil penalties assessed under the bill must be deposited in the state treasury to the credit of the High Volume Breeder Kennel Control License Fund, which the bill creates. The Fund must also consist of money appropriated to it. Under the bill, no money may be released from the Fund without Controlling Board approval. The Director must request the Controlling Board to release money in an amount not to exceed \$2.5 million per biennium.<sup>64</sup> The bill states that it is the intent of the General Assembly to appropriate money to the Fund to enable the Director to begin administering the bill and rules adopted under it.<sup>65</sup> The Director must use money in the Fund for the purpose of administering the bill and rules adopted under it.<sup>66</sup>

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<sup>63</sup> R.C. 956.17.

<sup>64</sup> R.C. 956.18(A) and (B).

<sup>65</sup> Section 3.

<sup>66</sup> R.C. 956.18(C).

## Miscellaneous

The bill requires the Director to enforce the requirements and standards established in the bill and rules adopted under it.<sup>67</sup>

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### HISTORY

ACTION	DATE
Introduced	03-22-11
Reported, S. Agriculture, Environment & Natural Resources	02-01-12
Passed Senate (30-0)	02-01-12
Reported, H. Agriculture and Natural Resources	-----

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<sup>67</sup> R.C. 956.09.

