

Senate Study Bill 3159 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON McCOY)

A BILL FOR

1 An Act requiring a commercial breeder of dogs and cats to file
2 evidence of financial responsibility with the department
3 of agriculture and land stewardship, and making penalties
4 applicable.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 162.2, subsection 8, Code 2011, is
2 amended to read as follows:

3 8. a. "*Commercial breeder*" means a person, engaged in the
4 business of breeding dogs or cats, who sells, exchanges, or
5 leases dogs or cats in return for consideration, or who offers
6 to do so, whether or not the ~~animals~~ dogs or cats are raised,
7 trained, groomed, or boarded by the person. A person who owns
8 or harbors three or fewer breeding ~~males~~ dogs or ~~females~~ cats
9 is not a commercial breeder. However, a person who breeds
10 any number of breeding male or female greyhounds for the
11 purposes of using them for pari-mutuel wagering at a racetrack
12 as provided in chapter 99D shall be considered a commercial
13 breeder irrespective of whether the person sells, leases, or
14 exchanges the greyhounds for consideration or offers to do so.
15 b. A dog or cat used for breeding includes either a female
16 or male.

17 Sec. 2. Section 162.2, Code 2011, is amended by adding the
18 following new subsections:

19 NEW SUBSECTION. 15A. "*Financial institution*" means
20 a state bank as defined in section 524.103, a state bank
21 chartered under the laws of any other state, a national
22 banking association, a federally chartered savings and loan
23 association, an out-of-state state chartered savings bank, a
24 financial institution chartered by the federal home loan bank
25 board, a non-Iowa chartered savings and loan association, or
26 an association incorporated or authorized to do business under
27 chapter 534.

28 NEW SUBSECTION. 15B. "*Government entity*" means the
29 federal government, including the United States department of
30 agriculture; the state, including the department; or a local
31 government, including a city as defined in section 362.2 or a
32 county as provided in chapter 331.

33 Sec. 3. NEW SECTION. **162.8A Commercial breeder — evidence**
34 **of financial responsibility.**

35 A person applying for the issuance of an authorization as a

1 commercial breeder as provided in section 162.8 shall provide
2 the department with evidence of financial responsibility
3 as required in this section. The evidence of financial
4 responsibility shall be provided to the department before the
5 authorization is issued.

6 1. *a.* The evidence of financial responsibility shall
7 consist of a surety bond furnished by a surety authorized to
8 do business in this state or an irrevocable letter of credit
9 issued by a financial institution.

10 *b.* The evidence of financial responsibility shall be
11 continuous in nature. The surety shall provide at least ninety
12 days' notice in writing to the person and the department
13 indicating the surety's intent to cancel the surety bond and
14 the effective date of the cancellation. The person shall have
15 sixty days from the date of receipt of the surety's notice of
16 cancellation to file a replacement.

17 2. The amount of the evidence of financial responsibility
18 shall be based on information included in the application as
19 certified by the person seeking to obtain the authorization.

20 *a.* The amount shall be based on the number of breeding dogs
21 and breeding cats owned by the person, calculated as follows:

22 (1) For a person who does not currently hold an
23 authorization as a commercial breeder, the calculation shall
24 be based on the greatest number of breeding dogs or breeding
25 cats owned by the person at any one time in the previous twelve
26 months or the greatest number of breeding dogs or breeding cats
27 that the person expects to own at any one time during the term
28 of the authorization, whichever is more.

29 (2) For a person who currently holds an authorization as
30 a commercial breeder, the calculation shall be based on the
31 greatest number of breeding dogs or breeding cats that the
32 person owned at any point during the term of the authorization.

33 *b.* Based on the calculation provided in paragraph "a", the
34 amount of the evidence of financial responsibility shall be as
35 follows:

1 (1) For owning twenty or more but not more than fifty
2 breeding dogs or breeding cats, ten thousand dollars.

3 (2) For owning more than fifty but not more than one hundred
4 breeding dogs or breeding cats, twenty thousand dollars.

5 (3) For owning more than one hundred but not more than two
6 hundred fifty breeding dogs or breeding cats, forty thousand
7 dollars.

8 (4) For owning more than two hundred fifty breeding dogs or
9 breeding cats, one hundred thousand dollars.

10 c. For purposes of paragraphs "a" and "b", a person is
11 deemed to own a breeding dog or breeding cat even if the person
12 does not hold title to the breeding dog or breeding cat so long
13 as the person otherwise possesses or controls the breeding dog
14 or breeding cat.

15 3. The evidence of financial responsibility shall be
16 conditioned upon the person's compliance with the provisions
17 of this chapter applicable to commercial breeders operating
18 pursuant to an authorization, during the term of the
19 authorization.

20 4. The surety's or issuer's liability extends to any
21 person who serves as the custodian of the dog or cat for all
22 actual and necessary expenses incurred by providing for care
23 or disposition of a breeding dog or breeding cat obtained as
24 provided in this subsection.

25 a. The custodian incurring the expense must have obtained
26 the dog as a direct result of an enforcement action taken
27 by a government entity against the person, or a criminal or
28 civil action in which a government entity is a party. The
29 enforcement action must be brought under any of the following:

30 (1) The federal Animal Welfare Act, 7 U.S.C. § 2131 et seq.

31 (2) This chapter or chapter 717B, including section 717B.4
32 or section 717B.5.

33 b. A person authorized as a commercial breeder may
34 relinquish the breeding dog or breeding cat to a government
35 entity or a custodian designated or approved by the government

1 entity. The government entity may seize the breeding dog or
2 breeding cat pursuant to an enforcement action or court order
3 as provided by federal or state law.

4 *c.* The actual or necessary expenses incurred by a custodian
5 designated or approved to provide for the care or disposition
6 of the breeding dog or breeding cat as provided in this
7 subsection include all of the following:

8 (1) Maintenance, including but not limited to providing
9 veterinary examinations or treatment, sterilization,
10 transportation, housing, and sustenance.

11 (2) Disposition, including transfer of title to another
12 person or humane destruction in the same manner as provided in
13 section 162.13.

14 *d.* Any private or public entity other than the state
15 government or the United States government may be a custodian.
16 A local government may be a custodian.

17 5. A custodian may bring a legal action in order to be
18 indemnified for all actual and necessary expenses incurred when
19 the custodian provides for the care and disposition of the dog
20 or cat as provided in subsection 4.

21 *a.* The legal action may be taken against the surety on the
22 bond or issuer of the irrevocable letter of credit in district
23 court. The custodian may also be awarded court costs and
24 reasonable attorney fees, which shall be taxed as part of the
25 costs of the legal action.

26 *b.* The surety or issuer shall not be liable to pay for the
27 amount received by the custodian as a result of an order to pay
28 for dispositional expenses as provided in section 717B.4.

29 *c.* The aggregate liability of the surety or issuer shall not
30 exceed the amount of the evidence of financial responsibility.

31 6. *a.* The department shall adopt rules as required
32 to administer this section, including but not limited to
33 rules providing for qualifications for a surety or financial
34 institution, procedures for filing evidence of financial
35 responsibility, including replacement bonds or letters of

1 credit, requirements for the cancellation of the evidence of
2 financial responsibility, and the liability of a surety or
3 issuer after cancellation.

4 *b.* The form and submission of the evidence of financial
5 responsibility shall be prescribed by the department.

6 Sec. 4. Section 162.12, Code 2011, is amended to read as
7 follows:

8 **162.12 Denial or revocation of license or registration.**

9 1. A certificate of registration may be denied The
10 department may deny an application for the issuance of an
11 authorization to any animal shelter, pound, or research
12 facility and a state license may be denied to any public
13 auction, boarding kennel, commercial kennel, pet shop,
14 commercial breeder, or dealer, or an existing certificate of
15 registration or state license a commercial establishment and
16 the department may be revoked by the secretary if, after public
17 hearing, it is determined suspend or revoke an authorization
18 issued to a commercial establishment if the department
19 determines that the housing facilities or primary enclosures
20 are inadequate under this chapter or if the feeding, watering,
21 cleaning, and housing practices at the pound, animal shelter,
22 public auction, pet shop, boarding kennel, commercial kennel,
23 research facility, or those practices by the commercial breeder
24 or dealer, employed by the commercial establishment are not in
25 compliance with this chapter or with the rules adopted pursuant
26 to this chapter. The premises of each registrant or state
27 licensee shall be open for inspection during normal business
28 hours.

29 2. The department shall deny an application for the issuance
30 of an authorization to operate as a commercial breeder and
31 shall revoke an authorization issued to a person operating as a
32 commercial breeder, if the person fails to comply with evidence
33 of financial responsibility requirements as provided in section
34 162.8A.

35 Sec. 5. Section 717B.1, Code 2011, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 3A. "*Department*" means the department of
3 agriculture and land stewardship.

4 Sec. 6. Section 717B.4, subsection 2, Code 2011, is amended
5 to read as follows:

6 2. The hearing to determine if the animal is a threatened
7 animal for purposes of disposition shall be a civil proceeding.
8 The hearing may be part of a hearing to determine the liability
9 of a surety who issued a surety bond or a financial institution
10 who issued an irrevocable letter of credit pursuant to
11 section 162.8A. If However, if the case is related to a
12 criminal proceeding, the disposition shall not be part of that
13 proceeding and shall not be considered a criminal penalty
14 imposed on a person found in violation of this chapter.

15 Sec. 7. Section 717B.4, subsection 3, Code 2011, is amended
16 by adding the following new paragraph:

17 NEW PARAGRAPH. *0c.* A local authority shall be
18 indemnified under this section prior to bringing a claim for
19 indemnification on a surety bond or irrevocable letter of
20 credit submitted to the department as evidence of financial
21 responsibility pursuant to section 162.8A.

22 EXPLANATION

23 GENERAL. Commercial breeders of dogs or cats are required
24 to obtain a state license, or alternatively a permit if
25 federally licensed, from the department of agriculture and land
26 stewardship (Code section 162.2A). A license or permit is
27 generally referred to as an authorization.

28 EVIDENCE OF FINANCIAL RESPONSIBILITY — APPLICATION AS
29 A COMMERCIAL BREEDER. This bill requires that a person
30 who applies for an authorization to operate as a commercial
31 breeder (either issuance or renewal of a license or permit)
32 must provide the department with evidence of financial
33 responsibility in the form of a surety bond or irrevocable
34 letter of credit issued by a financial institution (e.g., a
35 bank).

1 FINANCIAL CONDITIONS ASSOCIATED WITH MAINTAINING AN
2 AUTHORIZATION. The bill requires a commercial breeder to
3 maintain the evidence of financial responsibility, including
4 by replacing any evidence that is canceled by the surety or
5 issuer. The amount of the evidence is based on the greatest
6 number of breeding dogs or cats owned or controlled by the
7 person at any one time during the past 12 months, ranging from
8 \$10,000 to \$100,000.

9 USE OF THE EVIDENCE OF FINANCIAL RESPONSIBILITY —
10 CUSTODIANS. The evidence is used when the commercial breeder
11 transfers custody of the animal to another person designated
12 as the animal's custodian. The purpose of the evidence of
13 financial responsibility is to reimburse the custodian for
14 the actual and necessary expenses incurred when providing for
15 the care and disposition of the dog or cat as a result of a
16 federal or state enforcement action. A custodian entitled
17 to be reimbursed for expenses includes any private or public
18 entity other than the state government or the United States
19 government.

20 DISPOSITIONAL PROCEEDINGS INVOLVING THREATENED ANIMALS.
21 The bill provides for cases in which there is a dispositional
22 proceeding in which a local government and the owner are
23 parties to determine the disposition of a threatened dog or cat
24 subject to alleged neglect or abuse (Code section 717B.5). The
25 dispositional proceeding may be joined with the proceeding to
26 determine the liability of the surety or issuer of irrevocable
27 letter of credit. In any case, the owner who is a party in a
28 dispositional proceeding is required to pay for the disposition
29 of the dog or cat prior to the surety or issuer.

30 DISCIPLINARY ACTION. The department is required to revoke
31 an authorization issued to a person operating as a commercial
32 breeder for failing to comply with financial responsibility
33 requirements.

34 CIVIL PENALTIES. A person who fails to maintain evidence
35 of financial responsibility is subject to a civil penalty as

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1 determined by the department, not to exceed \$500, with each day
2 that a violation continues constituting a separate offense.