

SA 3723. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3500 proposed by Mr. HARKIN (for himself, Mr. CHAMBLISS, Mr. BAUCUS, and Mr. GRASSLEY) to the bill H.R. 2419, to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes; which was ordered to lie on the table; as follows:

On page 1362, between lines 19 and 20, insert the following:

SEC. 11072. REGULATION OF THE PET INDUSTRY.

(a) *High-Volume Retailers and Importers.*--

(1) **IN GENERAL.**--The Animal Welfare Act is amended by adding after section 19 (7 U.S.C. 2149) the following:

SEC. 20. REGULATION OF HIGH-VOLUME RETAILERS AND IMPORTERS.

(a) *Definitions.*--In this section:

(1) **CERTIFIED THIRD-PARTY INSPECTOR.**--The term 'certified third-party inspector' means a nonprofit organization certified by the Secretary in accordance with subsection (d).

(2) **IMPORTER.**--The term 'importer' has the same meaning as the term 'regulated person', except that the term also includes any person that imports into the United States any dog or cat for resale.

(3) **REGULATED PERSON.**--

(A) **IN GENERAL.**--The term 'regulated person' means any person who in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of--

(i) any dog or other animal (whether alive or dead) for research, teaching, or exhibition;

(ii) any dog or cat (whether alive or dead) at wholesale or retail; or

(iii) any dog or cat imported into the United States for resale.

(B) **EXCEPTIONS.**--The term 'regulated person' does not include--

(i) a retail pet store, except for a retail pet store that sells--

(I) any animal to a research facility, an exhibitor, or a regulated person; or

`` (II) any dog or cat imported into the United States directly by the retail pet store;

`` (ii) any animal shelter, rescue organization, or other person that does not operate for profit; or

`` (iii) any person that--

`` (I) sells dogs and cats only at retail;

`` (II) does not import dogs and cats for resale; and

`` (III)(aa) sells not more than the total number of dogs and cats described in subparagraph (C); or

`` (bb) in accordance with regulations promulgated by the Secretary, is determined to be in compliance with the standards of a third-party inspector certified under subsection (d).

`` (C) **DESCRIPTION.**--The number of dogs and cats referred to in subparagraph (B)(iii)(III)(aa) is not more than--

`` (i) a total of 25 dogs and cats not bred or raised on the premises of the seller during a calendar year; or

`` (ii)(I) the number of dogs and cats bred or raised during a calendar year on the premises of the seller and sold directly at retail to persons who purchase the dogs and cats for personal use and enjoyment and not for resale, provided that the total number sold during a calendar year is not more than the greater of 25 dogs and cats or the dogs and cats from not more than 6 litters; and

`` (II) a total of 25 other dogs and cats not bred or raised on the premises of the seller during the calendar year.

`` (4) **RETAIL.**--The term `retail' means any sale that is not at wholesale.

`` (5) **RETAIL PET STORE.**--

`` (A) **IN GENERAL.**--The term `retail pet store' means a retail business establishment that--

`` (i) maintains a physical premises that is open to the public; and

`` (ii) sells pet animals directly to the public from the retail business premises.

`` (B) **EXCLUSION.**--The term `retail pet store' does not include--

`` (i) a person breeding dogs or cats to sell at wholesale or retail; or

`` (ii) a person importing dogs or cats from outside the United States for resale.

` `(6) **WHOLESALE**.--The term 'wholesale' means the sale of an animal for resale.

` `(b) *Treatment of Regulated Persons*.--The Secretary shall treat a regulated person in the same manner that the Secretary treats a dealer under this Act.

` `(c) *Alternative Licensing Option*.--The Secretary may issue a license under section 3 to a regulated person that deals in dogs or cats if the regulated person--

` `(1) has demonstrated that the facilities of the regulated person comply with standards promulgated by the Secretary in accordance with section 13; or

` `(2) has demonstrated in accordance with regulations promulgated by the Secretary that the facilities of the regulated person comply with standards established by a certified third-party inspector.

` `(d) *Third-Party Inspectors*.--

` `(1) **REGULATIONS**.--

` `(A) **IN GENERAL**.--Not later than 36 months after the date of enactment of this subsection, the Secretary shall promulgate regulations under which the Secretary may certify nonprofit organizations that the Secretary determines to have standards and inspection protocols that are at least as protective of animal welfare as those promulgated by the Secretary in accordance with section 13(a)(2).

` `(B) **REQUIREMENTS**.--Regulations promulgated under subparagraph (A) shall--

` `(i) establish procedures under which the Secretary may certify third-party inspectors, including provisions for public notice of--

` `(I) third-party certification applications;

` `(II) certification decisions by the Secretary; and

` `(III) the standards and inspection protocols of certified third-party inspectors;

` `(ii) require each certified third-party inspector to be recertified not less than once every 3 years;

` `(iii) establish procedures under which the Secretary shall decertify a certified third-party inspector that the Secretary determines has failed to maintain standards and inspection protocols that are at least as protective of animal welfare as those promulgated by the Secretary in accordance with section 13(a)(2);

` `(iv) require each certified third-party inspector to immediately notify the Secretary of any person inspected by the certified third-party inspector--

` `(I) whose conduct places the health of an animal in serious danger; or

` `(II) who otherwise fails to comply with the standards established by the inspector (including a description of the specific failure);

` `(v) require each certified third-party inspector to submit to the Secretary an annual summary report describing--

` `(I) the number of inspections conducted;

` `(II) the number of persons found to be out-of-compliance with the standards of the certified third-party inspector and the response actions taken;

` `(III) the types of non-compliance found; and

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` `(IV) such other information about the program of the certified third-party inspector as the Secretary shall require, without revealing personal information about inspected persons, to ensure that the program of the third-party inspector is maintaining standards and inspection protocols that are at least as protective of animal welfare as those promulgated by the Secretary in accordance with section 13(a)(2);

` `(vi) require certified third-party inspectors to submit to the Secretary copies of all inspection reports on an annual basis;

` `(vii) establish procedures under which the Secretary may require certified third-party inspectors to participate in training and education programs carried out through the Animal and Plant Health Inspection Service; and

` `(viii) establish procedures for compliance audits of third-party inspections.

` `(C) **FOIA EXEMPTION.**--Section 552 of title 5, United States Code (commonly known as the `Freedom of Information Act') shall not apply to reports described in subparagraph (B)(vi).

` `(2) **INSPECTIONS.**--

` `(A) **IN GENERAL.**--The Secretary shall promulgate regulations under which a regulated person dealing in dogs and cats may elect to have a certified third-party inspector inspect the regulated person and report the results of the inspection to the Secretary in lieu of inspection by the Secretary.

` `(B) **THIRD-PARTY INSPECTIONS OPTIONAL.**--No regulated person shall be required under this Act to be inspected by a certified third-party inspector.

` `(C) **LIMITATION.**--No person other than a regulated person may make the election described in subparagraph (A).

` `(3) **ENFORCEMENT.**--

`` (A) **IN GENERAL.**--The Secretary shall have exclusive enforcement authority over any violation of this Act.

`` (B) **INITIATION OF ACTION.**--The Secretary shall investigate and, if appropriate, initiate enforcement action under this Act, immediately upon receiving notification under paragraph (1)(B)(iv).

`` (4) **USE OF APPROPRIATED FUNDS.**--

`` (A) **IN GENERAL.**--The Secretary may use funds appropriated to the Department of Agriculture to carry out this subsection.

`` (B) **PROHIBITION.**--A certified third-party inspector may not use funds appropriated to Department of Agriculture.

`` (e) *Access to Source Records for Dogs and Cats.*--Notwithstanding any other provision of this Act, all regulated persons and retail pet stores shall prepare, retain, and make available at all reasonable times for inspection and copying by the Secretary, for such reasonable period of time as the Secretary may prescribe, a record of--

`` (1)(A) the name and address of the person from whom each dog or cat acquired for resale was purchased or otherwise acquired; or

`` (B) if that information is not known, the source of the dog or cat; and

`` (2) if the person from whom the dog or cat was obtained is a dealer licensed by the Secretary, the Federal dealer identification number of the person.

`` (f) *Importation of Live Dogs and Cats.*--

`` (1) **FINDINGS.**--Congress finds that--

`` (A) regulating imports of dogs and cats for resale, including restricting importation of puppies and kittens for resale, is consistent with provisions of international agreements to which the United States is a party that expressly allow for measures that are necessary--

`` (i) to protect animal life or health;

`` (ii) to protect human health; and

`` (iii) to enjoin the use of deceptive trade practices in international and domestic commerce;

`` (B) the importation of puppies into the United States for resale is increasing;

`` (C) the breeding of puppies and kittens in foreign countries for resale in the United States creates opportunities and incentives for evasion of United States laws

(including regulations) relating to the humane care and treatment of breeding stock, puppies, and kittens;

``(D) the conditions under which puppies are transported into the United States for resale are frequently inhumane and in violation of domestic and international standards;

``(E) there is an unacceptably high incidence of disease and death among puppies imported into the United States for resale;

``(F) the importation of puppies and kittens for resale creates unacceptable incentives for evasion of United States laws (including regulations) intended to protect animal and human health in the United States, including quarantine regulations; and

``(G) puppies and kittens imported for resale may be accompanied by fraudulent health and breeding documents, imposing high economic and emotional costs and fraud on United States citizens.

``(2) **ENFORCEMENT**.--An importer that fails to comply with any Federal law (including a regulation) relating to the importation of live dogs and cats into the United States shall be subject to this Act, including penalties under section 19.

``(3) **REGULATIONS**.--Not later than 24 months after the date of enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, the Secretary of Commerce, and the Secretary of Homeland Security, shall promulgate regulations relating to the importation of live dogs and cats into the United States for resale.

``(4) **REQUIREMENTS**.--Regulations promulgated under paragraph (3) shall require that--

``(A) any importer that imports into the United States a dog or cat in violation of this Act shall provide for the care, forfeiture, and adoption of the dog or cat, at the expense of the importer; and

``(B) dogs imported into the United States for resale--

``(i) be not less than 6 months of age;

``(ii) have received all necessary vaccinations, as determined by the Secretary; and

``(iii) be in good health, as determined by the Secretary."

(2) **REGULATIONS**.--Not later than 36 months after the date of enactment of this Act, the Secretary shall promulgate final regulations to carry out the amendment made by paragraph (1)

(3) **EFFECTIVE DATE**.--The amendment made by paragraph (1) takes effect on the date on which final regulations described in paragraph (2) take effect.

(b) *Extension of Temporary Suspension Period.*--Section 19(a) of the Animal Welfare Act (7 U.S.C. 2149) is amended--

(1) by inserting `` (1)" after `` (a)"; and

(2) by adding at the end the following:

`` (2) *Extension of Temporary Suspension Period.*--If the Secretary has reason to believe that a violation that results in a temporary suspension pursuant to paragraph (1) is continuing or will continue after the expiration of the 21-day temporary suspension period described in that paragraph, and the violation will place the health of any animal in serious danger in violation of this Act, the Secretary may extend the temporary suspension period for such additional period as is necessary to ensure that the health of an animal is not in serious danger, as determined by the Secretary, but not to exceed 60 days.".

(c) *Authority To Apply for Injunctions.*--Section 29 of the Animal Welfare Act (7 U.S.C. 2159) is amended--

(1) in subsection (a), by inserting `` or that any person is acting as a dealer or exhibitor without a valid license that has not been suspended or revoked, as required by this Act," after `` promulgated thereunder,";

(2) in subsection (b), by striking the last sentence; and

(3) by adding at the end the following:

`` (c) *Injunctions; Representation.*--

`` (1) **INJUNCTIONS.**--The Secretary may apply directly to the appropriate United States district court for a temporary restraining order or injunction described in subsection (a).

`` (2) **REPRESENTATION.**--Attorneys of the Department of Agriculture may represent the Secretary in United States district court in any civil action brought under this section.".

(d) *Effect on State Law.*--Nothing in this section or the amendments made by this section (including any regulations promulgated as a result of this section) preempts any State law (including a regulation) that provides stricter requirements than the requirements provided in the amendments made by this section.