State Breeder Laws Every Resident Fancier Should Know!

CFA State Breeder Law Series, Part 2 - States of the Gulf Shore Region: Kansas, Colorado, Oklahoma, Texas, Louisiana, and Tennessee

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Over half of the U.S. states in the Gulf Shore Region have, or had, state breeder licensing laws. In this installment of the series, we discuss the six state laws enacted in the region over four decades. Only one of these state laws has expired. If you do not know which one, then read on! All but one of the Region's state laws use the format of a state license or permit with state administration of the law. In the first installment of this series, Regions Two and Five had no state breeder licensing that was combined with state-level administrative enforcement. In those regions the state laws fell into two other categories. California had a state mandate for care and facilities without state licensing. Nevada fell into the category of mandating local licensing subject to state requirements for care and facilities. As a reminder, this article is not a legal review; instead it provides a starting place for breeders to begin their analysis and determining if and how the law applies to them.

Kansas

Enacted in 1988, the Kansas Pet Animal Act regulates breeders, animal distributors, shelters, rescues, and research facilities. The Kansas breeder licensing plan starts with a minimum threshold of activities below which no one needs to be licensed. The no license required cap is a low bar at two or fewer litters, *and* 29 or fewer animals are sold or offered for sale in a given year. Anyone exceeding either of those limits must be licensed as a hobby breeder, retail breeder, or animal breeder depending on the type of premise they maintain. A hobby breeder premise is any premise "where all or part of 3, 4, or 5 litters of dogs or cats, or both, are produced for sale or sold [or exchanged], offered or maintained for sale per license year. This provision only applies if the total number of dogs, cats, or both, sold, offered or maintained for sale is less than 30 animals [language added]." A retail breeder is one who exceeds either of the hobby breeder limits -- all or part of six or more litters or 30 or more dogs or cats, or both, are sold, or offered or maintained for sale, primarily at retail and not for resale to another, while a person who primarily sells at this level at wholesale for resale to another, must be an animal breeder. It is presumed under the statute that a person is keeping animals for sale whenever 20 or more dogs or cats, or both, are maintained by that person. The license year ends on September 30.

The Animal Health Commissioner in the Department of Agriculture (commissioner) is authorized to adopt rules and enforce the provisions of the act. The regulations include standards of care, facility standards, record-keeping mandates, and information regarding investigations and inspections. The frequency of routine inspections is dependent on the passing rate of recent inspections. Hobby breeders working outside the home should note that notice is not required for inspections. The 2018 amendment complicated things for the hobby breeder by adding a $200 no-contact inspection fee. This happens when the owner (or their representative) fails to make the premises available for inspection within 30 minutes of the inspector's arrival. The 2018 amendment also increased the hobby breeder license fee from $95 to $250.

Hobby breeders that happen to be a United States Department of Agriculture licensed pet dealer do not have to worry about meeting two sets of care and facilities standards. The rules anticipate that possibility. Only federal rules and regulations in 9 C.F.R. 3.1 through 3.12 will apply to breeders licensed with the United States Department of Agriculture as "animal distributors and animal breeders" under the Animal Welfare Act.

The law also created the pet animal advisory board who is responsible for reviewing the act and recommend changes to the law or rules. The board consists of ten designated members, one of whom shall be a licensed hobby breeder.

More information on the Kansas Pet Animal Act, including the law and regulations, is available at https://agriculture.ks.gov/divisions-programs/division-of-animal-health/animal-facilities-inspections

Colorado

Colorado was the second state in the Gulf Shore Region to regulate breeders, and it is the most comprehensive of the state laws in the region. The 1994 Pet Animal Care and Facilities Act (PACFA) requires anyone maintaining facilities that adopt, breed, board, groom, handle, sell, shelter, trade, or otherwise transfer pet animals to be licensed. Pet animals include cats, dogs, birds, fish, and any other species of wild or domestic animals, including hybrids, sold, transferred or retained to be kept as a household pet. It does exclude livestock and animals used for working purposes on a farm or ranch.

PACFA excludes hobby breeders from the licensing requirement; however, fanciers should note the difference between the definition of hobby breeder facilities contained in the act in the word box and the definition below. As sometimes happens when a statute and associated regulations have existed for many years, the rules may deviate somewhat from the statutory language. It is the rules that the agency will use to enforce the act; however, it does demonstrate the need to be familiar with both. In the Rules a cat fancier does not have to be licensed if their facilities meet the following definition of 8 CCR 1202-15 1.10.6:

> "Cat breeder facility" means any firm, person, or corporation that is engaged in the operation of breeding and raising cats and that

produces more than three litters of kittens or transfers more than 24 cats per 12-month period.

The Department of Agriculture is authorized to adopt rules for administering and enforcing PACFA. The 12 licensed cat breeders in the state are subject to an annual license fee of $400, pre-license and routine inspections, minimum facility and care standards, record-keeping, and annual reporting requirements. Licenses are valid from March 1 through the last day of February.

PACFA also established a 17 person advisory committee, including one cat breeder member, to provide an ongoing review of the act and advise the commissioner about creating rules. The law underwent its latest sunset review in 2018, determining that it should be continued and recommending changes going forward. In 2019 the legislature amended the sunset review statute repeal date to September 1, 2026, before which newly enacted legislation will be necessary to avoid repeal of the law enabling the program. This mandatory review process is used to evaluate the costs and efficacy of state agencies with potential for wide-ranging results either by recommendation in the sunset review report to the legislature or by the legislature on its own initiative.

From the statute, CRS 35-80-102:

"Feline hobby breeder facility" means any facility that produces or transfers no more than twenty-four cats per year or breeds no more than three litters per year.

"Canine hobby breeder facility" means any facility which transfers no more than twenty-four dogs per year or breeds no more than two litters per year, whichever is greater.

"Bird hobby breeder facility" means any facility engaged in the operation of breeding and raising birds for the purpose of personal enjoyment that does not transfer more than thirty birds per year.

"Small animal hobby breeder facility" means any facility that transfers a number of small mammals that is less than the maximum number established by the commissioner by rule for each particular species.

More information about PACFA is available at https://www.colorado.gov/pacific/aginspection/pacfa

Oklahoma

In 2010, Oklahoma Senate Bill 1710, called the “Commercial Pet Breeders Act,” was enacted. However, in 2012 House Bill 2921 was passed and signed by a new governor as the Commercial Pet Breeders Act of 2012 and now is called the Commercial Pet Breeders and Animal Shelter Licensing Act. This law distinguishes between commercial pet breeders and noncommercial breeders based on the number of intact female animals (defined as cats or dogs) *possessed*. A commercial breeder means any “individual, entity, association, trust, or corporation who possesses eleven or more intact female animals for the use of breeding or dealing in animals for direct or indirect sale or for exchange in return for consideration.” Substitute “ten or fewer intact female animals” for “eleven or more intact female animals” in this definition and you have the noncommercial breeder definition. While licensing is mandatory for commercial

breeders, it is voluntary for noncommercial breeders. Currently, the licensing fee for noncommercial breeders is $125

The 2010 law had created the Board of Commercial Pet Breeders to administer the law under the authority of the State Board of Veterinary Medical Examiners, but the 2012 amendments changed enforcement to the State Board of Agriculture (Board). The Board is authorized to adopt rules that include standards of care, reasonable and necessary fees, applicable exemptions, provisions for the initial application and renewals of licenses, and other rules deemed necessary by the Board. In the Standards of Care rule (35:55-3-1), Title 9 of the Code of Federal Regulations, part 3, sections 3.1-3.19 covering humane handling, care, treatment, and transportation are incorporated into the rules by reference (https://www.ecfr.gov/cgi-bin/text-idx?SID=7d3d91f253a8633afadc341cb9ffd1c7&mc=true&node=sp9.1.3.a&rgn=div6). Other regulations include rules about primary enclosures, waste management, veterinary care, animal identification, the responsibility of the owner of males used at stud, breeding requirements, and record-keeping mandates. The Board must post on its website a directory of commercial pet breeders, including those whose licenses have been denied or revoked. There are also consumer protection provisions in the State Board regulations (35:55-7-2).

The law, regulations and other information about the Commercial Pet Breeders and Animal Sheltering Act is available at http://ag.ok.gov/pets/

Texas

In 2011, the Lone Star State enacted breeder licensing law after a similar attempt failed in the 2009 legislative session. Under Texas law, any cat or dog breeder who “possesses 11 or more adult female intact animals and is engaged in the business of breeding those animals for direct or indirect sales or for exchange in return for consideration, not fewer than 20 animals in a calendar year” must be licensed. An intact female is one that is intact and capable of reproduction. Licenses and renewals cost $300 for 11-25 intact females and $500 if the licensee has more than 25 intact female animals. Anyone not meeting either of these thresholds is not required to be licensed under state law.

Proponents of the bill told lawmakers that the program would be self-funding. Initial estimates were that there would be 1,000 breeders that would require licensing. Later, the estimated number was reduced to 600. Warned that forecast was still too high, the legislature passed the bill anyway, and then Governor Perry signed it into law. As of January 23, 2020, there are only 152 licensed breeders in the state. This is down from the highest number of 173 licensees in 2013 per the Licensed Dog and Cat breeders Advisory Committee, Field Operations Division Report, August 23, 2017 (https://www.tdlr.texas.gov/bre/agendas/BRE%20Staff%20Reports%20082317.pdf).

Unlike Colorado, Kansas, and eventually, Oklahoma, the authority to administer the law was not assigned to the Department of Agriculture. Instead, it was assigned to the

Texas Department of Licensing and Regulation (TDLR). It is responsible for enforcing the laws for all licensed professionals, including air conditioning contractors, cosmetologists, polygraph examiners, and tow truck drivers. None off the other 37 categories of licensees regulated by the TDLR requires any knowledge of animal husbandry for their profession.

Licensed breeders are subject to the specifications for the humane handling, care, treatment, and transportation requirements of a licensed USDA Pet Dealer as outlined in 9 C.F.R. Part 3, Subpart A (https://www.ecfr.gov/cgi-bin/text-idx?SID=7d3d91f253a8633afadc341cb9ffd1c7&mc=true&node=sp9.1.3.a&rgn=div6). Licensees are also subject to inspection at least once every 18 months. These inspections may be performed by third-party inspectors who are part of a state agency or local law enforcement or fire department agency with whom the Department contracts. The Department is responsible for maintaining a publicly available database of licensed breeders and third-party inspectors.

The law also created an animal advisory committee whose role is to advise the Commission on matters relating to the administration and enforcement of this law. Two of the nine positions on the committee are set aside for licensed breeders.

The statute, rules, and more information are available at https://www.tdlr.texas.gov/bre/bre.htm

Louisiana

Unlike the other states in Region 3 that currently license breeders, this law mandates licensing but leaves the administration and enforcement of the law to local governments. It also only applies to dog breeders.

Enacted in 2008, Louisiana Revised Statutes 3:2772 requires “any individual or business with five or more dogs and who breeds and sells dogs retail, wholesale, or to the public is required to procure a kennel license and pay a kennel license fee instead of the individual dog license fees provided for herein.” The law further states that no individual or business who breeds and sells dogs retail, wholesale, or to the public may maintain more than 75 dogs. The entire statute is available at http://www.legis.la.gov/Legis/Law.aspx?d=86095

Tennessee

Tennessee is unique in that the 2009 statute requiring the licensing of cat and dog dealers also contained an express termination date of June 30, 2014. The Commercial Breeder Act required the Department of Health to license and regulate individuals keeping 20 or more unsterilized female dogs or cats for purposes of breeding and selling the offspring as companion animals. The statute also urged the Controller to conduct a study of the benefits and costs and report any findings and recommendations of such study to the general assembly on or before January 15, 2014. According to the

Fiscal Revenue Committee Staff, there were only 500 licensed breeders in the fiscal year 2011-2012, generating $70,200 increased state revenue (estimated increased state revenue at the time of passage for FY11-12 was $1,056,000). Instead of state revenue balancing state expenditures as expected, costs for FY11-12 were $365,600. Thus, expenses were over five times the actual revenues associated with licensing (Comparison of Actual and Estimated Fiscal Note Impacts, http://theanimalcouncil.com/files/TN_2012_Public_Chapter_Review.pdf). With this justification, the statute was allowed to expire on schedule. Tennesseans should not rest easy, however, as there have been multiple attempts to get a new breeder licensing law passed.

Summary

Tennessee has been the only state breeder licensing law that has been allowed to terminate. Costs far exceeded projected revenues or benefits, and the fiscal concerns had been included in the statute. This history has been, so far, an effective bar to efforts to re-enact state breeder regulation in Tennessee. Breeders whose state laws are subject to sunset review before a set repeal date will want to track these dates and process, including any opportunity for input. Sunset reports usually contain important information about the program including data, analyses and recommendations for legislative action that will determine the future of the statute and program as well as set the next repeal date. These bills can present opportunities for amendment or even repeal as well as risks of unexpected directions.

Although residents in the other states may have escaped state laws, the federal Animal Welfare Act, as well as any applicable local laws, may impact their ability to engage in this hobby. Local zoning, business and animal ordinances should be reviewed at a minimum. Homeowner Association rules may also be in play. Being familiar with the laws before moving into a locality may save a lot of heartache down the road. However, laws can always change. So keeping abreast of any changes is just as important as the initial analysis.

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