



SPONSOR: Rep. Spence & Sen. Blevins ;
Reps. Carey, Fallon, Hocker, Lavelle, Lofink, Valihura, Ennis,
Longhurst, Schooley, Viola; Sen. McBride, Cloutier, Connor,
McDowell, Amick, Bunting, Cook, DeLuca, Peterson, Still

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 425

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO AGRICULTURE.

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

1 Section 1. Amend Part VI, Chapter 82, Title 3 of the Delaware Code by creating a new subchapter to read as follows:

2 "SUBCHAPTER II.

3 Animal Population Control Program and Spay/Neuter Fund

4 § 8214. SHORT TITLE.

5 This Chapter shall be known and may be cited as the 'Animal Population Control Program'.

6 § 8215. FINDINGS.

7 The General Assembly for the State of Delaware hereby finds that:

8 A. During 2002, of the 22,165 dogs and cats which were received at Delaware's primary animal facilities, of those
9 received:

10 (1) 2,409 (11%) were returned to their owners/guardians; while

11 (2) 7,290 (33%) were adopted; and

12 (3) 12,659 (57%) were euthanized.

13 B. During 2003, of the 24,510 dogs and cats which were received at Delaware's primary animal facilities, of those
14 received:

15 (1) 2,186 animals (9%) were returned to their owners/guardians; while

16 (2) 7,125 animals (29%) were adopted; and

17 (3) 13,653 animals (56%) were euthanized.

18 C. During 2004, of the 21,254 dogs and cats which were received at Delaware's primary animal facilities, of those
19 received:

20 (1) 2,193 animals (10.3%) were returned to their owners/guardians; while

21 (2) 5,500 animals (25.8%) were adopted; and

22 (3) 13,067 animals (61.4%) were euthanized.

23 D. During 2005, of the 21,062 dogs and cats which were received at Delaware's primary animal facilities or those
24 received:

25 (1) 2,299 animals (10.9%) were returned to their owners/guardians; while

26 (2) 5,837 animals (27.7%) were adopted; and

27 (3) 13,583 animals (64.4%) were euthanized.

28 E. As Delaware's human population growth rate increases so too will the population growth rate of the dog and cat
29 populations, the intake at animal facilities and the consequent disposition rates associated therewith.

30 F. Controlling the dog and cat population would have a significant benefit to the public health and safety in the
31 following manner:

32 (1) reducing nuisance complaints regarding homeless dogs and cats;

33 (2) reducing the number of homeless dogs and cats seeking to mate;

34 (3) reducing the number of dog and cat bite cases involving children;

35 (4) minimizing opportunities for rabies transmission;

36 (5) decreasing the number of automobile accidents caused by stray dogs and cats; and

37 (6) reducing cruelty to animals opportunities by addressing and decreasing the presence of
38 unwanted/nuisance populations.

39 G. This Act recognizes the economic hardships associated with animal population control, the problems associated
40 with homeless animals, and the societal impacts associated with failing to address these problems and establishes a program focused
41 upon addressing dog and cat population control by providing a means by which population control and rabies vaccinations may be
42 financed.

43 § 8216. PURPOSE.

44 The purpose of the spay/neuter program is to assist low-income residents and low-income communities. The Animal
45 Population Control Program's goals include:

46 A. population growth among stray and unwanted cats and dogs; and

47 B. stray and unwanted cats and dogs entering animal shelters; and

48 C. cat and dog euthanasia rates; and

49 D. animal-inflicted injuries to humans (e.g. bites); and

50 E. threats to public health and safety (e.g. from rabies and vehicular accidents).

51 § 8217. DEFINITIONS.

- 52 A. 'Abandoned/free roaming/homeless/stray/unwanted animal' – a cat or dog with no known owner or keeper or not
53 wanted by its owner or keeper or that may be deserted by its owner or keeper.
- 54 B. 'Administrator' – Department of Agriculture.
- 55 C. 'Animal Control Agency' – Any state, county or municipally authorized animal control agency.
- 56 D. 'Animal Shelter' – A public or private facility which includes a physical structure that provides temporary or
57 permanent shelter to stray, abandoned, abused, or owner-surrendered animals.
- 58 E. 'Cat' – A member of the genus and species known as felis catus.
- 59 F. 'Dog' – A member of the genus and species known as canis familiaris.
- 60 G. 'Keeper' – A person in possession or control of a cat, dog or other animal becomes the keeper of a stray
61 domesticated animal, other than livestock, if the person feeds that animal for at least three (3) consecutive days.
- 62 H. 'Owner' – Any person, firm, partnership, association or corporation owning, keeping or harboring a cat, dog or
63 other animal.
- 64 I. 'Program' – The mandatory pre-adoption sterilization and rabies inoculation program established by and set forth
65 in this Subchapter for cats and dogs.
- 66 J. 'Spay/neuter' – To sterilize a female animal by removing the ovaries or to castrate a male animal by removing the
67 testicles or by FDA approved pharmaceutical sterilization.

68 § 8218. FUNDING.

- 69 A. Spay/Neuter Fund shall be established for the purpose of funding the Animal Population Control Program.
- 70 B. All monies received by the Administrator in accordance with the authority provided by this Subchapter shall be
71 deposited into a separate, non-lapsing account and shall be dedicated for use by the Administrator exclusively for veterinarian
72 reimbursement and administration costs associated with the Program and set forth in this Subchapter.
- 73 C. All interest earnings shall be credited to the assets of the Fund and shall become part of the Fund.
- 74 D. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward for the next fiscal year
75 for this Program.
- 76 E. The Fund shall be created from a combination of the following:
- 77 (1) Upon adoption of this Bill, \$250,000, subject to appropriation, shall be deposited in the account for use
78 during fiscal year 2007.
- 79 (2) In addition to the foregoing, a three dollar (\$3.00) surcharge shall be added to each rabies shot
80 administered in Delaware on or after September 1, 2006. It shall be the responsibility of the veterinarian administering the
81 inoculation to collect said funds and forward same on a monthly basis, together with all applicable rabies inoculation
82 verifications and other forms to the Administrator.

83 (3) The surcharge shall be deposited in the Fund's account and shall become part of the Fund's corpus.

84 (4) The funding stream established in this Section shall be evaluated on or before December 30, 2007, to
85 assess the measurable impacts as set forth in § 8226 below and to determine the potential necessity for an extension of
86 subsidized funding compared to the ability of the Fund's corpus, as set forth below, to generate sufficient on-going
87 revenues to provide a self-sustaining funding mechanism.

88 (5) Beginning July 15, 2007, a sum equal to 80% of the Spay/Neuter Fund's corpus shall become available
89 and shall thereafter be utilized as the succeeding fiscal year's operating and administrative fund.

90 F. Soliciting and accepting funds from public or private sources:

91 (1) The Administrator is authorized to solicit and accept donations, grants, gifts, and bequests of money,
92 property or personal services from individuals and/or organizations including, but not limited to, private foundations or
93 alliances, non-public agencies, institutions, organizations or businesses. All funds generated shall be retained by the
94 Administrator in order to defray costs associated with the Animal Population Control Program and any volunteer and
95 community service activities and events of the Animal Population Control Program. Funds received will not be used for
96 employee salaries or benefits. All funds received are subject to audit by the Office of Management and Budget, and
97 employees of the Administrator or the Animal Population Control Program, if any, are bound by § 5806 of Title 29 of the
98 Delaware Code when engaging in fundraising activities.

99 (2) Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Administrator if it
100 sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey
101 thereby to the Administrator, the property, estate or interest therein expressed or described.

102 (3) Any property, real or personal, acquired by the Administrator on behalf of the Animal Population
103 Control Program may be used solely for purposes related to the goals of the Animal Population Control Program or, at the
104 discretion of the Administrator, sold at public auction to raise funds to support the Animal Population Control Program.

105 (4) All money donated or bequeathed to the Administrator or otherwise received hereunder shall be
106 deposited with the Secretary of Finance and shall be appropriated semi-annually to the Administrator for purposes of the
107 Animal Population Control Program.

108 § 8219. ELIGIBILITY.

109 A. The proceeds of the Spay/Neuter Fund outlined in this Subchapter shall be available to those parties qualifying for
110 participation under the following eligibility requisites:

111 (1) a person must be an adult (18 years or older); and

112 (2) be a resident of the State of Delaware; and

113 (3) be the owner or keeper of the cat or dog being spayed or neutered by a participating veterinarian or clinic
114 and shall:

- 115 a. establish proof of being a recipient of one (1) of the following programs:
- 116 (i) AFDC
 - 117 (ii) Food Stamps
 - 118 (iii) General Assistance
 - 119 (iv) Medicaid
 - 120 (v) Social Security Disability (SSD)
 - 121 (vi) SSI
 - 122 (vii) Temporary Assistance for Needy Families (TANF)
 - 123 (viii) WIC; and
- 124 b. establish further proof of identity through photo identification; or
- 125 c. an individual recognized by a county or municipal government or an authorized state, county or
126 municipal animal control agency as being an abandoned, free-roaming, homeless, feral cat or stray dog keeper;
127 or
- 128 d. an organization which establishes proof of being a 501(c)(3) animal welfare, animal rescue
129 and/or animal humane organization registered in the State of Delaware by means of the registered corporate
130 purpose clause and a copy of an IRS 501(c)(3) determination letter.

131 (4) The first two (2) year's fiscal allotment shall be divided by the Administrator as follows:

- 132 a. 75% of the funding shall be dedicated to subsidizing the cost of sterilizing domesticated animals
133 owned by those participants qualifying under the terms set forth in § 8219A(3)(a) and (3)(d) above.
- 134 b. 25% of the funding shall be dedicated to subsidizing the cost of sterilizing those
135 abandoned/free-roaming/homeless/stray/unwanted animals located in communities by participants qualifying
136 under § 8219A(3)(c) and (d).
- 137 c. An individual seeking a low-income subsidy pursuant to the requisites of § 8219A(3)(a) or (c)
138 shall be limited to three (3) such procedures per fiscal year and shall be ineligible to seek additional funding
139 by participating in the Program under the terms set forth in Section (3)(d) above.
- 140 d. Those organizations participating in the Program subject to the parameters of § 8219A(3)(d)
141 above shall be limited to a maximum of 25 spay/neuter/inoculation procedures per fiscal year per organization.
- 142 e. The division of the Program's fiscal allotment established above shall be re-evaluated by the
143 Administrator after two (2) years.

144 § 8220. PRE-ADOPTION SPAY/NEUTER MANDATE.

145 A. Effective upon the passage of this Act it shall be mandatory for all cats and/or dogs of reproductive age to be
146 spayed or neutered and inoculated for rabies prior to adoption from any of the following:

- 147 (1) a private animal welfare or rescue agency/group or organization;
148 (2) any adoption clinic endorsed, operated, managed, or sponsored by an animal welfare or rescue agency,
149 organizations, commercial enterprises or private parties or combination thereof; or
150 (3) an animal shelter as defined herein.

151 B. Exceptions to the pre-adoption spay/neuter mandate shall be limited to the following:

- 152 (1) An animal which, following a medical examination by an accredited veterinarian, is found to be in a state
153 of health which would preclude the safe and humane implementation of a spay/neuter procedure or rabies inoculation; or
154 (2) A dog or cat under the age of six (6) months provided that:
155 a. the adopted shall post a deposit of \$75.00; and
156 b. in the absence of an exemption as provided in § 8220B(1) above, said deposit shall be held by
157 the adopting agency until such time as:
158 (i) said deposit is rebated to the adopter upon proof that the spay/neuter procedures has been
159 completed within five (5) months of the date of adoption; and
160 (ii) the animal has received a rabies inoculation in accordance with the existing laws governing
161 rabies inoculations and such inoculation was not postponed beyond the 7th month of age; or
162 (iii) the deposit is disbursed subject o and in accordance with the procedures elaborated in § 8221C
163 below.

164 § 8221. ENFORCEMENT, VIOLATIONS AND PENALTIES.

165 A. The Administrator shall adopt regulations pursuant to this Chapter relative to:

- 166 (1) Format and content of all forms required under this Chapter.
167 (2) Proof of eligibility under § 8219.
168 (3) Administration of the Fund established under § 8222.
169 (4) Any other matter necessary for the administration of the Animal Population Control Program and
170 Spay/Neutering Fund established under this Chapter.

171 B. Any person who knowingly falsifies proof of eligibility for, or participation in, any program established under this
172 Chapter, or who knowingly furnishes any licensed veterinarian with inaccurate information concerning ownership of a pet
173 submitted for sterilization, or who falsifies an animal sterilization certificate shall be guilty of an unclassified misdemeanor and
174 shall be subject to a minimum mandatory fine, which shall not be subject to suspension, of \$250.00.

- 175 C. Failure to spay/neuter a dog or cat once within the parameters established in § 8220 of this Subchapter:
- 176 (1) In the absence of a medical exemption resulting from an examination by an accredited veterinarian,
- 177 which finds that the dog/cat has reached reproductive age but is in a state of health which precludes the safe and humane
- 178 implementation of a spay/neuter procedure or rabies inoculation (as is outlined in § 8220B(1) above) the adopter's
- 179 spay/neuter deposit shall be escheated to the Fund's corpus after the specified timeframe has lapsed, and the proceeds shall
- 180 be disbursed in accordance with the guidelines and process elaborated in § 8218E(5), (6) and (7) above.
- 181 (2) The Administrator shall be notified and prosecution shall follow.
- 182 (3) In addition to the forfeiture of the spay/neuter deposit, which shall not be subject to suspension, the
- 183 adopter shall be responsible for the actual cost of having the animal spayed/neutered and inoculated for rabies within a
- 184 period of 15 calendar days.
- 185 (4) In addition to the forfeiture of the deposit monies and the actual cost of having the animal
- 186 spayed/neutered and inoculated for rabies within the established period of 15 calendar days a mandatory minimum fine of
- 187 \$250.00, plus all enforcement and court costs, all of which shall not be subject to suspension, shall be levied upon the
- 188 violator for failure to comply with the spay/neuter and inoculation requisite within the established timeframe.
- 189 (5) If the adopter fails to comply with the spay/neuter and inoculation process within the extended fifteen 15
- 190 day timeframe, the minimum mandatory fine, which shall not be subject to suspension, shall be doubled and the animal
- 191 shall be forfeited to the original adopting agency.
- 192 (6) The Administrator shall employ all available remedies at law in any court of competent jurisdiction in
- 193 pursuing the collection of any and all fines.
- 194 D. Agency failure to spay/neuter an animal of reproductive age:
- 195 (1) Any agency, organization, or other entity cited under § 8220 of this Subchapter failing to comply with
- 196 the mandatory pre-adoption spay/neuter and rabies inoculation program set forth in this Subchapter shall be subject to a
- 197 mandatory minimum fine of \$500, which shall not be subject to suspension, for each violation of this Subchapter.
- 198 (2) An agency's holding of animals of reproductive age until such time as said animals are the subject of an
- 199 adoption application does not constitute a violation of this Subchapter.
- 200 E. All fines collected in association with this Subchapter shall be deposited in and become a part of the Fund's
- 201 corpus, shall be invested with the proceeds thereof and the monies earned therefrom, together with other interest income generated
- 202 by the Fund's corpus shall be disbursed according to the guidelines and process elaborated in § 8218E(5), (6) and (7) above.
- 203 § 8222. PROGRAM ADMINISTRATION.
- 204 A. The Administrator shall administer the Program and shall be responsible for:

- 205 (1) distributing, collecting and compiling all forms, including but not limited to, veterinarian participation
206 agreements, sterilization and immunization certifications, and creating a database there from for enforcement and
207 accountability purposes; and
- 208 (2) maintaining a list of participating veterinarians; and
- 209 (3) determining keeper/owner eligibility; and
- 210 (4) collecting co-payments; and
- 211 (5) obtaining the maximum number of spay/neuter/inoculation procedures available to the Program's financial
212 parameters per calendar year.
- 213 B. Veterinarian reimbursement shall be through the Administrator.
- 214 C. An amount equal to 6% of the fiscal year's operating budget shall be utilized as an administrative processing fee and
215 shall be paid by the Fund to the Administrator on a quarterly basis.

216 § 8223. VETERINARIAN PARTICIPATION.

217 A. Any veterinarian licenses in the State of Delaware may participate in the Program established under this Chapter. To
218 participate, a veterinarian must file an application provided by the Administrator spanning a two-year period from date of approval
219 agreeing to all pre-set fees and program conditions. Pre-set fees shall be set by the Administrator, in consultation with the Delaware
220 Veterinary Medical Association and shall be subject to revision at two (2) year intervals.

221 B. For all cats and dogs sterilized under this Program, the Administrator shall reimburse the veterinarians for services on
222 a monthly basis. The pre-set fee shall cover the cost of a pre-surgical medical evaluation; spay/neuter surgery, rabies vaccination
223 and routine post-surgical care required by the servicing veterinarians post-operative protocol. The keeper/owner shall be responsible
224 for the payment of any additional fees for procedures mutually agreed upon and administered by the veterinarian that are not
225 covered under this Program.

226 C. To receive reimbursement for procedures performed, the participating veterinarian shall submit an animal sterilization
227 form signed by the owner of the dog or cat and the veterinarian together with a copy of the completed Spay/Neuter Fund Certificate
228 to the Administrator.

229 D. The current rabies forms shall be revised in such a manner as to create an area for recording a serialized tag number
230 for purposes of accountability.

231 E. This process shall also apply to all inoculations clinics except that it shall also be the responsibility of the organization
232 conducting the clinic to maintain copies of the certificates for a minimum of 12 months after the expiration date of the vaccination.

233 F. In addition to that which is already established by law, a copy of the rabies registration form shall be generated and
234 provided to the Program's Administrator. The Administrator's copy shall be utilized for establishing and maintaining a database for
235 enforcement, performance review analysis and tax credit reporting purposes.

236 § 8224. VETERINARIAN SERVICES TAX CREDIT.

237 A. For taxable years beginning on or after January 1, 2008, any veterinarian who performs spaying or neutering
238 procedures in accordance with the terms and conditions established under this Subchapter on animals that have been held in public
239 shelters or in § 501(c)(3) shelters shall be entitled to a credit against the tax levied pursuant to Title 30 of the Delaware Code. The
240 amount of the allowable credit shall be \$50 for each combined spay/neuter and rabies inoculation procedure performed and shall not
241 exceed the taxpayer's annual tax liability.

242 B. The total number of allowable tax credits available statewide for the Program set forth in this Subchapter shall not
243 exceed 5,000 tax credits or \$250,000 per calendar year.

244 C. The tax payer shall submit proof of the number of applicable procedures performed in the taxable year based on
245 information requirements established by the Tax Commissioner that are explained in the income tax return instructions.

246 D. The Administrator shall compile a listing of the number of spay/neuter procedures performed each year by each clinic
247 and each veterinarian and shall provide a copy of same to the Performance Review Committee.

248 E. The Administrator shall compile a listing of the number of tax credits assigned to each veterinarian during the
249 preceding tax year and report same to the Department of Revenue on or before February 28th of the following tax year.

250 § 8226. PERFORMANCE MEASUREMENT.

251 Performance measurement is necessary to determine the success of the Program and to assess if any changes in the
252 Program should be made.:

253 A. To measure the performance of this Program, the Administrator shall establish a standardized statewide yearly
254 reporting system for the following:

- 255 (1) the number of spay/neuter surgeries; and
256 (2) the number of rabies inoculations performed pursuant to this Subchapter; and
257 (3) cat and dog shelter intake statistics; and
258 (4) euthanasia statistics; and
259 (5) such other criteria as the Administrator shall find necessary for the purposes of performance review analysis.

260 B. Performance Review Committee: For purposes of this Section, the 'Committee' shall mean a committee comprised of
261 the following 13 representatives:

- 262 (1) The Secretary of the Department of Agriculture or the Secretary's designee, which person shall also act as
263 Chairperson of the Committee;
264 (2) A representative of the Delaware Division of Public Health, Rabies Control or designee;
265 (3) The President of the Delaware Veterinary Medical Association or the President's designee;
266 (4) A representative of the Delaware SPCA;

267 (5) A representative of the Kent County SPCA;
268 (6) A representative of Faithful Friends;
269 (7) A representative of the Delaware Humane Association; and
270 (8) The following representative of animal rescue organization not cited above, one (1) from New Castle County, two
271 (2) from Kent County and (3) three from Sussex County to be appointed by the Secretary of the Department of Agriculture.
272 C. The Performance Review Committee shall meet as often as is necessary at times and in locations specified by the
273 Chairperson. The Performance Review Committee shall issue recommendations to the Department of Agriculture as often as the
274 Chairperson deems necessary, but no less often than annually.
275 D. Subject to and in accordance with Robert's Rules of Order, a quorum shall consist of 51% of the Performance Review
276 Committee's membership and actions by the Committee may only be taken by majority vote of those members present. The
277 members shall receive no compensation for their services.”

SYNOPSIS

Through the creation of a new subchapter this legislation establishes and implements a mandatory pre-adoption spay/neuter program for cats and dogs and a spay/neuter fund. In so doing, the Bill addresses the scope of compliance, eligibility requirements for participation in the spay/neuter fund program, veterinarian participation enhancements, fiscal impact limitations, veterinarian reimbursement, violations, penalties, enforcement, penalty disbursements, program administration expenses and caps and performance measurements and reviews.