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DELAWARE STATE SENATE

140th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO.

FOR

SENATE BILL NO. 77

AN ACT TO AMEND TITLE 6, DELAWARE CODE CREATING A DELAWARE PET WARRANTY LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 6, Delaware Code by adding thereto a new Chapter 40 to read as follows:

2 "Chapter 40. PET WARRANTIES

3 §4001. Definitions.

4 (a) As used in this chapter, the following words shall have the meaning ascribed to them:

5 (1) 'Seller' means any person, business or other entity engaging in the sale of  
6 dogs, except that this definition does not encompass the sale of dogs on the premises of  
7 and by a public shelter, pound or other entity operating as a nonprofit organization  
8 pursuant to Delaware law. Persons selling fewer than 20 dogs, or 3 litters, whichever is  
9 greater, in a single calendar year shall be exempt from the provisions of this chapter.

10 (2) 'Purchaser' means any person purchasing a dog from a seller, as defined by this  
11 section.

12 (3) 'Clinically ill' means an illness that is apparent to a licensed veterinarian based on  
13 observation, examination, or testing of the dog.

14 (4) 'Nonelective surgical procedure' means a surgical procedure that is necessary to  
15 preserve or restore the health of an animal, or to correct a condition that would interfere with the  
16 animal's ability to walk, run, jump, or otherwise function in a normal manner.

17 §4002. Information Provided at Time of Sale.

18 (a) Every seller shall, at the time of sale, deliver to the purchaser of each dog a written  
19 statement containing the following information:

20 (1) The date of the animal's birth, if known; the breeder's name and address, if known;  
21 and the date the seller received the animal, if not bred by the seller. If the seller does not know the  
22 name and address of the breeder, then the seller must provide the name and address of the person  
23 who sold or gave the animal to the seller.

24 (2) The breed, sex, and color of the animal, and identifying marks existing at the time of  
25 sale, if any. If the animal is from a United States Department of Agriculture licensed source, the  
26 statement shall contain the individual identifying tag, tattoo, or collar number for that animal. If  
27 the breed is unknown or mixed, the record shall so indicate.

28 (3) If the animal is being sold as registrable, the names and registration numbers of the  
29 sire and dam, and the litter number.

30 (4) A record of any inoculations and worming treatments administered to the animal as of  
31 the time of sale, to the extent known, including dates of administration and the type of vaccine or  
32 worming treatment.

33 (5) A record of any diagnosis, treatment, or medication received by the animal from a  
34 licensed veterinarian while in the possession of the seller.

35 §4003. Seller Disclosure.

36 (a) Upon the sale of a dog by any seller, a written disclosure signed and dated by the seller and  
37 purchaser shall be provided at the time of sale, which shall include:

38 (1) A statement by the seller:

39 (i) that the animal has no known disease or illness, nor any known  
40 congenital or hereditary condition that adversely affects the health of the animal at the  
41 time of sale or is likely to adversely affect the health of such animal in the future; or

42 (ii) a record of any known disease, illness, or congenital or hereditary  
43 condition that adversely affects the health of the animal at the time of sale, or is likely to  
44 adversely affect the health of the animal in the future.

45 (b) If the animal has not received a veterinary examination prior to sale, this fact shall be  
46 disclosed to the purchaser in writing.

47 §4004. Record Keeping.

48 A seller shall maintain the written record on the health, status, and disposition of each dog sold by  
49 the seller for a period of not less than two years following such sale. The record shall also contain all of  
50 the information required to be disclosed pursuant to §4002 and §4003 of this Title. Those records shall be  
51 available to animal control officers and law enforcement officers for inspection and copying during  
52 normal business hours.

53 §4005. Purchaser Remedies.

54 (a) A purchaser is entitled to a remedy from a seller pursuant to this section if, after the  
55 purchase of a dog from such seller, one of the following subdivisions becomes applicable.

56 (1) Within 20 days after purchase of the animal, a licensed veterinarian states in writing  
57 that the animal suffers, or has died, from an illness, disease or other defect, adversely affecting  
58 the animal's health, that existed in the animal on or before delivery to the purchaser. Intestinal or  
59 external parasites shall not be considered to adversely affect a animal's health unless their  
60 presence makes the animal clinically ill.

61 (2) Within two years after purchase of the animal, a licensed veterinarian states in writing  
62 that the animal possesses, or has died from, a congenital or hereditary condition adversely  
63 affecting the health of the animal, or that requires hospitalization or nonelective surgical  
64 procedures.

65 (b) A purchaser entitled to a remedy pursuant to this section may elect only one of the  
66 following remedies:

67 (1) Return the animal to the seller for a full refund of the purchase price, and  
68 reimbursement for reasonable veterinary fees for diagnosis and treatment in an amount not to  
69 exceed the original purchase price of the animal.

70 (2) Exchange the animal for another one, of purchaser's choice, having comparable  
71 value, providing such replacement animal is available, and receive reimbursement for reasonable  
72 veterinary fees for diagnosis and treatment in an amount not to exceed the original purchase price  
73 of the animal; or

74 (3) Retain the animal, and receive reimbursement for reasonable veterinary fees for  
75 diagnosis and treatment in an amount not to exceed the original purchase price of the animal.

76 (c) For purposes of this section, the veterinary fees shall be deemed reasonable if the services  
77 rendered are appropriate for the diagnosis and treatment of the illness or congenital or hereditary  
78 condition made by the veterinarian, and the cost of such services is comparable to that charged for similar  
79 services by other licensed veterinarians in proximity to the treating veterinarian. A veterinary fee shall be  
80 presumed reasonable in the absence of evidence to the contrary.

81 (d) Refunds and payment of reimbursable expenses pursuant to this section shall be made by the  
82 seller to the purchaser not later than 10 business days following receipt of the veterinarian's statement  
83 required by §4006 of this Title, except in cases in which the entitlement to a remedy is contested pursuant  
84 to §4008 of this Title.

85 §4006. Purchaser's Obligations.

86 (a) To obtain remedies under §4005 of this Chapter, the purchaser shall comply with all  
87 of the following requirements:

88 (1) Notify the seller as soon as practicable, but in no case more than 10 days after the  
89 diagnosis by a licensed veterinarian of a medical or health problem, including a congenital or

90 hereditary condition, for which a remedy is requested. Such notice shall include the name and  
91 telephone number of the veterinarian providing the diagnosis.

92 (2) In the case of illness or disease, provide a written statement from a licensed  
93 veterinarian within 10 days of diagnosis stating that the animal is clinically ill, suffers from a  
94 congenital or hereditary condition, or has symptoms of a contagious infectious disease, that  
95 existed on or before delivery to the purchaser, and that adversely affects the health of the animal.  
96 At the request of the seller, the purchaser shall also take the animal for an examination by a  
97 licensed veterinarian of the seller's choice. The cost of such examination shall be paid by the  
98 seller. In the case of death, the seller may have his or her veterinarian perform a necropsy and all  
99 other provisions of this section shall apply.

100 (3) The veterinarian's statement required under this section shall include all of the  
101 following:

102 (i) The purchaser's name and address.

103 (ii) The date or dates on which the animal was examined.

104 (iii) The breed and age of the animal, if known.

105 (iv) That the veterinarian examined the animal.

106 (v) That the animal has or had an illness or condition subject to a remedy under  
107 §4005 of this Title.

108 (vi) The precise findings of the examination or necropsy, including laboratory  
109 results or copies of laboratory reports.

110 §4007. Limitations.

111 (a) Notwithstanding any other provisions of this Chapter, no refund, replacement, or  
112 reimbursement of veterinary fees shall be made under any of the following conditions:

113 (1) The illness or death resulted from maltreatment or neglect or from an injury sustained  
114 or an illness contracted subsequent to the delivery of the animal to the purchaser.

115 (2) The purchaser fails to carry out the recommended treatment prescribed by the  
116 examining veterinarian who made the initial diagnosis. However, this subdivision shall

117 not apply if the cost for such treatment, together with the veterinarian's fee for diagnosis,  
118 would exceed the purchase price of the animal.

119 (3) The illness, disease or condition was disclosed at the time of sale pursuant to §4003 of  
120 this Title.

121 (4) The purchaser fails to return to the seller all documents previously provided to  
122 the purchaser for the purpose of registering the animal.

123 (b) If a refund for reasonable veterinary expenses is being requested, the veterinary statement  
124 shall be accompanied by an itemized bill of fees appropriate for the diagnosis and treatment of the illness  
125 or congenital or hereditary condition which is the subject of the remedy requested pursuant to this  
126 Chapter.

127 §4008. Contested Cases.

128 (a) In the event that a seller disputes a purchaser's entitlement to a remedy under this Chapter, the  
129 seller may, except in the case of the animal's death, have the dog examined by a licensed veterinarian  
130 designated by the seller. The cost of such examination shall be borne by the seller.

131 (b) If, following examination of the animal by the seller's chosen veterinarian, the purchaser and  
132 the seller are unable to reach an agreement within 10 business days, the purchaser may initiate an action  
133 in a court of competent jurisdiction to resolve the dispute or the parties may submit to binding arbitration  
134 if mutually agreed upon by the parties in writing. Any court having jurisdiction in a damages or trespass  
135 action for the amount in controversy shall have jurisdiction under this Chapter.

136 (c) The purchaser in any such legal action shall have the right to collect reasonable attorney's fees  
137 and court costs, if the opposing party acted in bad faith in seeking or denying the requested remedy.

138 §4009. Notice.

139 (a) Every seller shall post, in a conspicuous location, a notice stating that purchasers of animals  
140 have specific rights under law, and that a written statement of such rights is available upon request. Such  
141 notice shall be in 100-point type and shall read as follows:

142 'Purchasers of dogs from this seller are entitled to specific rights under the law. Purchasers must be  
143 provided a written copy of such rights at the time of sale. Prospective purchasers may receive a copy of  
144 such rights from the seller upon request.'

145 (b) Every seller shall, at the time of sale or upon the request of a prospective purchaser, provide a  
146 written notice of rights under this Chapter. Such notice shall be signed by the purchaser and seller at the  
147 time of sale acknowledging receipt.

148 (c) Every seller of an animal sold with the representation that the animal is registered or  
149 registrable with a registry shall, in addition to the above notices, provide purchaser a written notice,  
150 signed by purchaser and seller at time of sale, which shall read as follows:

151 'A pedigree or a registration does not assure proper breeding condition, health, quality or claims to  
152 lineage.'

153 §4010. Additional Legal Remedies.

154 (a) Nothing in this Chapter shall limit the rights or remedies that are otherwise available to a  
155 consumer under any other law. Nor shall this Chapter in any way limit the seller and the purchaser from  
156 agreeing between themselves upon additional terms and conditions that are not inconsistent with this  
157 Chapter. No waiver of rights under this Chapter shall be effective.

158 (b) Nothing in this Chapter shall limit prosecution for violation of any criminal statute or of Title  
159 6, Chapter 25, or of any other law.

160 (c) Nothing in this Chapter shall preclude the imposition of punitive damages otherwise available  
161 at law.

162 §4011. Misrepresentation as to registration or breed; remedies.

163 (a) A seller shall not state, promise, or represent to the purchaser, directly or indirectly, that an  
164 animal is registered or capable of being registered with an animal registering organization, unless the  
165 seller provides the purchaser with the documents necessary for that registration with 120 days following  
166 the date of sale of such animal.

167 (b) In the event that a seller fails to provide documents necessary for registration within  
168 120 days following the date of sale, the purchaser shall, upon written notice to the seller, be

169 entitled to retain the animal and receive a partial refund of 75 percent of the purchase price, or  
170 return the animal along with all documentation previously provided the purchaser for a full  
171 refund. Remedies under this section shall also be available where there was a material  
172 misrepresentation in connection with the sale as to the breed of the animal."

SYNOPSIS

This Act establishes a pet warranty law for the State of Delaware.

Author: Senator Blevins