

**Illinois Federation of Dog Clubs and Owners (IFDCO)**  
**Position Statement on PUPS (Puppy Uniform Protection and Safety Act, S.3424)**  
**June 15, 2010**

**OPPOSE as currently written**

**Name and number of bill**

**Puppy Uniform Protection and Safety Act – Senate Bill 3424**

This bill would amend the current Animal Welfare Act, and was introduced into the US Senate on May 25, 2010.

Sponsors: Richard J. Durbin (D-IL) and David Vitter (R-LA).

A complete copy of the bill can be found on the Library of Congress "Thomas" website.<sup>1</sup>

**Summary of Reasons to Oppose:**

- **"Co-ownership" questions would be raised by this bill and would prove problematic to quality purebred dog breeders of various registries**
- **Would force licensing for many hobby breeders under current federal Animal Welfare Act (AWA) regulations, which most home breeders would be unable to meet**
- **Would not improve conditions for dogs residing in substandard kennels of known current AWA violators**
- **The need for the stated exercise requirements, intended for all AWA breeder licensees, are not scientifically proven**
- **Would decrease the number of quality purposefully-bred puppies available for purchase by the American public**

**Background**

Under current regulations contained in the federal Animal Welfare Act (AWA), dog breeders who do not buy dogs for resale, sell only animals they produce, and sell puppies and dogs directly to the end purchaser for the purchaser's own use ("retail sales") without any sales to brokers, dealers, or pet stores, are exempt from licensing requirements.<sup>2</sup> Additionally, even if this "retail sales only" exemption is not met, breeders who gross less than \$500 annually from sales of these animals<sup>3</sup>, or who owns 3 or fewer "breeding females" and who sell their offspring as pets, are likewise exempt<sup>4</sup>. Thus, "hobby breeders" of purposefully bred dogs are generally excluded from licensing under this Act. Pet stores that sell puppies and other animals are also excluded, provided that the wholesaler sources of the pets sold in these stores are licensed under the AWA.<sup>5</sup> The AWA is administered by Animal and Plant Health Inspection Service (APHIS) under the auspices of the United States Department of Agriculture (USDA.)

This "retail" exemption is a longstanding one, and has survived a past major court challenge seeking to force its change. In 1999, in response to a rule-making petition filed by the Doris Day Animal League (DDAL), the USDA Secretary stated the Department's intention of continuing this exemption. The DDAL petition had requested that residential operations no longer be exempted from AWA regulations. The USDA Secretary, in defending this position, said that it was best for the Department to "concentrate [its] resources on those facilities that present the greatest risk of noncompliance with the regulations", and thereby focus only on wholesale dealers. Reasons that the Secretary gave in support of this position included the "self-regulation oversight" for retail dealers as compared with wholesalers, as well as the numerous state and local laws already in existence which cover these retail operations. The legality of these "retail pet stores" exemptions then came under judicial review, when DDAL filed suit against Ann M. Veneman,

then Secretary of the USDA. This exemption from AWA licensing was upheld in the US Circuit Court of Appeals, District of Columbia, in January 2003.<sup>6</sup>

In May, 2010, the USDA Office of the Inspector General (OIG) released a report, "Animal and Plant Health Inspection Service, Animal Care Program, Inspections of Problematic Dealers."<sup>7</sup> This report focused on APHIS inspection of already known and licensed "problematic dealers", covering 50 breeders and 18 brokers, all currently licensed under the AWA, and all with at least one previous violation under this Act. Many of the violations observed and documented during the audit period were of a highly serious nature, including several that resulted in deaths of the licensees' dogs. Several cases of previously-cited, unlicensed substandard breeders, who chose to remain unlicensed due to the relatively insignificant monetary penalties assessed by APHIS, were also described. The report detailed many APHIS inspection deficiencies, including ineffective enforcement processes, lack of proper violation documentation, and the Inspectors' misuse of APHIS guidelines which improperly lowered penalties assessed these continual violators. There is no question that the substandard practices of these "problematic breeders", abhorrent to everyone, must be remedied, and that the existing AWA regulations must be fairly enforced against all breeders that are required to be licensed under existing wording of this Act.

While the OIG report briefly refers to "some large breeders [who] circumvented AWA by selling animals over the internet" as an area requiring scrutiny under the AWA, it is clear that this is not the major focus of their report. Additionally, there is no hard substantiation offered in the OIG report validating the need to pull these "Internet breeders" under the umbrella of the AWA via new regulations, such as contained in PUPS. Allegations concerning these "Internet breeders" are quite unlike the well-documented cases in the OIG report that described ongoing substandard practices among already licensed breeders and those "wholesale" breeders who illegally refused licensing. Indeed, the OIG audit listed only four cases describing unhealthy puppies purchased by pet owners from supposedly unlicensed breeders who sold over the Internet: one case from their own OIG hotline, a second from a Better Business Bureau website response page, and two quoted from popular media articles. The OIG offered no further substantiation, such as veterinarian records, photos, or personal examination of the puppies, to validate the puppy purchaser's claims. Significantly more hard data and evidence should be required in order to understand the scope and magnitude of the supposed "Internet breeder" phenomenon prior to proposing legislation, to best determine what type of legislative solution is needed, or even if new regulations are needed at all.

Supposedly in response to these ongoing problems, Senator Richard J. Durbin (D-IL) introduced PUPS (Puppy Uniform Protection and Safety Act) in the U.S. Senate on May 25, 2010, according to a press release appearing on his official website.<sup>8</sup> What is highly puzzling, however, is that his bill only addresses a minor concern named in the OIG report: dog breeders that sell more than 50 dogs per year directly to the public and who are not currently required to be licensed under the AWA. PUPS therefore ignores the major problem as described in the OIG report, namely, the inability of APHIS to enforce current regulations found in the AWA for those licensed commercial breeders who incur repeated violations. In addition, Durbin's bill "also requires that dogs in commercial breeding facilities have appropriate space and opportunity for regular exercise" according to his press release, yet nowhere in the OIG report is the need for additional regulations to address this "lack of space and opportunity for regular exercise" mentioned! As documented in the OIG report, the USDA already finds itself hard-pressed to enforce the existing AWA regulations. Should Durbin's PUPS pass, the USDA would be forced to use its limited resources to inspect and license an entirely new segment of breeders, pulling time, money, and attention away from these repeat AWA violators, as detailed in the OIG report. It is clear that this bill would not improve care and treatment of dogs found in these substandard facilities which are already in violation of the AWA.

## **Analysis: New "High Volume Retail Breeder" category**

**New breeder category to be licensed under the AWA:** PUPS would provide for a new category of breeder, "High Volume Retail Breeder", as one needing USDA licensing under the AWA, and defined on the basis of ownership interests in one or more "breeding female dogs", *and* sales by any means of more than 50 of the offspring of these "breeding female dogs" in any 1-year period:

(B) HIGH VOLUME RETAIL BREEDER- The term 'high volume retail breeder' means a person who, in commerce, for compensation or profit--  
` (i) has an ownership interest in or custody of 1 or more breeding female dogs; and  
` (ii) sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of the offspring of such breeding female dogs for use as pets in any 1-year period.

"Breeding female dogs" is defined as follows:

` (A) BREEDING FEMALE DOG- The term `breeding female dog' means an intact female dog aged 4 months or older.

In other words, any breeder who owns (or co-owns) one or more intact bitches over four months of age, and – with the total sum of such bitches owned or co-owned – produces more than 50 puppies in any one year period, must now be licensed under the AWA.

**Co-ownership questions:** PUPS would open up a very onerous situation for many of the best purebred dog breeders of the American Kennel Club (AKC), United Kennel Club (UKC), and other major purebred dog registries, where co-ownership of valuable animals is not only accepted, but encouraged. These co-owned bitches do not normally live in the home of the breeder, yet their offspring would count towards the 50 puppies required for licensing. Even worse, it is very possible that these breeders would, under PUPS, be made responsible for the care and conditions provided for co-owned bitches and their litters residing in distant states from the breeder. Without doubt, this would set up excessive liability for these breeders, and force a reassessment of the entire co-ownership concept, to the detriment of the breeders, the registries, and the dogs themselves.

**Definition of "breeding female dog":** Also unsettling is how a "breeding female dog" is defined to be such at four months of age, if intact. With rare exception, bitches four months of age or younger are not biologically capable of being bred, therefore, the use of this age is not scientifically supportable. Additionally, "breeding females" would include puppies not intended to be bred until a more mature age; young bitches left intact until a better evaluation of their working talents could be made; elderly intact bitches well past a breedable age; bitches left intact for reasons of veterinary recommendation; or bitches left intact for show, working ability, or any other purposes, even if the bitch was not intended to be bred that year, or ever. Additionally, mandatory spay-neuter laws are increasingly being proposed, and passed across the United States, with a four-month age limit, illustrating the goal of Animal Rights activists to have all dogs spayed or neutered before any reasonable breedable age is achieved. Might the wording of PUPS be interpreted as extra coercion towards having co-owned bitches spayed rather than left intact?

Given the second requirement of more than 50 puppies sold or offered for sale, the fact that only one "breeding female dog" is included appears odd, given that it is biologically impossible for the best producing bitch to produce 50 saleable puppies in a one year period! However, the "one breeding female dog" might be a omen of further AWA revisions to come, in which the

number of puppies sold is reduced to that more harmonious with what a "breeding female dog" can reasonably be expected to whelp in a given year.

**Use of term "sells or offers for sale":** The term "sells or offers for sale" adds further potential complications to this bill. As any long term breeder knows, the number of puppies the breeder "offers to sell" in any given time period does not mean that all those puppies were actually sold. Perhaps, for example, the number of puppies actually produced was not the optimistic number that the breeder had buyers for, or perhaps a poor economy forced buyers to back out of the deal at the last minute, leaving those puppies unsold. Yet, the breeder would still be classified by the number he or she "offered to sell" in any given year, as opposed to the actual number of puppies sold.

**More than breeders who sell via the Internet will be impacted:** In Senator Durbin's May 25, 2010 press release announcing the introduction of PUPS, he stated that the purpose of the bill is to "close the loophole that allows large breeders to sell puppies online, escaping inspection and oversight."<sup>9</sup> Quite to the contrary, however, is the bill's wording, which includes the phrase "sells or offers for sale, via any means of conveyance (including the Internet, telephone, or newspaper), more than 50 of the offspring...." This shows that the net is being cast to include all breeders with the one intact bitch/more than 50 puppies offered for sale minimums, not just those breeders who sell "on the Internet." Additionally, the bill does not make allowances for the many responsible breeders who make use of the Internet (or telephone, or newspaper) as initial first contact only, but who require a meeting in person with the potential purchaser typically at the home of breeder, prior to the finalization of the sale.

**Consequences of the bill for the home hobby breeder:** This bill poses enormous ramifications for a home hobby dog breeder that would now be defined under the Animal Welfare Act as a "High Volume Retail Breeder." In order to be licensed, they would have to be inspected through APHIS to ensure that their facility (i.e., their home in most cases) meets the engineering standards required for a commercial USDA-licensed kennel. Unless such a breeder keeps their dogs kenneled in a separate portion of the home, and away from the "human" home proper, it would be difficult to meet the minimum engineering standards as directed. Several obvious conflicts arise when attempting to apply the specific kenneling standards contained in the AWA to the typical residential home where most dogs owned by hobby breeders live. These conflicts include:

1. The AWA requires that all walls, floors, and other surfaces that would be in direct contact with the dogs must be of a substance "impervious to moisture". Therefore, carpeting, uncoated wood flooring, upholstered furniture, wallpaper, and fiber matting would generally not be considered as acceptable surfaces in areas of the house in which the dogs live. These materials, however, are extremely common in typical homes, including those of hobby breeders who do not require licensing under the current law.<sup>10</sup>
2. Under the current AWA, "primary enclosure" surfaces and food and water bowls must be sanitized at least once every two weeks using one of the following allowed methods of cleaning: live steam under pressure; hot (minimum 180° F) water combined with soap or detergent; and a professional mixture of detergent with disinfectant.<sup>11</sup> These cleaning methods are not readily available to a typical home owner, who maintains their dogs in their residence. These methods may also not be necessary for use on a frequent basis for an owner with only a small number of dogs living with the owner in his or her home.
3. The required size of primary enclosure is not in conformance with standard crate sizes for home use. According to dog breeder regulations found in the AWA, a "primary enclosure" (e.g., crate or pen) as defined must have the following square footage: (length of the dog in inches + 6 inches) x (length of the dog in inches + 6 inches) / 144, with "length of the dog" being measured from the tip of the dog's nose to the base of the dog's tail. In

addition, the required height of the enclosure must be at least 6 inches taller than the dog when it is in a standing position.<sup>12</sup> The results of these calculations provide for a much larger crate size than standard sizes generally used in a home. While perfectly desirable for dogs confined for long periods of time, such as at a professional kennel, these required enclosure sizes do not take into account that a dog which resides in a home with humans is typically crated only for a portion of the day, such as while the owners are at work. Therefore, since dogs residing in their owners' houses usually spend a regular portion of each day outside their crates, these mandated crate sizes are unrealistic and unnecessary for home use.

4. AWA regulations state that breeders are not to house their dogs with other species unless the two species are "compatible."<sup>13</sup> Many hobby breeders house other mammalian and non-mammalian species in their residence along with their dogs, in long-term safety and harmony for all pets. Should the "primary enclosure" for these dogs be the owner's residence, shared with other species, it is unclear how an APHIS Inspector would view these multi-pet species households.

**Potential impact on the rescue and shelter community:** While not specifically aimed at dog rescues and shelters, there is no explicit exclusion made for breed rescues, private shelters, or public shelters from the regulations detailed in PUPS. It is very common for dog rescuers to take possession of bitches in whelp, or bitches with an unweaned litter of puppies, with the goal of adoption of the puppies and the dam once the puppies are weaned. Should such a rescue or shelter place more than 50 puppies a year from bitches over which they have possession, and should "adoption", normally done for a fee, be interpreted as a "sale" under the language of this bill, it would be very possible that such a rescue or shelter would be construed as a "High Volume Retail Breeder" under this bill. This would require these shelters and rescues to become licensed as "High Volume Retail Breeders", and meet all AWA requirements regarding facilities and care of dogs. Additionally, purebred kennels occasionally need to be liquidated due to the sudden death or disability of their owners, requiring emergency placement of their dogs. Often, other recognized breeders, acting out of a sense of responsibility to their breed and concern for these dogs, will step in and take temporary possession of these dogs and then seek suitable homes for them. Again, should they take ownership of bitches in whelp, or bitches with an unweaned litter, the puppies later sold may quite easily put them over the "more than 50 puppies sold or offered for sale" stipulation in this bill, requiring licensing as a "High Volume Retail Breeder". This might cause them financial and legal hardship if they were not previously required to be licensed under the AWA.

**Potential impact on kennels primarily selling dogs for working tasks instead of as "pets":** The phrase "more than 50 of the offspring of such breeding female dogs for use as pets" would seem to indicate that breeders raising dogs specifically for working roles (such as police dog, guard dog, livestock guardian or herder, service dog, hunting dog as owned by a professional, etc.) would be exempted from specifications of this bill. However, this interpretation is probably not correct. Even the best breeder of "working dogs" produces a fair number of puppies that simply would not make the grade as "working dogs", and which are therefore sold simply as "pets", or sold to amateurs or hobbyists in these fields. Additionally, the roles of "working dog" and "family pet" are often blurred. For example, a hunting dog or herding dog may "work" only a portion of each year, and spend the remainder of the year as a personal pet. There, a number of sales from these "working dog" kennels could well be included in the "over 50 offspring" sold requirement and mandate licensing of their breeders.

**Additional funding would be required by APHIS for enforcement of the AWA to include the additional large category of "High Volume Retail Breeders":** Senator Durbin provided for no new sources of funding for enforcement of these new provisions. Particularly when this new breeder category licensing would go into effect, when pre-licensing inspections would be

required, APHIS inspectors would have a much greater workload in the past. Unless additional funds can be found to support and train an additional number of APHIS inspectors that would be required for enforcement, the time and attention of APHIS inspectors would be pulled away from the problematic already-licensed breeders, as well as breeders who should be currently licensed but aren't, that were described in the OIG audit. There is no indication that the overall welfare of breeding dogs would improve should APHIS focus on this new segment of AWA licensed breeders, as stipulated in PUPS. To the contrary, in fact, should PUPS be enacted into law, known problem licensed breeders with ongoing and multiple serious violations would receive less APHIS attention than in the past, there would be no incentive for these problem breeders to improve the care and treatment of their dogs.

**Exactly who will enforce this new High Volume Retail Breeder category is uncertain, should it prove beyond the scope of APHIS:** Given the multiple serious ongoing violations of existing AWA dog breeder licensees as described in the OIG report, APHIS may not have sufficient resources to oversee this new breeder classification. Given that current APHIS resources are probably insufficient for enforcement of regulations pertaining to this new large category, there are grounds for concern that oversight and enforcement may occur, formally or informally, via one or more of the major animal welfare ("animal rights") organizations. Not only do these organizations lack scientific knowledge of animal husbandry to be able to effectively oversee these regulations for the benefit of dogs owned by this new breeder category, but such organizations might have hostile intentions towards certain sectors of the breeding community.

### **Analysis: Exercise Requirements**

**PUPS would provide for new exercise requirements for already-licensed breeders as well as for breeders in the new "High Volume Retail Breeder" category, as follows:**

- ` (1) IN GENERAL- Not later than 1 year after the date of enactment of this subsection, the Secretary shall promulgate standards covering dealers that include requirements for the exercise of dogs at facilities owned or operated by a dealer, including exercise regulations that ensure that--
  - ` (A) each dog that is at least 12 weeks old (other than a female dog with unweaned puppies) has daily access to exercise that--
    - ` (i) allows the dog--
      - ` (I) to move sufficiently to develop or maintain normal muscle tone and mass as appropriate for the age, breed, sex, and reproductive status of the dog; and
      - ` (II) the ability to achieve a running stride; and
    - ` (ii) is not a forced activity (other than a forced activity used for veterinary treatment) or other physical activity that is repetitive, restrictive of other activities, solitary, and goal-oriented;
  - ` (B) the provided area for exercise--
    - ` (i) is separate from the primary enclosure if the primary enclosure does not provide sufficient space to achieve a running stride;
    - ` (ii) has flooring that--
      - ` (I) is sufficient to allow for the type of activity described in subparagraph (A); and
      - ` (II)(aa) is solid flooring; or
      - ` (bb) is nonsolid, nonwire flooring, if the nonsolid, nonwire flooring--
        - ` (AA) is safe for the breed, size, and age of the dog;
        - ` (BB) is free from protruding sharp edges; and
        - ` (CC) is designed so that the paw of the dog is unable to extend through or become caught in the flooring;
    - ` (iii) is cleaned at least once each day;
    - ` (iv) is free of infestation by pests or vermin; and

(v) is designed in a manner to prevent escape of the dogs.

**Lack of definitions of terminology make requirements, as well as enforcement, unclear, subjecting breeders to unwarranted citations:** Two key phrases, “running stride”, and “normal muscle tone and mass”, are not defined in the bill, and could be interpreted in a number of ways without additional details. Licensed breeders would not know how to modify their facility to provide for the fulfillment of these requirements, possibly placing the breeder in violation of the amended AWA should their interpretation be different from that of an APHIS inspector.

**Lack of scientific justification that these exercise requirements are needed:** Curiously, “Exercise Requirements” as described in the PUPS Bill are nearly identical to those recommended in the new American Veterinary Medical Association (AVMA) “Model Bill” and “Model Regulations” compiled on April 9, 2010,<sup>14</sup> and released to the public in a AVMA Press Release dated June 3, 2010<sup>15</sup>. In the related paper, “Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets: Background and Context” (April 9, 2010), the AVMA attempts to justify the use of “performance standards” (i.e., “achieve a running stride” and “develop and/or maintain normal muscle tone and mass as pertinent for age, breed, sex, and reproductive status of the dog”) as compared with what they term “stringent exercise requirements” regarding size and type of exercise area, or rigid time allotment for exercise.<sup>16</sup>

However, even with the citations provided by the AVMA in their “Background and Context” paper in support of these Model Bill and Regulations canine exercise requirements, there remains a striking lack of proof that such exercise improves the physical or psychological well-being of a majority of dogs in such programs. In fact, one study cited by the AVMA, Campbell et al. (1988), actually show little or no benefit to dogs either from structured/repetitive exercise, or from opportunity to exercise freely in an individual enclosure of sufficient space, or ability to exercise in a compatible group. These researchers concluded: “There were no significant differences in laboratory findings among dogs in the four groups. This moderate exercise program had no demonstrable effects. Similarly, continuous cage housing, without a formal exercise program, could not be determined to be detrimental to the physiologic or health status of dogs.”<sup>17</sup> As with any other facet of animal husbandry, it is important to institute dog care regulations and procedures which are supportable by scientific studies as beneficial to the animals, and not propose sweeping changes based upon supposition of what dogs in an ideal state might need.

That is not to say that such evidence might not be produced in the future to show that such required exercise provides a clear health and well-being advantages to the majority of dogs owned by breeding kennels. Perhaps such benefits would be found to be restricted to certain breeds, ages, living conditions, or health or injury status. But clearly, at this time, there is a lack of hard evidence to show that specific exercise requirements mandated by PUPS for all dogs owned by breeders and dealers covered under the amended AWA would significantly benefit a majority of these dogs. Therefore, animal husbandry standards covering AWA-licensed breeders should not include exercise standards until more evidence is found proving clear benefits for dogs would be gained by such a program.

One discrepancy in the language between PUPS and the AVMA Model Bill and Regulations is that PUPS apparently prohibits “goal-oriented” exercise<sup>18</sup>, while the AVMA Model Regulations supports “goal-oriented” exercise, disfavoring other forms of exercise<sup>19</sup>. Since this analysis is an examination of the wording found in PUPS, our discussion will be limited to a literal interpretation of the PUPS language, and not speculate as to the underlying intentions of this wording, or whether there was a mistake in transcribing wording from one document to another when PUPS was being written. A disavowing of “goal oriented” exercise for dogs as written in PUPS is actually on very tenuous grounds scientifically, since adult wild canids exhibit primarily

goal-oriented activities, such as searching for food and mates, and daily movements between shelter and water, and such instinctual behavior undoubtedly carries over to an extent in our own domesticated dogs.

**“Forced”, “repetitive”, “restrictive”, “solitary” or “goal oriented” (PUPS wording) activities cannot be counted as exercise under these requirements, unless performed under the order of a veterinarian:** These specifications would have a number of negative ramifications for both dogs and breeders, should PUPS amend the existing AWA, including:

1. Many show breeders living in colder, snowier climates use indoor treadmills during the winter months to keep their dogs in condition when prolonged outside activities are less inviting for both dogs and their owners. Use of treadmills for this purpose apparently could not fulfill the PUPS “exercise requirements”, and some other exercise program for the winter months would have to be designed. Perhaps a special indoor exercise facility would have to be constructed by the breeder at great expense to fulfill these requirements
2. Probably being defined as “goal oriented”, such purposeful training activities, such as hunting, tracking, agility, obedience, and herding, apparently cannot be counted as fulfillment of these exercise requirements in PUPS, no matter how well they condition the dog physically and mentally, nor the level of enjoyment that the dog receives from these pursuits. Breeders licensed under the PUPS language to be included in the AWA would probably be forced to institute other exercise programs even for their working dogs, in addition to or even in place of their current training regimens.
3. Owners who are elderly, disabled, or recuperating from illness or injury, and who are therefore unable to assist the dogs in an exercise program, will often use treadmills, or “repetitive activities” such as ball tossing to provide their dogs with meaningful exercise. Disallowing these, and mandating other forms of exercise, may make it more difficult for these breeders to maintain their AWA license, despite the overall good care they otherwise provide their dogs.

**A question exists if natural surfaces (such as vegetated surfaces, bare dirt, sand, or pea gravel) would be allowable in this exercise area:** The exercise requirements mandate that the floor of the area to be so utilized must be “cleaned once a day” and is “free from pests and vermin”. A scrupulous application of these terms might rule out “natural” surfaced exercise quarters, no matter how careful the owner was regarding sanitation and pest control of this area.

**Even though approved wire flooring is acceptable under current AWA standards<sup>20</sup>, PUPS specifically states that wire flooring cannot be used as a surface on which these exercise requirements would be met.** Even if the “primary enclosures” are deemed to be sufficient size to meet these new exercise requirements, and are well-maintained and are in conformance with AWA specifications, these would need to be replaced should they have wire flooring due to these mandated exercise requirements contained in PUPS. Wire flooring has proven useful in larger kennels for reasons of sanitation, dryness, and warmth; there is no reason given in PUPS why these would not be acceptable as flooring in exercise enclosures in addition to primary enclosures.

### **Analysis: Section 3, Regulations to be later promulgated**

**Exact methodology of enforcement unknown at the time of the bill’s passage:** PUPS Section 3, Regulations, states:

Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture shall promulgate any regulations that the Secretary determines to be necessary to implement this Act and the amendments made by this Act.

It is not uncommon for bills to be passed in summary form, with the exact regulations and enforcement to be clarified at a later date by administrative rule or other non-legislative means. However, with this bill, there is great concern within the dog breeding community that specific methodologies of enforcement as later written would prove unworkable for a large number of breeders, forcing them to give up their hobby or livelihood.

## **Final Thoughts**

There is no doubt that Senator Durbin had good intentions in the introduction of PUPS. However, there is also no reason to believe that animal welfare would be improved should the current AWA be amended by the new regulations contained in PUPS. More likely, with reduced APHIS attention spent on known licensee violators, additional serious violations would occur among the “problematic breeders” who are already licensed under current AWA provisions. The result would be higher numbers of dogs becoming ill or injured, or even dying, while under the care of these substandard breeders. New licensing requirements for home hobby breeders would drive many of them away from this pursuit, lowering numbers of quality purposefully bred puppies available for the American public. It would become increasingly more difficult for a pet purchaser to obtain a healthy, socialized puppy of known pedigree, since the numbers of unregulated and “underground” breeders, producing puppies of questionable health and temperament, would proliferate, as would sources of “random bred” puppies. Potential negative implications from this bill exist also for kennels producing dogs for professionals, and even for the rescue community. Finally, the bill’s provisions show neither an application nor understanding of scientific animal husbandry principles. Therefore, this bill must be opposed in its entirety.

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## **Citations**

<sup>1</sup> Puppy Uniform Protection and Safety Act, S.3424. Introduced May 25, 2010. United States Library of Congress THOMAS.

<sup>2</sup> 9 CFR Ch. I (1–1–08 Edition) § 2.1(3)(vii) “Any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer’s own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and is not otherwise required to obtain a license.”

<sup>3</sup> 9 CFR Ch. I (1–1–08 Edition) § 2.1 (3)(ii) “Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license.”

<sup>4</sup> 9 CFR Ch. I (1–1–08 Edition) § 2.1(3) (iii) “Any person who maintains a total of three (3) or fewer breeding female dogs, cats, and/or small exotic or wild mammals, such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, and jerboas, and who sells only the offspring of these dogs, cats, or small exotic or wild mammals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license.”

<sup>5</sup> CFR Ch. I (1–1–08 Edition) § 2.1 (3)(i) “Retail pet stores which sell non-dangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only: Provided, That, Anyone wholesaling any animals, selling any animals for research or exhibition, or selling any wild, exotic, or nonpet animals retail, must have a license.”

<sup>6</sup> Doris Day Animal League, et al., Appellees v. Ann M. Veneman, in her official capacity as Secretary, United States Department of Agriculture, et al., Appellants Appeal from the United States District Court for the District of Columbia (00cv01057). United States Court of Appeals For the District of Columbia Circuit. Argued November 4, 2002. Decided January 14, 2003. No. 01-5351.

<sup>7</sup> U.S. Department of Agriculture, Office of the Inspector General. “Animal and Plant Health Inspection Service Animal Care Program, Inspections of Problematic Dealers.” Audit Report 330002-4-SF. May, 2010.

<sup>8</sup> Durbin Calls for Stronger Policing Standards for Puppy Mills. (May 28, 2010). United States Senator Dick Durbin (official website.)

<sup>9</sup> Ibid.

<sup>10</sup> 9 CFR Ch. I (1–1–05 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. § 3.2 Indoor housing facilities.

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<sup>11</sup> CFR Ch. I (1–1–05 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Animal Health and Husbandry Standards. § 3.11 Cleaning, sanitization, house-keeping, and pest control.

<sup>12</sup> 9 CFR Ch. I (1–1–05 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Facilities and Operating Standards. § 3.6 Primary enclosures.

<sup>13</sup> 9 CFR Ch. I (1–1–05 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. Animal Health and Husbandry Standards. § 3.7 Compatible grouping.

<sup>14</sup> Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets. (April 9, 2010.) American Veterinary Medical Association.

< [http://www.avma.org/advocacy/state/issues/Care\\_for\\_Dogs\\_Model\\_Act\\_and\\_Regulations.pdf](http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regulations.pdf) >

<sup>15</sup> Press Release. AVMA offers guidance for states regulating dog breeders, retailers. (June 3, 2010). American Veterinary Medical Association. <

[http://www.avma.org/press/releases/100603\\_guidance\\_states\\_regulating\\_dog\\_breeders\\_retailers.asp](http://www.avma.org/press/releases/100603_guidance_states_regulating_dog_breeders_retailers.asp) >

<sup>16</sup> Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets: Background and Context. (April 9, 2010). American Veterinary Medical Association.

< [http://www.avma.org/advocacy/state/issues/Care\\_for\\_Dogs\\_Model\\_Act\\_and\\_Regs\\_Backgrounder.pdf](http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regs_Backgrounder.pdf) >

<sup>17</sup> Campbell SA, Hughes HC, Griffin HE. (1988.) Some effects of limited exercise on purpose-bred dogs. American Journal of Veterinary Research, 1988:49:1298-1301.

<sup>18</sup> “(j) Exercise Requirements-...(ii) is not a forced activity (other than a forced activity used for veterinary treatment) or other physical activity that is repetitive, restrictive of other activities, solitary, and goal-oriented.”

Puppy Uniform Protection and Safety Act, S.3424. Introduced May 25, 2010. United States Library of Congress THOMAS.

<sup>19</sup> “e. LOCOMOTION ...iii. Forced activity, other than for veterinary treatment, is neither sufficient nor appropriate for fulfilling these needs. Physical activity that is repetitive, restrictive of other activities, solitary, and not goal-oriented is neither sufficient nor appropriate for fulfilling all activity needs.” Model Bill and Regulations to Assure Appropriate Care for Dogs Intended for Use as Pets: Background and Context. (April 9, 2010). American Veterinary Medical Association.

< [http://www.avma.org/advocacy/state/issues/Care\\_for\\_Dogs\\_Model\\_Act\\_and\\_Regulations.pdf](http://www.avma.org/advocacy/state/issues/Care_for_Dogs_Model_Act_and_Regulations.pdf) >

<sup>20</sup> 9 CFR Ch. I (1–1–05 Edition) Part Three, Standards. Subpart A – Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats. § 3.6 Primary enclosures. “On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a)(2). If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.”