

CHANNELING CRUELLA DE VIL: AN EXPLORATION OF PROPOSED AND IDEAL REGULATION ON DOMESTIC ANIMAL BREEDING IN CALIFORNIA

I. INTRODUCTION

Imagine this familiar scene: the puppy looks at you through the glass, cocking her head from side to side as you admire her. You briefly consider that it seems cruel for the pet store to keep such a large Labrador puppy in such small cage, but this thought leaves your mind as the clerk takes her out for you to play with. As you pay the store's inflated prices and take your puppy home, you never consider where your new friend came from or her life before the pet store. However, the truth might shock you.

A majority of puppies that are sold at pet stores come from facilities known as puppy mills,¹ which have been referred to as “concentration camps for dogs.”² These places create many different problems for animals³ and society.⁴ Not only are these puppies less healthy than other dogs,⁵ but the overall care of the breeding animals is substandard.⁶ Fur-

¹ *Puppy Mills, Pet Shops, and The AKC Basic Facts*, FRIENDSOFANIMALS.ORG, <http://www.friendsofanimals.org/programs/spay-neuter/puppy-mills-pet-shops-the-akc-basic-facts.html> (last visited Sept. 27, 2010).

² *Puppy Mill Breeding Dogs*, SOSDOGS.ORG, <http://www.sosdogs.org/mill-dogs.html> (last visited Sept. 27, 2010). See e.g., *Puppy Mills: Holocaust for the 21st Century*, DOGS-CENTRAL.COM, http://www.dogs-central.com/puppy_mills.htm (last visited Sept. 27, 2010).

³ See generally *Puppy Mills*, HUMANE SOCIETY.ORG, http://www.humane-society.org/issues/puppy_mills/ (last visited Sept. 27, 2010); *Pet Overpopulation*, HUMANE SOCIETY.ORG, http://www.humanesociety.org/issues/pet_overpopulation/ (last visited Sept. 27, 2010).

⁴ “California’s tax payers pay over a quarter of a billion dollars every year in order to provide housing and ultimately euthanize dogs and cats in shelters.” *The Truth About SB 250*, YESONSB250.COM, <http://www.yesonsb250.com/sb250-home.php> (last visited Dec. 10, 2010).

⁵ See *Puppy Mills*, *supra* note 3.

⁶ *Id.*

thermore, as pet overpopulation grows, government resources are strained as millions of dogs enter shelters each year.⁷ As awareness of this problem increases, so do the number of jurisdictions attempting to create laws to curb it.⁸

The purpose of this Comment is to examine the regulation of breeding facilities in California and compare it to other states, and to ultimately come to a conclusion on a proposed regulation. It will discuss Federal law, California law, and a proposed Assembly Bill that was vetoed by Governor Schwarzenegger in 2009.⁹ Through an assessment of the proposed bill, the reasons for the Governor's veto, and similar successful and unsuccessful legislation in other states, this Comment will devise a rule that will curtail the problems created by puppy mills, while taking into account the Governor's concerns.

II. PUPPY MILL BACKGROUND

Puppy mills are large-scale breeding operations that produce puppies for profit like a cash crop.¹⁰ They appeared after World War II when fallow ground made producing crops much more difficult and farmers sought new ways to earn money.¹¹ Puppies were bred in a similar manner to the way that farm animals and crops were raised, but farmers did not have the specific knowledge of domestic animal breeding or the skill to raise pets.¹² At this same time, large-scale chain stores began selling puppies in pet departments, and pet stores were introduced as the supply and demand for puppies grew.¹³

Historically and modernly, the emphasis of these facilities has been on income, rather than on the health of the puppies or the breeding dogs,¹⁴

⁷ *Pet Overpopulation*, *supra* note 3.

⁸ Rebecca F. Wisch, *Table of State Laws Concerning Breeders, Kennels, and Pet Dealers*, ANIMAL LEGAL AND HISTORICAL CENTER (2009, updated 2010) <http://www.animallaw.info/articles/ovuspupmilttable.htm> (last visited Sept. 27, 2010). *See, e.g.*, VA. CODE ANN. § 3.2-6507.2 (West 2010); S.B. 5651, 61st Leg. Assemb. Reg. Sess. (Wash. 2009); Assemb. B. 250, 2009 (Wis. 2009).

⁹ Assemb. B. 241, 2009 (Cal. 2009) (vetoed).

¹⁰ *What is a puppy mill*, ASPCA.ORG, <http://www.aspc.org/fight-animal-cruelty/puppy-mills/what-is-a-puppy-mill.aspx> (last visited Dec. 22, 2010) [hereinafter ASPCA.ORG].

¹¹ *What IS a Puppy Mill?*, AMERIDOGS.COM, <http://www.ameridogs.com/PuppyMill.htm> (last visited Sept. 27, 2010) [hereinafter AMERIDOGS.COM].

¹² *Id.*

¹³ *Id.*

¹⁴ *See* SANDRA CHORON & HARRY CHORON, *PLANET DOG: A DOGLOPEDIA* 215 (Houghten Mifflin Books, 1st ed. 2005).

and the conditions in puppy mills reflect this mentality.¹⁵ Some facilities place the young animals in wire cages stacked on top of each other to minimize the cleanup of waste, and these puppies may never go outside, run, or play.¹⁶ Often these puppies do not survive or have serious health and personality defects, such as heart and kidney disease and fear of people.¹⁷ These defective animals are sold either indirectly through dealers to pet stores, or directly to the buyer.¹⁸ When they are sold to pet stores, the sick puppies are kept in the back of the store where they will not taint the customer's opinions of the puppies that appear healthier.¹⁹ Some of these sick animals survive and others do not, but they are given very little, if any, veterinary care during this process.²⁰

Aside from the atrocious conditions at the puppy mills themselves, the industry exacerbates problems in pet control.²¹ These large-scale breeding facilities have the ability to produce many more puppies per year than can be placed in homes,²² especially considering that between six to eight million dogs and cats enter shelters every year.²³ Of these, only half are placed in homes, and the shelters have no choice but to euthanize the rest.²⁴ Any method to reduce the amount of dogs and cats bred per year would have the dual effect of preventing these animals from ending up on the streets and inspiring more adoption from shelters and purchases from legitimate breeders.

Legitimate breeders fall into two categories.²⁵ The first are professional, longtime breeders, who maintain very high standards of cleanliness and care for their animals.²⁶ The second are backyard breeders, who operate on a smaller scale and generally keep the breeding female as a pet.²⁷ Both types of legitimate breeders generally rear, at most, two dif-

¹⁵ *What is a Puppy Mill*, *supra* note 10.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Puppy Mills, Pet Shops, and The AKC Basic Facts*, *supra* note 1. See CHORON, *supra* note 14, at 215.

¹⁹ See BARBARA J. WREDE, BEFORE YOU BUY THAT PUPPY 48 (Barron's Educational Series, Inc., 1st ed. 1994).

²⁰ *Id.*

²¹ See generally *Pet Overpopulation*, *supra* note 3.

²² *Id.*

²³ *Id.*

²⁴ See *Id.*

²⁵ Compare WREDE, *supra* note 19, at 39, and OFF. OF ASSEMBLYMAN NAVA, ASSEMBLY BILL 241 (PEDRO NAVA) RESPONSIBLE BREEDER ACT OF 2009 at 1-2, available at http://democrats.assembly.ca.gov/members/a35/top_story/pdf/AB241PuppyMillsFactSheet.pdf (last visited October 5, 2010) (on file with author).

²⁶ See WREDE *supra* note 9, at 41.

²⁷ See *id.* at 44.

ferent breeds of dogs, and they provide a much greater level of care and attention to the breeding animals and their puppies.²⁸

In order to outline criteria for legitimate small-scale dog breeders, California enacted the Polanco-Lockyer Pet Breeder Warranty Act, California Health & Safety Code sections 122045 through 122315.²⁹ These sections define a breeder as “a person, firm, partnership, corporation, or other association that has sold, transferred, or given away all or part of three or more litters or 20 or more dogs during the preceding 12 months that were bred and reared on the premises....”³⁰ This Act requires certain disclosures by the breeder to the purchaser,³¹ and prohibits the breeder from falling below accepted standards of care and cleanliness.³² The act also specifically prohibits housing dogs or puppies primarily on wire flooring,³³ which is a common practice in puppy mills.³⁴ Enforcement of this law in California is often lax or non-existent, allowing these problems to continue.³⁵

In fact, this act has become known as the “Puppy Lemon Law.”³⁶ Section 122070 allows for the return of a puppy to the breeder for the full purchase price, applicable sales tax and reasonable veterinary fees when a veterinarian diagnoses the puppy with any congenital or hereditary condition.³⁷ This condition must have existed prior to the sale and presented itself within fifteen days after the sale.³⁸ Although this section

²⁸ See generally *id.* at 39-49.

²⁹ CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

³⁰ *Id.* § 122045.

³¹ *Id.* § 122050.

³² *Id.* § 122065.

It shall be unlawful for a breeder to fail to do any of the following: (a) Maintain facilities where the dogs are kept in a sanitary condition. (b) Provide dogs with adequate nutrition and potable water. (c) Provide adequate space appropriate to the age, size, weight, and breed of dog. For purposes of this subdivision, "adequate space" means sufficient space for the dog to stand up, sit down, and turn about freely using normal body movements, without the head touching the top of the cage, and to lie in a natural position. (d) Provide dogs with a rest board, floormat, or similar device that can be maintained in a sanitary condition. (e) Provide dogs with adequate socialization and exercise. For the purpose of this article, "socialization" means physical contact with other dogs and with human beings. (f) Wash hands before and after handling each infectious or contagious dog. (g) Provide veterinary care without delay when necessary.

³³ *Id.* § 122065.5 (“It shall be unlawful for a breeder to primarily house a dog on wire flooring.”).

³⁴ See WREDE, *supra* note 19, at 47.

³⁵ See generally OFF. OF ASSEMBLYMAN NAVA, *supra* note 25.

³⁶ David Colker, *Sickly Puppies Can Be Returned*, L.A. TIMES, Apr. 13, 2008, available at <http://articles.latimes.com/2008/apr/13/business/fi-puppy13>.

³⁷ CAL. HEALTH & SAFETY CODE § 122070 (West 2010).

³⁸ *Id.*

attempts to alleviate some of the problems with selling dogs with health problems, it has not prevented these dogs from being bred and mistreated in the first place.³⁹

Proponents of large scale breeding facilities fear that restrictions on the number of dogs and puppies permitted in these facilities, or further restrictions on conditions, would have the effect of harming the businesses of humane breeders who may also have a larger facility.⁴⁰ Furthermore, though some breeders and breeding associations agree that the traditional idea of a puppy mill is wrong, they are concerned that laws regulating lawful breeding facilities could continue to expand and push them out of business if further regulation created stricter rules.⁴¹

III. DIFFERING APPROACHES, DIFFERING OUTCOMES

A. *The Federal Approach*

The federal government first showed signs of its desire to protect domestic animals with the adoption of the Animal Welfare Act (“AWA”), enacted in 1966.⁴² The original version of the act focused mostly on animals intended for use in research facilities.⁴³ However, as amended in 1970, the scope of the AWA was expanded to include commercial activities.⁴⁴ This amendment provides that “[t]he Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.”⁴⁵ The standards referred to specifically concern the conditions of the places where the animals are kept, as well as their need for exercise and socialization.⁴⁶

Through the Animal Welfare Act, the United States Department of Agriculture (“USDA”) created the Animal and Plant Health Inspection

³⁹ See OFF. OF ASSEMBLYMAN NAVA, *supra* note 25.

⁴⁰ Kathy Sweeney, *Puppy Mill Bill: Opponents Speak Against the Bill*, HEARTLAND NEWS, Apr. 29, 2010, <http://www.kfvs12.com/Global/story.asp?S=12399843>.

⁴¹ See *id.*

⁴² Animal Welfare Act of 1966, 7 U.S.C. §§ 2131 – 2159 (1985) (amended 1970).

⁴³ *Id.*

⁴⁴ Animal Welfare Act of 1970, Pub. L. 91-579, 7 U.S.C.A. § 2131 (1985).

⁴⁵ *Id.*

⁴⁶ *Id.* § 2143(2)(a-b).

[H]andling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals; and...for exercise of dogs, as determined by an attending veterinarian in accordance with the general standards promulgated by the Secretary. . . .

Services (“APHIS”) to inspect and regulate animal breeding facilities.⁴⁷ APHIS requires all entities dealing in animals to be licensed and submit to inspections.⁴⁸ Failure to meet inspection guidelines will subject the facility to the sanctions listed within the AWA.⁴⁹ The AWA provides that when a facility is in violation, the regulating body “may suspend such person’s license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.”⁵⁰ However, enforcement is problematic due to the limited number of inspectors compared to the vast number of facilities to be inspected.⁵¹ It has been estimated that there are approximately 8,300 facilities within the purview of APHIS inspections nationwide and only seventy inspectors.⁵² Based on this discrepancy, it is easy to infer that violators may escape detection.⁵³

Furthermore, the AWA contains an exception when it specifies that the act is only supposed to apply to animal dealers.⁵⁴ Although some large scale breeding facilities do sell their animals through dealers, thus falling within the scope of the AWA, some facilities sell directly to the public and avoid these regulations.⁵⁵ A person looking for a new pet may assume that newspaper ads and Internet sites that directly sell to the public are smaller scale breeders, but, in actuality, function as a more subtle method for large scale puppy mills to market their animals directly to the public.⁵⁶ Although some large-scale breeding facilities do sell their ani-

⁴⁷ *Animal Welfare*, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, http://www.aphis.usda.gov/animal_welfare/index.shtml (last visited Oct. 5, 2010).

⁴⁸ ANIMAL AND PLANT HEALTH INSPECTION SERV., U.S. DEP’T OF AGRIC., THE ANIMAL WELFARE ACT 1, 2 (2002) available at http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awawact.pdf (last visited Oct. 5, 2010).

⁴⁹ *Id.* at 2.

⁵⁰ 7 U.S.C. § 2149 (1985) (amended 1976).

⁵¹ Responsible Breeders Act of 2009, Hearing on A.B. 241 Before the Assemb. Comm. on Pub. Safety, 2009-2010 Sess. (Cal. 2009) [hereinafter *Hearings*] (background).

The U.S. Department of Agriculture is tasked with monitoring and inspecting kennels to ensure that they are not violating the standards of the Animal Welfare Act (AWA). Unfortunately, kennel inspections are a low priority. In the U.S. there are more than 1000 research facilities, more than 2,800 exhibitors, and 4,500 dealers that are supposed to be inspected each year. There are three Animal and Plant Health Inspection Service sector offices with a total of approximately 70 veterinary inspectors who are supposed to inspect, unannounced, the various types of facilities covered by the AWA. This means that 70 inspectors are expected to cover more than 8,300 facilities nationwide.

⁵² *Id.*

⁵³ *See Id.*

⁵⁴ Animal Welfare Act § 2149.

⁵⁵ *See* CHORON, *supra* note 14, at 215.

⁵⁶ Animal Welfare Act of 1966, 7 U.S.C.A. § 2133 (1985) (amended 1970).

mals through dealers, thus falling within the scope of the AWA, some facilities sell directly to the public through newspaper ads and Internet sites.⁵⁷ This distinction within the law prevents the regulation of each facility that might otherwise need to be regulated, creating a loophole.⁵⁸

B. California Legislative Findings

The California legislature specifically addressed the problems created by improper breeding facilities in California Health and Safety Code section 122330.⁵⁹ The section reads,

The Legislature finds and declares all of the following:

(a) Uncontrolled and irresponsible breeding of animals contributes to pet overpopulation, inhumane treatment of animals, mass euthanasia at local shelters, and escalating costs for animal care and control; this irresponsible breeding also contributes to the production of defective animals that present a public safety risk. . . .

(c) It is therefore the intent of the Legislature in enacting this chapter to permit cities and counties to take appropriate action aimed at eliminating uncontrolled and irresponsible breeding of animals.⁶⁰

These sections allow individual cities and counties to regulate breeding; however, having different rules in different areas of the state makes it more difficult for these rules to be enforced and also creates confusion for residents of each city or county. When the rules are different in neighboring towns, it is more difficult for someone to know when they are breaking the law, especially if he or she is purchasing or selling ani-

The term "dealer" 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, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include— (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year;

Animal Welfare Act of 1966, 7 U.S.C.A. § 2132(f) (1985) (amended 1970) (definition of a dealer).

⁵⁷ See CHORON, *supra* note 14, at 215.

⁵⁸ See Animal Welfare Act § 2149.

⁵⁹ CAL. HEALTH & SAFETY CODE § 122330 (West 2010).

⁶⁰ *Id.*

imals in different jurisdictions. Though California Health and Safety Code section 122330 is a great start, a statewide standard is the only way to ensure consistent enforcement.

California law also recognizes the need to prevent cruelty to animals, as California Penal Code section 597.1 clearly demonstrates.⁶¹ This code section punishes the failure to treat animals with “proper care and attention.”⁶² This law further allows animal control to inspect facilities and remove animals that are in danger.⁶³ Although it is clear from these code sections that the California legislature recognizes the problem of irresponsible breeding⁶⁴ and cruelty to animals,⁶⁵ the problem continues.⁶⁶

C. The Proposed California Assembly Bill

With the problems created by puppy mills in mind, Assemblyman Pedro Nava, who represents the 35th District,⁶⁷ introduced Assembly Bill 241 (“AB 241”) in February of 2009.⁶⁸ AB 241 would impose a misdemeanor violation on a person who possesses more than fifty intact⁶⁹ cats and dogs.⁷⁰ Proponents of the bill argued that it would curb the overpopulation problem of dogs and cats, as well as improve the terrible conditions at the breeding facilities.⁷¹ They argued that this bill was necessary as inspections of kennels are not a high priority for the USDA, and

⁶¹ CAL. PENAL CODE § 597.1 (West 2010).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

⁶⁵ PENAL § 597.1.

⁶⁶ OFF. OF ASSEMBLYMAN NAVA, *supra* note 25 at 1-2.

⁶⁷ *Project Vote Smart – Assembly Member Pedro Nava – Biography*, VOTESMART.ORG, http://www.vote-smart.org/bio.php?can_id=29757?q=print (last visited Oct. 6, 2010).

⁶⁸ Assemb. B. 241, 2009 (Cal. 2009) (vetoed).

⁶⁹ In animal breeding, intact means being unspayed or unneutered and being able to reproduce. (“*Of a living body or its parts: having no relevant component removed or destroyed: a: physically virginal b: not castrated.*”) MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/intact> (last visited Oct. 17, 2010).

⁷⁰ Cal. Assemb. B. 241.

This bill would make it a misdemeanor for any person to have more than a combined total of 50 adult unsterilized dogs and cats, in the state, for breeding or raising them for sale as pets, as specified. The bill would also prohibit a business entity, as defined, from having more than a combined total of 50 adult unsterilized dogs and cats, in the state, for breeding or raising them for sale as pets, as specified. The bill would make it a misdemeanor to act in concert with another person or to voluntarily assist a business entity in violating these provisions.

⁷¹ *Hearings*, *supra* note 51, at 5-6 (statements of Humane Society of the United States, Last Chance for Animals and Pet Overpopulation Task Force).

that something further is necessary to control the epidemic of puppy mills.⁷²

Those in opposition to the bill countered that laws already exist that attempt to curb the overpopulation of dogs and cats as well as improve these facilities.⁷³ Therefore, these laws just need to be more strictly enforced.⁷⁴ The opponents argued that creating more legislation, especially one that imposed a criminal penalty, would create more judicial problems and cost more money than the enforcement of preexisting regulations.⁷⁵ Others have also pointed out that there was some vagueness about the age of the animals that were prohibited, and expressed concern that this regulation would include puppies and younger dogs that were only being kept to be evaluated for breeding purposes and those not yet placed in a home.⁷⁶

One individual opponent's example stated that it seems unfair that a facility that had thirty dogs or cats for breeding purposes and two brand new litters of ten to fourteen puppies or kittens under one week old would be in violation of this new law, and, therefore, subject to criminal liability.⁷⁷ This also raises another problem with the bill that opponents observed: larger breeds of dogs, such as German Shepherds, may have anywhere from ten to fifteen puppies in a single litter, while a smaller breed, like a Pomeranian, may only have one or two puppies.⁷⁸ This bill may present unfairness to breeders of each type. For example, while a German Shepherd breeder may fail to be in compliance if they have four litters at the same time, a Pomeranian breeder would be unable to keep the amount of dogs necessary in order to generate the same amount of puppies.⁷⁹

Although AB 241 passed the Assembly and the Senate, it was vetoed on October 11, 2009 by Governor Schwarzenegger.⁸⁰ The Governor's veto message stated, "this measure simply goes too far in an attempt to

⁷² See OFF. OF ASSEMBLYMAN NAVA, *supra* note 25.

⁷³ *Hearings*, *supra* note 51, at 9 (statements of California Responsible Pet Owners Coalition). See CAL. PENAL CODE §597.1 (West 2010); CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

⁷⁴ *Hearings*, *supra* note 51, at 9 (statements of California Responsible Pet Owners Coalition).

⁷⁵ *Id.* at 8 (statements of California Responsible Pet Owners Coalition).

⁷⁶ *Id.* at 7-10 (statements of California Responsible Pet Owners Coalition and Peggy Ruchter).

⁷⁷ See *id.* at 10 (statements of Peggy Ruchter).

⁷⁸ Carmen Battaglia, *Litter Size and Singleton*, BREEDINGBETTERDOGS.COM (2007) at 2, available at http://www.breedingbetterdogs.com/articles/litter_size_and_singleton.php.

⁷⁹ *Hearings*, *supra* note 51, at 10 (statements of Peggy Ruchter).

⁸⁰ *Hearings*, *supra* note 51, at 1 (complete bill history).

address the serious problem of puppy mills.”⁸¹ He also stated that the limit of fifty intact dogs and cats was an “arbitrary cap” that would not resolve the problem that it was directed at solving.⁸² His concern was that this bill would put a criminal penalty on “the lawful activities of reputable breeders, pet stores, kennels, and charitable organizations engaged in raising service and assistance dogs.”⁸³ However, the exact language of the bill emphasized that it would only be a crime to exceed the limit if the purpose of the animals was for “breeding or raising dogs or cats for sale as pets.”⁸⁴ With this in mind, the Governor’s veto message seems inconsistent with the actual language and intent of AB 241.

Assemblyman Nava’s office has a different perspective on the Governor’s rationale behind his veto.⁸⁵ First, although the Governor called the cap on the number of intact dogs and cats “arbitrary,”⁸⁶ this number was arrived at by all three of the sponsors of the bill, The Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals (“ASPCA”) and Social Compassion in Legislation, and it was based upon legislation from twenty-nine different states.⁸⁷ Furthermore, as Jackie Koenig, the Chief of Staff of Assemblyman Nava’s office, pointed out, the bottom line of the veto message seems to hinge on the fear that this measure would criminalize lawful and necessary businesses, such as guide dogs.⁸⁸ However, in reality a majority of guide dog organizations are training facilities that do not sell the animals they train, and therefore, they would not be penalized by this law.⁸⁹ Koenig’s con-

⁸¹ Memorandum from Arnold Schwarzenegger, Governor of the State of California, to Members of the California State Assembly, (Dec. 11, 2009) (on file with California State Assembly) (vetoing Cal. AB 241).

I am returning Assembly Bill 241 without my signature. This measure would make it a crime for any person or entity to own or control more than 50 unsterilized adult dogs or cats for breeding or raising for sale as pets. I support measures designed to prevent animal cruelty and that punish persons engaged in the abuse of animals. However, this measure simply goes too far in an attempt to address the serious problem of puppy mills. An arbitrary cap on the number of animals any entity can possess throughout the state will not end unlawful, inhumane breeding practices. Instead this measure has the potential to criminalize the lawful activities of reputable breeders, pet stores, kennels, and charitable organizations engaged in raising service and assistance dogs. For these reasons, I am unable to sign this bill.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Assemb. B. 241, 2009 (Cal. 2009) (vetoed).

⁸⁵ E-mail from Jackie Koenig, Former Chief of Staff, Assemblyman Nava’s office, to author (July 14, 2010, 10:53 PST) (on file with author).

⁸⁶ Memorandum from Arnold Schwarzenegger, *supra* note 81.

⁸⁷ E-mail from Jackie Koenig, *supra* note 85.

⁸⁸ *Id.*

⁸⁹ *Id.*

cern is that the Governor's veto was not motivated entirely by his concern for lawful business, but rather by the animal breeding lobby, which she calls "quite powerful with far-reaching ties and influences."⁹⁰ Koenig's apprehension is that the Governor's true reasoning may be more political, and that future legislation may suffer a similar fate, even with changes to the specifics of the law.⁹¹

D. Other Jurisdictions with Failed or Pending Laws

Other states have failed in their attempts to pass different versions of laws aimed at controlling pet breeding.⁹² In Arkansas, a Senate Bill died when the state legislature adjourned.⁹³ This bill would have required licenses for owners of twelve or more dogs or cats, but also required that owners of twenty-four or more dogs or cats post a bond to help pay the costs of the irresponsible breeding by other facilities.⁹⁴ This bill added an extra element of high expense to the breeders, while not specifically addressing the negative effects of breeding facilities.⁹⁵

The Missouri Dog Breeding Regulation Initiative or Proposition B, appeared on Missouri's ballot in November of 2010 and was approved.⁹⁶ This law would require certain minimum standards for care, as well as prohibit any breeder from "having more than 50 breeding dogs for the purposes of selling their puppies as pets."⁹⁷ This law reads very similarly to AB 241, and it has been met with similar support and criticisms.⁹⁸ However, Missouri has been referred to as the "puppy mill capitol" based on the prevalence of such facilities in that state, and therefore the aware-

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *See, e.g.*, S.B. 864, 87th Gen. Assemb., Reg. Sess. (Ark. 2009) (unenacted).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Ballot Issues - Official Election Returns*, STATE OF MISSOURI, <http://www.sos.mo.gov/enrweb/ballotissueresults.asp?eid=300> (last visited Nov. 9, 2010).

⁹⁷ *2010 Ballot Measures*, SOS, MISSOURI, <http://www.sos.mo.gov/elections/2010ballot/> (last visited Nov. 9, 2010).

Shall Missouri law be amended to: require large-scale dog breeding operations to provide each dog under their care with sufficient food, clean water, housing and space; necessary veterinary care; regular exercise and adequate rest between breeding cycles; prohibit any breeder from having more than 50 breeding dogs for the purpose of selling their puppies as pets; and create a misdemeanor crime of "puppy mill cruelty" for any violations?

⁹⁸ *See* Kathy Sweeney, *Puppy Mill Bill: Proponents speak about the bill*, KFVS12, April 29, 2010, <http://www.kfvs12.com/Global/story.asp?S=12399481>.

ness of the problem may have led to the approval of this bill.⁹⁹ However, even so, opponents of the bill immediately began efforts to change or repeal the bill mere days after the election.¹⁰⁰

E. The Successful Approaches of Other States

Many states require breeders with a certain numbers of dogs to be licensed and pay licensing fees.¹⁰¹ Although some states do not have a cap on the number of dogs that a breeding facility can maintain, they increase their licensing fees based on the total number of breeding dogs.¹⁰² Additionally, other states that may or may not require licensing insist on inspections, anywhere from every six months¹⁰³ to every two years.¹⁰⁴

Colorado has established the Pet Animal Care Facilities Act Program (“PACFA”) to manage the state’s inspections.¹⁰⁵ PACFA recognizes that there are high volumes of animal breeding facilities that would fall within the scope of their inspections and have instituted a risk-based inspection system.¹⁰⁶ In Colorado, when a facility is licensed, they are assigned a ranking of high, medium or low risk, and inspections are conducted anywhere from every six months to every two years, depending on the facility’s risk factor.¹⁰⁷

Four states have already passed laws with caps on the number of intact dogs and cats.¹⁰⁸ Louisiana law prohibits any person or business from possessing more than seventy-five dogs or cats for the purposes of breeding over the age of one year,¹⁰⁹ while Virginia, Washington, and Wisconsin each prohibit facilities from having fifty or more intact dogs for

⁹⁹ Jack Wagman, *La Russa, Kit Bond’s Wife Endorse Anti-Puppy Mill Measure*, STLTODAY, May 10, 2010, 3:33pm, http://www.stltoday.com/news/local/govt-and-politics/political-fix/article_4288b6b9-492f-55dd-8d83-1bb7d40fd04c.html.

¹⁰⁰ Justin Kendall, *Lawmakers already looking for ways to weaken puppy mill law. . . just days after voters passed it*, PITCH, Nov. 4, 2010, 4:30pm, http://blogs.pitch.com/plog/2010/11/lawmakers_looking_weaken_puppy_mill_law.php.

¹⁰¹ See, e.g., CONN. GEN. STAT. ANN. § 22-342 (West 2010); 3 PA. STAT. ANN. § 459-206 (West 2010).

¹⁰² See, e.g., CONN. GEN. STAT. ANN. § 22-342 (West 2010); 3 PA. STAT. ANN. § 459-206 (West 2010).

¹⁰³ N.H. REV. STAT. ANN. § 437-8 (West 2010).

¹⁰⁴ Assemb. B. 250, 2009 (Wis. 2009).

¹⁰⁵ *Pet Animal Care Facilities Program*, COLORADO.GOV, <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1167928256523> (last visited Oct. 10, 2010).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ LA. REV. STAT. ANN. § 2772 (2010); VA. CODE ANN. § 3.2-6507.2 (West 2010); H.B. 2470; 75th Leg. Assemb. (Or. 2009); Assemb. B. 250, 2009 (Wis. 2009).

¹⁰⁹ LA. REV. STAT. ANN. § 2772 (2010).

breeding.¹¹⁰ Wisconsin clarifies its law by defining a dog breeder as “a person who sells 25 or more dogs in a year that the person has bred and raised, excepting that ‘dog breeder’ does not include a person who sells 25 or more dogs in a year...if all of those dogs are from no more than 3 litters.”¹¹¹ This definition provides a helpful threshold, which eliminates fears of breeding associations that breeders of larger dogs will be held to stricter standards solely because their dogs have larger litters.¹¹² Virginia courts have also established an example of disallowing people who are in violation or convicted of animal cruelty from keeping or breeding dogs for a specific time period.¹¹³

F. Washington Findings

When the state of Washington passed its cap on the number of intact dogs a facility may keep,¹¹⁴ the legislature made a number of findings to support its reasoning regarding the necessity of the regulations.¹¹⁵ These findings provide helpful insight to a state’s reasoning for increased management of breeding facilities. Through a provision-by-provision comparison of Washington’s rationale to similar motivations in California, this section will provide further support for the necessity of the proposed rule.

1. Dogs Do Not Grow On Trees

The historical emphasis of puppy mills has been income, and this naturally neglects the emotional attachment that people place on their pets.¹¹⁶ Proponents of puppy mills may argue that, especially in this economy, there is a need for people to be allowed to make a living.¹¹⁷ Profits made from these businesses are significant, as the upkeep costs are relatively low and the number of puppies sold per year is relatively high.¹¹⁸ However, the Washington legislature found the comparison between a dog and a cash crop disturbing when they found that “dogs are neither a

¹¹⁰ VA. CODE ANN. § 3.2-6507.2 (West 2010); S.B. 5651, 61st Leg. Assemb. Reg. Sess. (Wash. 2009); Assemb. B. 250, 2009 (Wis. 2009).

¹¹¹ Assemb. B. 250, 2009 (Wis. 2009).

¹¹² *Hearings*, *supra* note 51, at 10 (statements of Peggy Ruchter).

¹¹³ Tony Gonzales, *Stuaris Draft Dog Breeder Charged with 70 Animal Cruelty Charges*, WSUS, Aug. 28, 2009, http://www2.wsls.com/news/2009/aug/28/stuaris_draft_dog_breeder_charged_with_70_animal_c-ar-371985/.

¹¹⁴ S.B. 5651, 61st Leg. Assemb. Reg. Sess. (Wash. 2009).

¹¹⁵ *Id.*

¹¹⁶ AMERIDOGS.COM, *supra* note 11.

¹¹⁷ ASPCA.ORG, *supra* note 10.

¹¹⁸ *See* AMERIDOGS.COM, *supra* note 11; ASPCA.ORG, *supra* note 10.

commercial crop, nor commodity and should not be indiscriminately or irresponsibly mass produced.”¹¹⁹ This shows that there is a legislative concern for the well-being of the dogs, and emphasizes that they are not to be treated like a commercial crop. The legislature’s main concern, however, may not be solely the emotional well-being of the dogs. As they put it, “indiscriminately or irresponsibly mass produc[ing]” dogs leads back to the problem of overpopulation, which, inevitably, puts a strain on the resources of the community.¹²⁰ Each of these same problems exist in California and are worthy of consideration.¹²¹

2. *The Struggle Between the Well-being of Business and the Well-being of Dogs*

The Washington legislature also found that “large-scale dog breeding increases the likelihood that the dogs will be denied their most basic needs,”¹²² which reiterates the fears of many groups that are fighting puppy mills,¹²³ and relates back to their origins.¹²⁴ Historically, the people operating puppy mills have not had a background in dog breeding and rearing, and, therefore, do not understand the basic care and conditions necessary to ensure that the dogs remain healthy, both mentally and physically.¹²⁵ Furthermore, as the focus is primarily on profit, the fear of the Washington legislature is that “large-scale breeding facilities can easily fall below even the most basic standards of humane housing and husbandry.”¹²⁶ This lack of knowledge of animal husbandry continues today as these large facilities focus more on profit than the conditions of the animals.¹²⁷ These fears are also expressed in California Health and Safety code section 122330, showing that California also has a concern and a desire to protect animals. Logically, if both states acknowledge the problems associated with large-scale dog breeding, both states should attempt to curb the problem. Washington has enacted its law limiting the

¹¹⁹ S.B. 5651, 61st Leg. Assemb., Reg. Sess. § 1(1) (Wash. 2009).

¹²⁰ AMERIDOGS.COM, *supra* note 11.

¹²¹ See OFF. OF ASSEMBLYMAN NAVA, *supra* note 25 at 1-2.

¹²² S.B. 5651 § 1(2). “Large-scale dog breeding increases the likelihood that the dogs will be denied their most basic needs including but not limited to: Sanitary living conditions, proper and timely medical care, the ability to move freely at least once per day, and adequate shelter from the elements;”

¹²³ See generally ASPCA.ORG, *supra* note 10.

¹²⁴ AMERIDOGS.COM, *supra* note 11.

¹²⁵ *Id.*

¹²⁶ S.B. 5651 § 1(3). “Without proper oversight, large-scale breeding facilities can easily fall below even the most basic standards of humane housing and husbandry;”

¹²⁷ See *Puppy Mills*, *supra* note 3.

number of intact dogs and cats permitted at one facility,¹²⁸ which may serve as an example to California.

3. *The Inadequacy of Current State Laws*

The Washington legislature recognized that “current Washington state laws [we]re inadequate regarding the care and husbandry of dogs in large-scale breeding facilities,”¹²⁹ and that “no Washington state agency currently regulates large-scale breeding facilities.”¹³⁰ These findings are not unique to the state of Washington, as California lacks these regulations as well.¹³¹ Prior to enacting its limit on dogs and cats in May of 2009, each Washington county was tasked with making its own dog licensing requirements.¹³² However, like California’s licensing requirements, these regulations did not solve the problems associated with puppy mills. Likewise, no California agency currently regulates these types of facilities. Although the Polanco-Lockyer Pet Breeder Warranty Act takes a step in this direction, its lack of enforcement prevents it from being any type of deterrent for this behavior.¹³³

4. *The Inadequacy of Current Federal Laws*

Washington legislature recognized that the “United States Department of Agriculture does not regulate large-scale breeding facilities that sell dogs directly to the public and thus, such direct-sales breeders are currently exempt from even the minimum care and housing standards outlined in the Federal Animal Welfare Act.”¹³⁴ Based on this area of non-enforcement by the government, and the problems associated with inspecting those facilities that do fall within the AWA, further regulations are necessary on a state-by-state basis to fill in this gap.¹³⁵ Furthermore, APHIS does not have the resources or time to inspect and enforce its regulations on each of the facilities that do fall within its scope.¹³⁶ If each state had its own laws to control puppy mills, enforcement would be

¹²⁸ S.B. 5651, 61st Leg. Assemb. Reg. Sess. (Wash. 2009).

¹²⁹ *Id.* § 1(4).

¹³⁰ *Id.* § 1(5).

¹³¹ CAL. HEALTH & SAFETY CODE § 122330 (West 2010).

¹³² *General Animal Licensing Requirements*, MUNICIPAL RESEARCH AND SERVICES CENTER OF WASHINGTON, <http://www.mrsc.org/Subjects/PubSafe/animal/AnimalLicense.aspx> (last visited Oct. 16, 2010).

¹³³ See generally CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

¹³⁴ S.B. 5651, 61st Leg. Assemb. Reg. Sess. § 1(6) (Wash. 2009).

¹³⁵ 7 U.S.C. § 2149 (1985) (amended 1976).

¹³⁶ See OFF. OF ASSEMBLYMAN NAVA, *supra* note 25 at 2.

easier because the area within the scope of the regulations would be more manageable.

5. *Unsanitary Conditions Have Repercussions on Health and Taxpayers*

Washington legislature further expanded upon the larger societal repercussions of allowing breeding to continue without supervision and regulation.¹³⁷ First, there are numerous health concerns to the animals, and to the public, based on the horrible conditions within the puppy mill facilities.¹³⁸ Excess urine and feces can seep into the groundwater, attract vermin and insects and create a nuisance to neighbors and to the city where the puppy mill is located.¹³⁹ These toxic conditions create disease not only for the animals, but also for anyone who comes in contact with the puppy mill, including the people who work there.¹⁴⁰ Furthermore, the Washington legislature points out the tremendous weight placed on the state's finances for each of the burdens imposed by the overpopulation of dogs within the state.¹⁴¹ From the collection of stray dogs by animal control, to the care and often euthanasia of dogs in shelters, there are many different places that government resources are needed to help in animal control.¹⁴² Each of the concerns listed in the Washington findings are also present in California.¹⁴³

These findings as a whole function similarly to the limited message of California Health and Safety Code section 122330 because they recognize that dogs and cats are being mistreated and need protection.¹⁴⁴ However, Washington elaborated on its concerns and took a step further by enacting the associated legislation.¹⁴⁵

¹³⁷ S.B. 5651 § 1(7-8).

(7) Documented conditions at large-scale breeding facilities include unsanitary conditions, potential for soil and groundwater contamination, the spread of zoonotic parasites and infectious diseases, and the sale of sick and dying animals to the public; and

(8) An unfair fiscal burden is placed on city, county, and state taxpayers as well as government agencies and nongovernmental organizations, which are required to care for discarded or abused and neglected dogs from large-scale breeding facilities.

¹³⁸ See *Puppy Mills*, *supra* note 3.

¹³⁹ S.B. 5651 § 1(7-8).

¹⁴⁰ See *id.*

¹⁴¹ *Id.*

¹⁴² *Pet Overpopulation*, *supra* note 3.

¹⁴³ See OFF. OF ASSEMBLYMAN NAVA, *supra* note 25 at 1-2.

¹⁴⁴ CAL. HEALTH & SAFETY CODE § 122330 (West 2010).

¹⁴⁵ *Id.*

IV. RECOMMENDATION

A. Proposed Guidelines for California

In order to cut down on the numerous problems created by puppy mills, a strict rule is necessary. To be effective, this rule must include four parts: 1) definitions of different classes of breeders; 2) licensing requirements; 3) restrictions on the numbers of puppies sold; and 4) licensing penalties for animal cruelty convictions.

1. Definitions of Different Classes of Breeders

The Polanco-Lockyer Pet Breeder Warranty Act defines a commercial breeder as one who has sold or given away most or all of three or more litters, or twenty dogs, over a year period.¹⁴⁶ However, this does not go far enough in classifying the different levels of breeding facilities that exist in California. For example, three litters for a small dog, such as a Pomeranian, may be only five or six dogs, while twenty dogs for a German Shepherd breeders may only be from two litters.¹⁴⁷ Therefore, California should refer to Colorado State law in recognizing that some breeding facilities require more attention based on their size and scope.¹⁴⁸ If these facilities were defined by their size, rather than just generally as “breeders,” enforcement would be easier to implement.

Colorado defines breeding facilities as high, medium, and low risk, and this is a model that California should adopt when determining how to classify breeders in this state.¹⁴⁹ These classifications then correspond to the frequency of inspections. The higher risk a breeder is determined to be, the more likely that a violation will occur. Therefore, this classification system will identify and prioritize these breeding facilities and aid in enforcement.

2. Licensing Fees

California should implement a sliding scale of licensing fees based on the appropriate category for that breeder. The more dogs that are kept, bred, and sold, the higher these licensing fees should be. This cost would be less for a backyard breeder or hobby breeder that sells a relatively small number of puppies per year, and higher for a larger facility that conducts breeding as a full time business. Therefore, the fee would be

¹⁴⁶ CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

¹⁴⁷ Battaglia, *supra* note 78 at 2.

¹⁴⁸ COLORADO.GOV, *supra* note 105.

¹⁴⁹ *Id.*

reasonable and proportionate to the amount of income generated by the breeder. Unlike the failed proposed law in Arkansas, where the breeders were required to post a bond that would offset government costs for other irresponsible breeders, this recommendation is a simple licensing fee, much like any other business's licensing fees.¹⁵⁰ This fee would not act as a penalty or punishment for other breeders' bad actions.

The concern with the Arkansas bill was that it added an extra cost without addressing the true problem of the conditions of puppy mills.¹⁵¹ This sliding scale would maintain the economic feasibility of breeding, while at the same time possibly addressing the core problem of overproduction of puppies as increased costs may deter larger scale breeding facilities. The fees are crucial to aid enforcement, which is a necessity based on the propensity for these breeding facilities to maintain substandard conditions.

3. *Cap on Puppies Sold*

The Governor's veto and the opponents to AB 241 focused on the problems associated with putting a cap on the number of intact dogs kept for breeding purposes.¹⁵² This law mirrors laws in Washington and Virginia, which have been successful in reducing the number of puppy mills in those states.¹⁵³ However, to assuage the fears of the Governor and breeding associations, it may be prudent to approach a cap on dogs from the perspective of numbers of dogs sold, rather than capping the number of breeding dogs. If the cap was placed instead on the numbers of puppies sold, there would no longer be a disadvantage to breeders of large dogs or smaller dogs. This would also prevent any connection with this law and service animal associations, as these types of organizations do not regularly sell their animals to the public.¹⁵⁴

However, in order to ensure that these laws do not interfere with legitimate organizations, it might be possible to build a sliding scale into the cap on number of puppies sold. For example, if a large breeding facility successfully passed three inspections, the legal number of puppies sold in a year could increase. This option should be used sparingly, however, because inspections would only solve the first problem associ-

¹⁵⁰ S.B. 864, 87th Gen. Assemb., Reg. Sess. (Ark. 2009) (unenacted).

¹⁵¹ *See id.*

¹⁵² *See* Memorandum from Arnold Schwarzenegger, *supra* note 81; *Hearings, supra* note 51, at 7 (statements of PetPAC).

¹⁵³ Gonzales, *supra* note 113.

¹⁵⁴ *See* Memorandum from Arnold Schwarzenegger, *supra* note 81.

ated with puppy mills: mistreatment of animals.¹⁵⁵ The concern of overpopulation and overcrowding in shelters would still exist.

4. *Licensing Penalties for Animal Cruelty Violations*

In May of 2009, a Virginia District Court judge ruled that a man convicted of animal cruelty could not keep or breed dogs for a period of two years.¹⁵⁶ This type of ruling should be included by statute as a penalty for violating puppy mill laws and other animal cruelty statutes. If a person has been convicted of any type of violence or disregard for the well-being of animals, he or she should not be allowed to keep or raise dogs, especially for profit, for a specific time period, determined by, and based upon, the severity of the violation. If the possibility of losing one's ability to keep and breed dogs is implemented as a consequence of failure to conform to puppy mill laws, it would function as an effective method of deterrence. This would help with enforcement of puppy mill laws in reducing their numbers.

B. *Enforcement*

An obvious difficulty in implementing new laws designed to prevent puppy mills is enforcement. Currently, California has a series of laws that are intended to control the conditions at breeding facilities, but these laws are not enforced with consistency.¹⁵⁷ However, enforcement of these existing regulations, with the inclusion of the additional recommended provisions, is essential to limiting the consequences of puppy mills. Although resources are generally a main concern when implementing new laws, money spent on enforcement would eventually be offset by the government resources saved by curbing the drain created by overpopulation. In order to design a system of enforcement and a model for inspections, California can look to the existing Colorado program - PACFA.¹⁵⁸ California may not need to go as far as creating a separate agency for enforcement, but it is necessary to put a greater priority on compelling compliance with existing laws. Though enforcement would be the most difficult hurdle in the process of preventing puppy mills, the dangers and harms that stem from these facilities outweigh any problems of implementation.

¹⁵⁵ See *Puppy Mills*, *supra* note 3.

¹⁵⁶ Gonzales, *supra* note 113.

¹⁵⁷ CAL. HEALTH & SAFETY CODE §§ 122045-122315 (West 2010).

¹⁵⁸ COLORADO.GOV, *supra* note 105.

V. CONCLUSION

Puppy mills are dangerous and harmful businesses to the animals, pet owners, and to society as a whole.¹⁵⁹ The negative effects of unsanitary conditions and overpopulation created by these facilities, coupled with their prevalence, demand that action be taken to put an end to puppy mills. Although it would be an impossible task to eliminate puppy mills with the enactment of one piece of legislation, immediate measures need to be taken to reduce further negative effects of these facilities on society, reputable breeders and the animals themselves. Any movement in the direction of prevention of puppy mills will serve to reduce the number of animals in shelters and being euthanized. By looking at Washington and Colorado as concrete examples, hopefully the California legislature will take positive steps toward introducing new legislation, which solves the problems of AB 241 while keeping its spirit. The proposed guidelines for a new rule outlined in this Comment while starting down the longer road of eliminating them. Action must be taken to come to the aid of those vulnerable dogs that cannot help themselves.

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¹⁵⁹ See *Pet Overpopulation*, *supra* note 3; *Puppy Mills*, *supra* note 3.