

COMMONWEALTH OF VIRGINIA
Department of Agriculture and Consumer Services
Division of Animal and Food Industry Services
Office of Veterinary Services
102 Governor Street, Richmond, Virginia 23219
Phone: 804/786-2483 Fax: 804/371-2380

INFORMATION REGARDING COMMERCIAL DOG BREEDER LEGISLATION

Virginia's new commercial dog breeder legislation became effective on January 1, 2009, thereby creating several new sections as well as modifying some existing sections of the Comprehensive Animal Care laws. The information contained herein is intended to give dog breeders, animal control and law enforcement officers, and other interested parties guidance on these new laws. These are not state regulations.

Following these guidelines will not ensure compliance with the law. These guidelines are not intended to be used as a legal opinion. These guidelines are only intended to note how the Office of Veterinary Services (OVS) may interpret the relevant sections of Code during an investigation, but such interpretation is subject to modification due to the particular facts of any specific case.

Dog breeders should consult with their attorneys if they are uncertain if they fall under the definition of a commercial dog breeder, or have questions regarding the compliance of their operation. Violations of these laws can carry significant fines and jail time upon conviction.

Animal control or other law enforcement officers should consult with their jurisdiction's Commonwealth's Attorney office for guidance on enforcement of these laws. The law has specifically instructed Commonwealth's Attorneys to prosecute violations.

These guidelines will cover the following sections of the Virginia Comprehensive Animal Care laws created or modified by the Commercial Breeder Bill:

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It must be remembered that commercial dog breeders must comply with all other relevant provisions of the Comprehensive Animal Care laws and other Virginia laws, including but not limited to **Section 3.2-6503** pertaining to the care of companion animals by their owner, **Section 3.2-6521** pertaining to rabies vaccination, **Section 3.2-6524** pertaining to licensing, and **Section 3.2-6570** pertaining to animal cruelty.

Section 3.2-6500: Definitions

“Commercial dog breeder” means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

Every word in this definition is critical, and each criterion it establishes needs to be met in order for a breeder of dogs to be considered a commercial dog breeder. Breeders and animal control officers should consult an attorney if further clarification on this definition is required. The key words to consider when deciding if this definition fits an individual breeder are as follows:

- **Person** is defined in Section 3.2-6500 as “any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.” Generally, a married couple is considered one legal entity under law.

- **Maintains** is not defined under Section 3.2-6500. Maintain is defined by the American Heritage Dictionary as “to keep in existence; sustain.” It does not necessarily mean legal ownership. Thus, any person who is responsible for the care of 30 or more adult female dogs regardless of ownership may be considered under this definition.
- **Adult** is not defined under Section 3.2-6500. Adult is defined by the American Heritage Dictionary as “fully grown, mature.” Though the veterinary community uses several criteria to determine maturity (such as radiographic evidence of bone physis closure or onset of estrus), there is no universally accepted definitive test of maturity. Section 3.2-6507.2 establishes 18 months as the threshold for fitness to reproduce, so by correlation 18 months can be considered the age at which a female dog is considered adult for the purposes of this law.
- **Primary** is not defined under Section 3.2-6500. Primary is defined by the American Heritage Dictionary as “first or highest in rank, quality, or importance; principal.” In order to meet the definition, a breeder would have to be engaged in breeding primarily for the sale of offspring. If the primary purpose of the female dog is for something other than breeding, such other use should be clear and able to be demonstrated.
- **Sale** is not defined under Section 3.2-6500. Sale is defined by the American Heritage Dictionary as “the exchange of goods or services for an amount of money or its equivalent; the act of selling.” The breeder will need to be compensated for any animals they transfer ownership of under this definition.
- **Companion animal** as defined under Section 3.2-6500 includes any domestic or feral dog. Therefore, all dogs under Virginia law are sold as companion animals. Persons breeding dogs for the sale of their offspring whose end purpose is not commonly viewed as companionship (such as hunting, sport, or service dogs) are not excluded from this legislation.

Section 3.2-6507.1: Business license required

No commercial dog breeder shall breed dogs in the Commonwealth without a valid business license issued by any locality, as applicable, where he maintains dogs for the purpose of commercial dog breeding.

- This requirement applies only if a local business license is available.
- If the breeder maintains their dogs in a city, the city would need to require a business license. If the breeder maintains their dogs in a county, the county or recognized subdivision (such as a town) or both would need to require a business license.
- This law does not establish any statewide license requirement for dog breeders.

Section 3.2-6507.2: Commercial dog breeding; requirements

Commercial dog breeders shall:

1. Maintain no more than 50 dogs over the age of one year at any time for breeding purposes. However, a higher number of dogs may be allowed if approved by local ordinance after a public hearing. Any such ordinance may include additional requirements for commercial breeding operations;

- This requirement applies only to persons who meet the definition of a commercial dog breeder, thus people who keep 30 or more adult female dogs for purposes other than sale of their offspring are not affected.
- The word “adult” is not used in this requirement, but rather over the age of one year. Therefore, it needs be established that any dog over one year of age is intended for breeding purposes in order for it to count towards the total. A general rule of thumb would be that any sexually intact dog over one year of age is intended for breeding purposes, unless the owner can clearly demonstrate that some other purpose is intended. However, an attorney should be consulted if there is confusion regarding the standing of female dogs between 12 and 18 months of age.
- Due to other provisions of this legislation, female dogs that are either over eight years of age or deemed in unsuitable health for breeding by a veterinarian should in general not be counted towards the 50 dog limit as they cannot be legally used for breeding purposes. An attorney should be consulted if there is confusion regarding the legal status of such animals.
- A local ordinance, adopted after a public hearing, can override this requirement. The number established by the local ordinance would therefore override the state maximum of 50 dogs over one year of age. However, the local ordinance would apply only in that locality.

2. Breed female dogs only: (i) after annual certification by a licensed veterinarian that the dog is in suitable health for breeding; (ii) after the dog has reached the age of 18 months; and (iii) if the dog has not yet reached the age of 8 years;

- “Suitable health for breeding” is not defined under section 3.2-6500 or under section 3.2-6507.2. Licensed veterinarians will need to determine if each dog presented to them for annual certification is in suitable health for breeding based on their professional expertise.
- The law does not provide or prescribe a format for the annual certification. OVS recommends that the annual certificate include at a minimum the identity and description of the animal (name or other identification for the animal, age, breed, color, sex, and weight of the animal), a statement indicating that the dog is in suitable health for breeding, and the examining veterinarian’s name, address, and signature.
- The law does not allow for any exceptions to the 18-month minimum or 8-year maximum age for breeding. A veterinarian cannot waive these restrictions based

on examination of the animal, nor can any state or local government grant an exemption. These age limits apply only to commercial dog breeders.

3. Dispose of dogs only by gift, sale, transfer, barter, or euthanasia by a licensed veterinarian;

- Gift is defined by the American Heritage Dictionary as something that is bestowed voluntarily and without compensation.
- Sale is defined by the American Heritage Dictionary as the exchange of goods or services for an amount of money or its equivalent; the act of selling.
- Transfer is defined by the American Heritage Dictionary as to make over the possession or legal title of; convey.
- Barter is defined by the American Heritage Dictionary as to trade goods or services without the exchange of money.
- Only a licensed veterinarian can perform euthanasia. Under Section 3.2-6503, euthanasia must be performed if warranted. Therefore, any dogs requiring euthanasia must be brought to a veterinarian. There is no scope under this legislation for a commercial dog breeder to kill a dog or cause a dog to be killed by anyone other than a licensed veterinarian.

4. Dispose of deceased dogs in accordance with § 3.2-6554;

- 3.2-6554 states: “The owner of any companion animal shall forthwith cremate, bury, or sanitarily dispose of the animal upon its death. If, after notice, any owner fails to do so, the animal control officer or other officer shall bury or cremate the companion animal, and he may recover on behalf of the local jurisdiction from the owner his cost for this service.”
- Burial is not an acceptable disposal option in every locality as it may be disallowed under local, state, or federal regulations. Sanitary disposal by other means should be by a method approved by the Virginia Department of Health or the Virginia Department of Environmental Quality.

5. Dispose of dog waste in accordance with state and federal laws and regulations;

- The Department of Environmental Quality does not currently have any specific laws or regulations for the disposal of dog waste, but it does regulate the storage, treatment, and land application of sewage and wastewater. Issues regarding disposal of dog waste are often site specific and a permit may or may not be required of individuals. Animal control officers and commercial breeders should contact the Department of Environmental Quality if there are questions regarding compliance with this provision.
- The EPA currently has no laws or regulations specifically regarding disposal of dog waste.

6. Maintain accurate records for at least five years including:

- Records should be maintained on each dog for at least five years after the date of final disposition.
- Records should be organized and legible.

a. The date on which a dog enters the operation;

- For dogs located on the premises before 1/1/09, records should indicate the date the dog entered the operation. If such date is not known, an estimated date of entry should be included in the record. Records should indicate when an entry date is an estimate.
- For dogs born on the premises, the date the dog enters the operation is the same as the date of birth.
- Exact date the dog enters the operation should be included in records for all dogs entering after 1/1/09.

b. The person from whom the animal was purchased or obtained, including the address and phone number of such person;

- Should include full name and current physical address at the time the dog was purchased or obtained.

c. A description of the animal, including the species, color, breed, sex, and approximate age and weight;

- If the breed, age, or weight of an animal on the premises on 1/1/09 is unknown, estimate the information and indicate in the record that such information is an approximation. Commercial dog breeders should have scales available to capture weights.
- Description, age, and weight at date of entry should be captured for dogs arriving on the premises after 1/1/09.

d. Any tattoo, microchip number, or other identification number carried by or appearing on the animal;

- Other identification number could include: rabies tag number, license number, or other tag numbers.
- Section 3.2-6524 of the Code of Virginia requires licensure of all dogs maintained by persons other than releasing agencies. This applies to all dogs held by commercial breeders. The license number should therefore be part of the record.

e. Each date that puppies were born to such animal and the number of puppies;

- This number should include all puppies born to such animal, whether stillborn or alive.

f. All medical care and vaccinations provided to the animal, including certifications required by a licensed veterinarian under this chapter; and

- This should include all medical care and vaccines provided, whether provided by the owner or by a licensed veterinarian.
- Rabies vaccines must be administered to all dogs over four months of age by a licensed veterinarian as per Section 3.2-6521. Rabies vaccines administered by the breeder are not recognized as valid under this section. The rabies certificate should be included in the record.
- Section 3.2-6503 requires each owner to provide his companion animals with veterinary care when needed or to prevent suffering or disease transmission. Such veterinary care can be provided only by a licensed veterinarian upon examination of the animal.
- The law does not specify what the record of vaccinations should contain. For reference, a complete record should include: The name and type of vaccine, date the vaccine was given, route of administration, name of the individual administering the vaccine, the lot number on the vaccine, the manufacturer of the vaccine, and the date when the next booster is due.
- The law does not specify what the record of medical care should contain. For reference, a thorough medical care record should include: Date medical attention was sought, presenting complaint or problem, name and address of treating veterinarian, diagnosis, and treatment if prescribed.
- Annual certification of suitable health for breeding for female dogs over 18 months of age.

g. The disposition of each animal and the date.

- This is the final disposition of the animal, the reason and date it leaves the commercial dog breeder's premises. If the animal returns to the premises a new record would need to be established unless the original record was still maintained by the breeder.
- Again, the only options for final disposition are: gift, sale, transfer, barter, or euthanasia by a licensed veterinarian.

Section 3.2-6507.3: Right of entry

A. The Commissioner, the State Veterinarian or his assistant, any animal control officer, and any public health or safety official employed by the locality where a commercial dog breeder resides or maintains breeding operations may, upon receiving a complaint or upon his own motion, investigate any violation of the provisions of this chapter. Such investigation may include (i) the inspection of the books and records of any commercial dog breeder, (ii) the inspection of any companion animal owned by the commercial dog breeder, and (iii) the inspection of any place where animals are bred or maintained. In conducting the inspection, the

Commissioner or animal control officer may, during daytime hours, enter any premises where animals may be bred or maintained.

B. Any commercial dog breeder who is the subject of an investigation by the Commissioner, the State Veterinarian, or an animal control officer shall, upon request, provide assistance to the Commissioner, the State Veterinarian, or the animal control officer in making any inspection authorized by this section.

- During daytime hours, any of the individuals listed above have the right to inspect the premises of a commercial dog breeder, the dogs they maintain, and any records required by this legislation at least twice annually. Commercial dog breeders must allow entry and provide assistance to the investigator as requested.
- Commercial dog breeders must cooperate with such inspections, and provide access to all records that are required by this legislation.

Section 3.2-6507.4: Concurrent operation of releasing agency prohibited

It is unlawful for a commercial dog breeder to operate or maintain a controlling interest in any releasing agency.

- “Controlling interest” is not defined under section 3.2-6507.4 or under section 3.2-6500. Controlling interest is defined by the American Heritage Dictionary as “the ability to exercise authoritative or dominating influence over” in this case a releasing agency.
- “Releasing agency” is defined in section 3.2-6500 which states: “Releasing agency means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that releases companion animals for adoption.”
- Commercial dog breeders therefore cannot manage, direct, own or otherwise provide leadership to any animal shelter or home-based animal rescue organization, regardless of the species of animals it deals with. This should not generally prevent them from working for or volunteering with such an organization in a non-leadership capacity. Animal control officers and breeders should consult an attorney if compliance with this provision is not clear.

Section 3.2-6507.5: Penalty

Any commercial dog breeder violating any provision of this article is guilty of a Class 1 misdemeanor.

- As this section refers to any provision of this article, violating any portion of the entire commercial dog breeder legislation (limits on number of dogs, annual

veterinary examination, recordkeeping, disposition, providing access, and so forth) will constitute a Class 1 misdemeanor.

- Section 18.2-11 of the Code of Virginia provides the penalties for misdemeanor convictions. “For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.”

Section 3.2-6507.6: Duty of attorneys for the Commonwealth.

It shall be the duty of each attorney for the Commonwealth to enforce this article.

- This section indicates that the General Assembly of Virginia, in passing this law, expects elected Commonwealth’s Attorneys to prosecute violations of these laws brought to them by animal control officers or other law enforcement officers.

Section 3.2-6511.1: Pet shops; procurement from unlicensed commercial dog breeders; penalty

A. It is unlawful for a pet shop to sell or offer for sale any dog procured from a person who is not a dealer or licensed by the U.S. Department of Agriculture pursuant to the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder.

B. It shall be unlawful for any commercial dog breeder who is not licensed by the U.S. Department of Agriculture pursuant to the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder to sell any dog to a pet shop, unless such commercial dog breeder maintains a valid and current USDA dealer's permit.

- These subsections are complex, as they deal with both state and federal law and use terms that can be defined differently under both sets of laws. Briefly, they mean that in order for a commercial dog breeder as defined under Virginia law to sell dogs to a pet shop they must be currently licensed as a dealer by the USDA under the Animal Welfare Act. Commercial dog breeders can still sell directly to the public without a USDA license as long as they comply with all provisions of the commercial dog breeder legislation and other relevant Virginia laws.
- The intent of this section regarding which persons pet shops themselves may procure dogs from is unclear. Animal control or law enforcement officers who wish to investigate pet shop dog procurement should only do so after consultation with their jurisdiction’s Commonwealth’s Attorney’s office.
- “Pet shop” is defined under Section 3.2-6500, which states: “Pet shop means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.”

- The federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) requires people who breed dogs for sale at the wholesale level to be licensed as a dealer with the United States Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS). There are some exemptions, but they would not apply to breeders who fit the definition of a commercial dog breeder under Virginia law. In order to be licensed by the USDA, commercial dog breeders must comply with federal regulations concerning animal care, veterinary care, and recordkeeping and are subject to inspection by APHIS employees. These requirements are separate and distinct from Virginia’s requirements, and compliance with federal regulations does not ensure compliance with Virginia law.
- “USDA dealer’s permit” as used in Subsection B of this section does not currently exist; only a dealer’s license is offered. Therefore, any commercial dog breeder who sells animals to a pet store must have a current, valid USDA dealer’s license.

C. Any person violating any provision of this section is guilty of a Class 1 misdemeanor.

- This penalty would apply to both the commercial dog breeder selling the dogs and the pet shop buying them.
- Section 18.2-11 of the Code of Virginia states the punishment for conviction of a misdemeanor.
- “For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.”

Section 3.2-6555. Position of animal control officer created

Commercial dog breeding locations shall be subject to inspection by animal control at least twice annually and additionally upon receipt of a complaint or their own motion to ensure compliance with state animal care laws and regulations.

- Every location where commercial dog breeding occurs can be inspected at least twice a year by animal control officers, and more frequently if bona fide complaints are received.
- Animal control officers can expect public demand for verification of such inspections.
- A sample Commercial Breeder Inspection Form is attached. This form can be adopted or modified by animal control officers as they see fit.

Section 3.2-6570.1: Sale of animals after cruelty or neglect conviction; penalty

Any person who has been convicted of a violation of any law concerning abuse, neglect, or cruelty to animals who sells, offers for sale, or trades any companion

animal is guilty of a Class 1 misdemeanor. However, a person may dispose of animals under the provisions of a court order.

- Section 18.2-11 of the Code of Virginia States the punishment for conviction of a misdemeanor: “For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.”
- Consult with your Commonwealth’s Attorney for guidance on the application of this section.