

- 2 LEGISLATIVE & REGULATORY NEWS
- 2 CERTIFICATION SEMINAR SCHEDULE
- 3 EDUCATION NEWS



PIJAC: WORKING FOR YOU

Animal Welfare Act Expansion on the Horizon

Unlike the *Puppy Protection Act* (PPA), which had a few relatively straightforward (albeit subjective and punitive) provisions, currently pending legislation to amend the Animal Welfare Act (AWA) would result in complex and dramatic changes to the longstanding federal law. From its inception as a vehicle for regulating the commercial pet trade, the AWA has explicitly distinguished between wholesale and retail activity; the former being subject to federal oversight while the latter was left to state and local regulation. The *Pet Animal Welfare Statute of 2005* (PAWS) would alter that balance and, consequently, has generated significant controversy among the pet owning public. Its proponents say that the bill is intended to address burgeoning dog imports and Internet sales, as well as reaching commercial pet dealers that are escaping current enforcement efforts. But opponents claim the bill would have deleterious affects on people who aren't really engaged in commercial behavior and that elimination of the retail exemption is poor public policy.

The Senate version of this bill, S. 1139, was sponsored by Senators Rick Santorum (R-PA) and Richard Durbin (D-IL) and was assigned to the Committee on Agriculture, Nutrition and Forestry. Representatives Jim Gerlach (R-PA) and Sam Farr (D-CA) introduced a companion bill, H.R. 2669, which was sent to the House Agriculture Committee. The broad intent of the legislation is to modify the current pet dealer definition to bring within the scope



of the AWA many people that are not currently covered, including "high volume" breeders who sell dogs and cats directly to the public and those who import puppies for retail sale, and to enhance enforcement provisions within the Act allowing USDA to go after unlicensed dealers and temporarily suspend licenses in cases of egregious violations. It would also mandate that dealers and retailers maintain records on sources of dogs and cats and make these available to USDA.

Although primary sponsors of the PPA have signed on to the current initiative as well, none of the earlier bill's provisions were included in PAWS. Ironically, while PIJAC was not invited to participate in crafting this bill, the legislation does include provisions relating to injunctive

authority and temporary suspensions that were originally proposed by PIJAC as alternatives to the PPA. PIJAC's strong opposition to the earlier measure was premised on the fact that it would have done little to enhance enforcement and, rather than strengthening welfare standards, would have imposed dubious requirements for which no objective basis even exists.

PIJAC was provided a copy of PAWS shortly before its introduction, but was not given the opportunity to provide comments at that time. Following review of the bill,

continued on page 3

Legislative & Regulatory News

STATE NEWS

Arizona. The legislature adopted **S. 1333**, providing penalties for animal terrorism. Defining such terrorism to include acts intended to “obstruct, impede or deter any person from participating in a lawful animal activity,” the bill was aimed at activists engaged in conduct to disrupt animal research, breeding and selling of pets, and other legal commerce. It was vetoed by the Governor.

California. Having gone through several iterations since its introduction, the bill to legalize ferrets was again amended in July. The cost of evaluating the environmental impact of ferrets (and who pays it) contin-

ues to be at issue. In the latest version of **A. 647**, the department is authorized to “arrange for” preparation of an “initial study” (but not actually conduct the study) to determine whether an environmental impact report is actually necessary. The bill places a \$35,000 cap on use of agency resources for this purpose, and provides that if an environmental impact report is deemed necessary it will be completed “when sufficient private funding is received or sufficient funds are appropriated for that report.”

A. 1428 was initially voted down by committee, but was subsequently granted reconsideration, and has now been carried over to 2006. The measure included findings that “the short but well-documented history of the cloning and genetic modification of animals offers indisputable evidence that technological developments come at great cost to the animals involved” and that marketing of transgenic species “demonstrates predatory marketing practices.” It further sets forth “the intent of the Legislature to prohibit the commercial sale and transfer of cloned or genetically modified pet animals within California.”

Connecticut. H. 5010 was intended to ban the sale of pet store puppies throughout the state. Challenging the proposal, PIJAC pointed out not only the fact that the vast majority of puppies are not sold by pet stores but, further, that very few complaints about pet store puppies are being made. The bill was successfully amended to eliminate the pet store ban and instead require a report on enforcement of existing laws governing the sale of puppies. It has now died in committee.

A bill to prohibit insurance companies from discriminating against homeowners based on the breed of dog owned has died in committee. **H. 6543** was one of several bills introduced nationwide to address the practice of denying policies simply because a pet owner has a specific dog breed. PIJAC will continue to support legislation aimed at ending this type of baseless discrimination.

Although **S. 862**, mandating a review of potentially invasive species and the ban on import of such species, has died the Department of Environmental Protection is con-

ducting a review of import restrictions based on existing statutory standards. A longstanding policy allowing reptile and amphibian imports under a blanket permit is being revised and a new regulation identifying those species requiring a permit, and those for which no permit is required, will be developed. Prior to an actual rulemaking, the department will be making available to the pet trade a list of suggested permitted, non-permitted, and prohibited species. The pet industry, in turn, will be in the position to comment on possible changes to the lists. In the meantime, any species appearing on the non-permitted list may be imported and sold without permit requirements. PIJAC will continue to work with the department to achieve reasonable import standards and an effective final rule on imports.

Iowa. Legislation creating a Commercial Canine Operations Advisory Committee has been held over for the 2006 legislative session. **H. 758** calls for the advisory committee to advise the department of natural resources on adoption of rules regulating commercial canine operations. The bill provides for abolition of the advisory committee on March 1, 2006.

Louisiana. The Department of Agriculture and Forestry adopted an emergency rule amending existing regulations governing testing for pet turtles. “A non-antibiotic effective in killing Salmonella in pet turtles” has been developed, said the department, and therefore the “continued imposition of mandatory testing for Salmonella” is unnecessary. Accordingly, under the emergency rule, Salmonella testing requirements for turtles and eggs were eliminated.

Massachusetts. H. 3566 establishes a statutory warranty allowing pet owners to recover a reimbursement from pet stores for any dog that dies from a “medical condition” within six months of purchase. Adoption of this bill would create the first ever strict liability puppy law, mandating compensation for something wholly unrelated to the quality of the pet animal sold. PIJAC offered testimony before the joint Committee on Municipalities vehemently opposing the measure, which was subsequently sent to a study committee.

2005 CERTIFICATION SEMINAR SCHEDULE

Following is a list of planned seminars. For further information, please visit PIJAC's Website at www.pijac.org.

CANINE

September 21, 2005 – 8:00am-12:00pm

Mandalay Bay Convention Center,
Las Vegas, NV
In conjunction with SuperZoo
West Trade Show

FELINE

September 22, 2005 – 8:00am-12:00pm

Mandalay Bay Convention Center,
Las Vegas, NV
In conjunction with SuperZoo
West Trade Show

October 7, 2005 – 8:00am-12:00pm

Donald E. Stephens Convention Center,
Rosemont, IL
In conjunction with HH Backer Pet
Industry Christmas Trade Show

SMALL ANIMAL

October 8, 2005 – 8:00am-12:00pm

Donald E. Stephens Convention Center,
Rosemont, IL
In conjunction with HH Backer Pet
Industry Christmas Trade Show

Minnesota. Legislation prohibiting a pet shop from possession or sale of an unweaned bird was withdrawn from the Committee on Commerce and sent to the Senate Agriculture, Vets and Gaming Committee. It has now been carried-over to the 2006 session. Under the bill, pet shops would be required to “document the weight of any hand fed bird under one year of age” and maintain records on the health, disposition and age of all birds sold.

New Jersey. AB 2324 was withdrawn from further consideration by the sponsor. Initially the bill would have mandated agency established cage sizes for every animal sold by a pet store. Following objections by PIJAC, the sponsor indicated a willingness to consider changes, and PIJAC offered specific language that would have sharply limit application of the bill. It is anticipated that the sponsor will confer with PIJAC prior to introduction of a new bill.

New York. Multiple bills have been introduced to address concerns arising from a fire in a pet store that resulted in the loss of virtually all the store’s animals. While PIJAC supports reasonable fire protection requirements, it has opposed new mandates that

may be cost prohibitive for pet stores or would require installations not permitted under existing leases. PIJAC is negotiating acceptable language with legislative sponsors.

Rhode Island. PIJAC has supported rational pet warranty laws in several states, but raised questions about a bill that would establish an unusual two-year warranty for congenital or hereditary conditions. **H 6263** is comparable to several state warranty laws in other respects, encompassing provisions intended to protect the seller against fraud or abuse under the statute. The House Committee on Health, Education and Welfare has held the bill over for the 2006 legislative session.

West Virginia. SB 277 would have established an Exotic Animal Regulation Board vested with authority to “establish requirements for the operation of pet shops selling or breeding exotic animals, including standards of care for those animals.” Any animal not qualifying as wildlife or a domestic animal would have been defined as “exotic.” Very few domestic animals could have qualified as domestic under the narrow definition included in the bill. The measure has died in committee. ■

Animal Welfare Act Expansion...

continued from page 1

PIJAC registered opposition to several of its provisions and has maintained frequent interaction with the sponsor’s office regarding the pet industry’s concerns. Indeed, the lead aide to Senator Rick Santorum (R-PA) on PAWS attended a special PIJAC Canine-Feline Committee workshop meeting to explain the intent of the bill and to answer questions about it. By virtue of its new dealer definition, and revised exemption language, PAWS would have the effect of requiring licensure for a disproportionate number of the nation’s pet stores. For example, pet stores falling under the following exclusions in PAWS would become subject to the AWA; anyone:

- ▶ Selling “wild animals.” Wild animals are not defined by the AWA, but a common definition would encompass any species that lives in the wild (even though the actual pet store animal did not come from the wild). Thousands of domesticated, common household pet species fall under this definition.

continued on page 4

Education News

Persons interested in PIJAC’s certification program should visit PIJAC’s Website at www.pijac.org for further information, or phone Nancy Knutson at 202-452-1525. PIJAC congratulates the following individuals who have been certified in their respective fields.

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Richmond, CA
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Osner, Stephanie A.
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Animal Welfare Act Expansion...

continued from page 3

- ▶ Selling "hunting, security, or breeding dogs." This language is currently in the AWA, but relates to an entirely different provision from the retail exemption. Subjecting pet stores to licensure requirements for selling these dogs would constitute a ridiculous anomaly. Firstly, there is no way to know whether a retail customer intends to use a dog for hunting, security, or breeding purposes, as well as keeping the dog as a pet. But further, the only reason that language is in the Act at all is to ensure that pet dealers who *are* subject to the law will also have to be licensed for selling hunting, security or breeding dogs. It would be silly to exempt pet stores and then require them to be licensed for selling this limited class of animals.
- ▶ Breeding animals for sale to the public as pets. This, of course, impacts anyone who deliberately breeds pet animals (not just dogs and cats, but all other warm blooded animals, such as rabbits, hamsters, guinea pigs, etc.). But it also affects pet stores because small animals will frequently breed while they are in a pet store, even though they are not deliberately being bred. And it would apply to anyone breeding **even a single animal** because the 6 litter/25 animal exemption in PAWS applies only to dogs and cats, not other animals.
- ▶ Selling dogs imported from outside the United States, even if they were imported by a USDA licensed dealer who then sold them to a pet store. Under those circumstances, the pet store frequently won't even know the animal was imported. Further, it makes no sense to mandate licensure if the pet store bought these animals from a licensed dealer, any more than it would require the same pet store to become licensed for buying domestically bred dogs from a licensed dealer.

Some of the problems with these exclusions just come from poor drafting, and PIJAC has urged alternative language to deal with them. But it is important to note that these defects in the bill don't just affect pet stores, they apply to anyone. For example, a ten-year old child who breeds a litter of hamsters and sells one to a friend would have to be licensed under federal law if PAWS were enacted in its current form.

PIJAC has also expressed concern about the "source record" requirement because it would apply not only to dealers but also pet stores who aren't under USDA jurisdiction. That provision is intended to allow USDA to identify unlicensed pet dealers who aren't complying with the law. Part of it requires licensed dealers and pet stores to maintain records on "whether the person from whom each dog or cat was acquired is required to be licensed." This is information that cannot reasonably be verified, meaning pet dealers and pet stores could not assure compliance.

Of course, much of the debate surrounding PAWS has been the proposed "threshold" standard; that is, the threshold at which breeders or dealers would become subject to the AWA (those selling more than six litters or more than 25 dogs and cats a year). These so-called "high volume" breeders would need to be licensed whether selling at wholesale or retail. This would replace the "three breeding female" rule currently recognized by USDA, but it would also change the way the breeder exemption operates. Under existing law, retailers are exempt from the AWA, whether they are breeders or not. That standard was upheld by the appellate court in the DDAL lawsuit. Under PAWS, the exemption would be expanded to cover a broader group of breeders, but it would also apply to breeders selling at retail because under PAWS they would be encompassed by the dealer definition (and would have to be licensed unless they meet another exemption).

In a July 27, 2005 statement entered into the Congressional Record, Senator Santorum sought to address some of the concerns about his bill. He noted that "we believe the vast majority of animal dealers are conscientious persons who make every effort to treat their animals humanely and to comply with the law," and went on to speak to issues raised by the rescue and shelter community, as well as hobby breeders who raise cats or dogs in residential settings. Specifically, Senator Santorum emphasized that he intends to make technical corrections to PAWS, and "to clarify some of the bill's language to better reflect our intentions as set forth in this statement."

One provision that apparently is not on the bargaining table is the threshold standard. Other provisions of the Senate bill will be amended during a subcommittee "markup" after the August recess. Ultimately, before a final bill is sent to President

PetLetter

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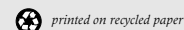
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Bush, any amendments by either the Senate or House of Representatives would have to be reflected in a version passed by both houses, which is not likely to take place until the 2006 legislative session. Adoption of this bill, regardless of its final form, would probably mean the most expansive change to the Animal Welfare Act in decades. ■