SPONSOR: Sen. Blevins & Sen. Peterson, & Rep. Jaques, & Rep. K. Williams
Sens. Ennis, Henry, Marshall, McBride, Sokola, Townsend, Venables; Reps. Baumbach, Bennett, Brady, Hudson, Keeley, Miro, Osienski, Paradee, Ramone, B. Short, M. Smith, Smyk

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 201
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 3, 16, AND 21 OF THE DELAWARE CODE RELATING TO THE HUMANE KILLING OF ANIMALS HELD IN SHELTERS, ANIMAL POPULATION CONTROL PROGRAM AND SPAY/NEUTER FUND, ANIMAL WELFARE LICENSE PLATES, AND AUTHORITY OF THE DEPARTMENT OF AGRICULTURE.

WHEREAS, the Animal Welfare Task Force, established by Senate Concurrent Resolution 44 of the 146th General Assembly, recommended the establishment of a State Office of Animal Welfare under the Department of Health and Social Services to carry out recommendations of the Task Force; and,

WHEREAS, the Office of Animal Welfare was established through 2014 budget appropriations to coordinate programs, standards, and oversight to protect our state's animals and ensure best practices with public health and safety as outlined by the Animal Welfare Task Force recommendations; and,

WHEREAS, The Delaware Department of Agriculture is responsible for the oversight, protection, health and welfare of domesticated commercial animal species utilized in agricultural and related practices;

NOW, THEREFORE:

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

Section 1. Amend Title 3 and Title 16 of the Delaware Code by transferring Chapter 80 of Title 3 to Title 16, and by redesignating present §§ 8001 through 8007 of Title 3 as §§ 3001E through 3007E of Chapter 30E, Subchapter 1, of Title 16, and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 30E. Animals Held in Shelter

§ 3001E. Definitions.

For purposes of this ~~chapter~~ subchapter:

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"Department" means the Department of Health and Social Services or its duly authorized representatives.

§ 3004E. Euthanasia in animal shelters.

(d) Euthanasia method and procedure. —

(1) The Department shall promulgate regulations regarding acceptable methods of euthanasia in animal shelters and regarding sanitation and ventilation of euthanasia areas. The methods included shall be approved or conditionally approved by the most recent American Veterinary Medical Association Guidelines on Euthanasia.

(2) Under no circumstances shall carbon monoxide or carbon dioxide be used as a method of euthanasia.

(3) Any animal shelter performing euthanasia shall have a current policy and procedure manual regarding euthanasia. The policy and procedure manual shall set forth the shelter's equipment, process, and the procedures for individual separation of animals.

(4) Notwithstanding the provisions of Chapter 33 of Title 24, euthanasia must be performed by:

a. A licensed veterinarian;

b. A nationally certified euthanasia technician;

c. A licensed veterinary technician; or

d. A person certified by a licensed veterinarian, after passing both a written and practical examination, as proficient to perform euthanasia. Training and certification requirements shall be established by Department regulation in consultation with the Delaware Board of Veterinary Medicine.

(5) If euthanasia is by injection, animals in an animal shelter that are amenable to being controlled shall be lowered to the surface on which they are being held and shall not be permitted to drop or otherwise collapse without support.

(6) The trained staff member performing the euthanasia in animal shelters shall remain in attendance between the time procedures to euthanize the animal are commenced and the time death occurs, and shall verify death has occurred using methods to be determined by regulation.

(7) Sodium pentobarbital may be obtained by an animal shelter with required federal and state permits.

§ 3008E. Enforcement.

(a) The Department shall adopt rules and regulations as may be necessary for the protection and care of companion animals in animal shelters, as defined in this subchapter.

(b) The Department will conduct at least annual inspection of every animal shelter.

(c) The Department or its duly authorized representative(s) shall have the power to enter at all reasonable times, during ordinary business hours, upon any private or public animal shelter for the purpose of determining whether or not there is compliance with or violations of this subchapter, rules, and regulations thereunder.

(d) Upon request of the Department, animal shelters shall make available records concerning the requirements of this subchapter.

(e) All findings will be documented in writing and a copy provided to the animal shelter within 30 days. Once provided to the animal shelter, the documentation will also be posted on the Department Web site. Deficiencies must be corrected within the timeframe established by the Department.

(f) The Department shall have the power to issue orders to correct deficiencies and to impose penalties pursuant to § 107(a) of this title.

(g) The animal shelter management has the right to appeal the results of the inspection. If the opinion of the animal shelter management is in conflict with the inspection, the animal shelter management may request a review of the inspection by the Department. The appeal will be made in writing and submitted within 30 days after publication of the findings. After receipt of the appeal, the Department will have 60 days to respond in writing.

(h) The Department shall conduct an investigation upon receipt of a complaint of alleged violations of this subchapter.

(1) Anyone desiring to file a complaint against any animal shelter shall file a written complaint with the Department. All complaints shall be reviewed and complaints concerning violations of this chapter will be investigated by the Department or its designee. The Department shall notify the animal shelter of the complaint within 30 days of receipt of said complaint. The Department shall be responsible for issuing a final written report of violations of this subchapter to the animal shelter. Once the final report is issued to the animal shelter, the report will also be posted to the Department Web site at the conclusion of the proceedings.

(2) The animal shelter management may, in writing to the Department, request a hearing if they wish to contest the findings of the investigation. The appeal will be made in writing and submitted within 30 days after publication of the findings. Within 30 days of receipt of the request for public hearing, the Department shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, and the Freedom of Information Act, Chapter 100 of Title 29.

Section 2. Amend Title 3 of the Delaware Code by transferring Chapter 82, Subchapter 2 of Title 3, to Title 16, and by redesignating present §§ 8214 through 8225 of Title 3 as §§ 3010E through 3021E of Chapter 30E, Subchapter 2, of Title 16 and by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3013E. Definitions.

"Administrator" -- Department of ~~Agriculture.~~ Health and Social Services.

§ 3017E. Enforcement, violations and penalties.

(a) The administrator shall adopt regulations pursuant to this ~~chapter~~ subchapter relative to:

(1) Format and content of all forms required under this ~~chapter~~ subchapter.

(2) Proof of eligibility under ~~§ 8219~~ § 3015E of this title.

(3) Administration of the Fund established under ~~§ 8222~~ § 3018E of this title.

(4) Any other matter necessary for the administration or enforcement of the Animal Population Control Program and Spay/Neutering Fund established under this subchapter.

§ 3021E. Performance measurement.

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

(2) The Performance Review Committee shall be reinstated as the Spay/Neuter Performance Review Committee (the Committee). ~~For purposes of this section, the "Committee" shall mean a committee comprised of the following 14 representatives:~~. The Committee shall consist of the following members or their respective designees:

a. The Secretary of the Department of ~~Agriculture or the Secretary's designee, which person~~ Health and Social Services, shall serve as an *ex officio* non-voting member and shall also act as Chairperson of the Committee;

b. ~~A representative of the~~ The Director of the ~~Delaware~~ Division of Public Health, or a designee having knowledge in the area of Rabies Control ~~or designee~~;

c. The President of the Delaware Veterinary Medical Association ~~or the President's designee~~;

d. The President of the ~~A representative of the Delaware SPCA [~~ Board of Directors of the First State Animal Center - Delaware Society for the Prevention of Cruelty to Animals~~]~~;

e. ~~A representative of the Kent County~~ The President of the Board of Directors of the First State Animal Center-SPCA;

f. ~~A representative of~~ The President of the Board of Directors of Faithful Friends Animal Society;

g. ~~A representative~~ The President of the Board of Directors of the Delaware Humane Association;

h. ~~A representative of the Delaware~~ The Director of the Division of Social Services; and

i. ~~The following representative of animal rescue organization no cited above, 1 from New Castle County, 2 from Kent County and 3 from Sussex County to be appointed by the Secretary of the Department of Agriculture.~~ Six additional members appointed by the Chairperson, including two members from each county, each of whom shall be a veterinarian or a representative of an animal rescue organization not cited above.

(3) The ~~Performance Review Committee~~ Chairperson shall ~~meet~~ schedule Committee meetings as often as is necessary ~~at times and in locations specified by the Chairperson~~. The ~~Performance Review~~ Committee shall issue recommendations to the Department of ~~Agriculture~~ Health and Social Services as often as the Chairperson deems necessary, but no less often than annually. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least ½ of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from the Committee and a replacement shall be appointed by the Chairperson.

(4) Subject to and in accordance with Robert's Rules of Order, a quorum shall consist of 51% of the ~~Performance Review~~ Committee's membership and actions by the Committee may only be taken by majority vote of those members present. The members shall receive no compensation for their services. The Committee is authorized to adopt such rules and procedures as may be necessary or convenient to accomplish the purposes set forth in this subchapter, including without limitation, the adoption of conflict of interest rules.

Section 3. Amend § 2139F, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2139F. Special animal welfare license plates.

(g) For purposes of this section, the "Fund Committee" shall consist of the following ~~5~~ 6 persons or their respective designees:

(1) The Secretary of the Department of ~~Agriculture~~ Health and Social Services, ~~or the Secretary's designee~~ which person shall also act as chairperson of the committee and shall serve as an exofficio non-voting member;

(2) ~~A representative~~ The President of the ~~Kent County~~ First State Animal Center-SPCA Board of Directors;

(3) ~~A representative~~ The President of the Delaware SPCA Board of Directors;

(4) ~~A representative~~ The President of the Delaware Humane Association Board of Directors;

(5) The President of the Faithful Friends Animal Society Board of Directors; and,

~~(5)~~ (6) The President of the State Veterinary Board ~~or the President's designee~~.

The Fund Committee shall meet as often as is necessary at times and in locations specified by the chairperson. The Fund Committee shall issue recommendations to the Department of ~~Agriculture~~ Health and Social Services as often as the chairperson deems necessary but no less often than annually. Three members shall comprise a quorum and actions by the committee may only be taken by majority vote of those members present. The members shall receive no compensation for their services. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least ½ of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from the Fund Committee and a replacement shall be appointed by the chairperson. The Fund Committee is authorized to adopt such rules and procedures as may be necessary or convenient to accomplish the purposes set forth in this section, including without limitation, the adoption of conflict of interest rules.

Section 4. Amend § 101, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 101. Powers.

The Department of Agriculture may:

~~(8) Exercise authority to make rules and regulations covering the possession, control, care and maintenance of ostriches, emus or rheas domesticated and confined for commercial farming purposes; specifically excluding ostriches, emus or rheas that are kept and maintained primarily for exhibition purposes;~~

~~(9) Exercise authority to make rules and regulations covering the possession, control, care and maintenance of deer, elk, llamas, alpacas or any other species of the cervidae or camilid families domesticated and confined for commercial farming purposes. Members of these two families kept for exhibition purposes would not be exempt from these regulations; and~~

(8) Exercise authority and make and adopt regulations covering the possession, control, care, and maintenance of, and take measures necessary to control disease in and ensure the welfare of, the following domesticated species: poultry and livestock, including but not limited to bovine, camilid, cervidae, equine, swine, ruminants, ratites, rabbits, poultry, and other animals harvested for food, fiber, fur or leather ;

(9) Devise and execute measures necessary to mitigate disease occurrences in animal species, if such disease is able to affect poultry or livestock, or is capable of causing disease in humans. For rabies refer to Del. C., Title 3, Chapter 82.

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