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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 4, 1999

Honorable D. Michael Fisher
Attorney General
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Re: IRRC Regulation #59-06 (#1993)
Office of Attorney General
Dog Purchaser Protection

Dear Attorney General Fisher:

Enclosed are our Comments on your proposed regulation #59-06. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact John Jewett at 783-5475.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Douglas P. Yauger
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

OFFICE OF ATTORNEY GENERAL REGULATION NO. 59-6

DOG PURCHASER PROTECTION

MARCH 4, 1999

We have reviewed this proposed regulation from the Office of Attorney General (OAG) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to reasonableness, consistency with statutes, and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 309.1. Definitions. – Consistency with Statute and Clarity.

The proposed language in the definition of “kennel” will limit application of the regulation to breeding kennels. This is inconsistent with both the Dog Law and Act 27 of 1997 (Act 27). The word “breeding” should be deleted from the section’s definition of “kennel.”

The regulation does not define “veterinarian.” Section 9.3(i) of the Unfair Trade Practices and Consumer Protection Law (Law) as amended by Act 27 (73 P.S. § 201-9.3(i)) defines the term as “an individual licensed under the laws of this Commonwealth or any other state to practice veterinary medicine and surgery.” A reference to the statutory definition should be in the regulation. For dog owners living near or along Pennsylvania’s borders, the closest veterinarian may be licensed in another state. This will alert these purchasers that their out-of state veterinarians can perform the diagnosis and certification necessary for recovery under Act 27.

2. Section 309.2. Notice to be posted. – Posting requirements: Consistency with Statute, Reasonableness and Clarity.

Senator Stewart J. Greenleaf, prime sponsor of Act 27, and the Federated Humane Societies of Pennsylvania, Pennsylvania Federation of Dog Clubs, Inc. (PFDC) and Pennsylvania Legislative Animal Network (PLAN) offered three suggestions to improve the notice requirements. These suggestions are consistent with Section 9.3(g)(1) of the Law as amended by Act 27 (73 P.S. § 201-9.3(g)(1)). The Law requires that the notice be “conspicuously posted in the place of business of persons subject to this section.”

First, commentators suggest the regulation include a “minimum size” for the required notice. They recommend a minimum size of 8½ by 14 inches. This is consistent with the sample submitted by the OAG. We recommend that minimum dimensions be set forth in the regulation.

Second, the notice should be posted in a visible location in the store near where the dogs are visible to customers. One pet store reportedly posted the notice near its fish tanks away from where customers viewed and paid for dogs. In addition to requiring that the notice be “easily visible,” the regulation should provide specific directions for the location of the notice. For

example, the notice should be readily visible in areas where dogs are displayed for sale, or where payments are made for dog purchases, such as at the cash register.

Third, notices must be legible. Other agencies set specific minimum standards in regulations for public notices including typeset size. This proposed regulation should include specific minimum standards for typeset size and format.

3. Section 309.2. Notice to be posted. – Format and Structure: Reasonableness and Clarity.

The Pet Industry Joint Advisory Council (PIJAC), PLAN and PFDC express concerns with the clarity of this section. The length and structure of this section cause part of this problem. There are two ways to improve its clarity.

First, this section should be split into two sections: One section for the specific requirements for posting the notice including minimum standards for its size; and the second section for the prescribed contents of the notice.

Another area that could be improved is the format of the notice's contents. The contents include eight paragraphs. The second through seventh paragraphs are marked by bullets "•." The paragraphs would be easier to read and examine if they were numbered.

4. Section 309.2. Notice to be posted. – Contents of Notice: Consistency with Statute, Reasonableness and Clarity.

Several commentators expressed concern that portions of the notice's contents are not entirely consistent with the provisions of Act 27.

Notice - Summary of Act 27

Park City Pet Center contends that the notice should indicate that it is a "summary" of Act 27 and not a complete rendition. If not, customers may be misled. Section 9.3(g)(1) of the Law states that the posted notice is a "summary of the provisions of" Act 27. In addition, Section 9.3(g)(2) requires a seller to provide the purchaser with a written notice summarizing Act 27. It also requires this "hand-out" notice to include the following statement:

THIS DISCLOSURE OF RIGHTS IS A SUMMARY OF PENNSYLVANIA LAW. THE ACTUAL PROVISIONS OF THE LAW ARE IN SECTION 9.3 OF THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.

Including a similar statement in the posted notice should reduce confusion.

First and second bulleted paragraphs: Inconsistency with statute and OAG forms

Both PIJAC and Park City Pet Center expressed concerns with the first two bulleted paragraphs of the notice. These concerns involve substantive differences between Act 27 and the prescribed contents of the notice. The contents of the notice are inconsistent with both a "Guarantee of Good Health" form provided by the OAG and Act 27.

The problems with the notice's first two bulleted paragraphs involve specific requirements in Act 27 for the health record, health certificate and guarantee of good health. The specific requirements for these documents are set forth in Subsections 9.3(a)(1)(i) – (vii), 9.3(a)(2)(i), and 9.3(a)(2)(ii) of the Law, respectively.

These two paragraphs are not entirely consistent with the specific requirements of Act 27. However, rather than repeating the statute, the notice should refer to forms developed by the

OAG. The first bulleted paragraph in the notice could be reduced to two short and simple sentences. The first sentence would remain the same as the proposed regulation. The second sentence would state that the health record must contain the information required by Act 27 in a form developed by the OAG.

The same solution could be used in the second bulleted paragraph. There is no need to provide a detailed description of these documents in the notice if the specific requirements of Act 27 are included in forms provided by the OAG.

Third bulleted paragraph: Veterinarian examination required within ten days

PIJAC expresses concern with the structure of the third bulleted paragraph. Under Act 27, a veterinarian must examine the dog within ten days of purchase for the purchaser to get a refund if the dog is ill or dies. The third paragraph does not clearly state this fact. The notice should state that a purchaser must have a licensed veterinarian examine the dog within ten days of purchase to preserve the right of recovery.

Third bulleted paragraph: Injury or illness after purchase not covered

The third paragraph does not include an important sentence from the final paragraph of Subsection 9.3(b) of the Law. This sentence reads: “A dog shall not be unfit for purchase on account of injury sustained or illness most likely contracted subsequent to the date of sale” [emphasis added]. In addition, the definition of “unfit for purchase” in Subsection 9.3(i) of the Law uses the phrase “likely to have been contracted on or before the sale and delivery of the animal to the consumer” [emphasis added]. For greater consistency, we suggest that the third bulleted paragraph begin with the following:

To preserve your rights under the Law, you must take your newly purchased dog to a licensed veterinarian for examination within 10 days of purchase. If a veterinarian determines, within 10 days of purchase, that your dog is clinically ill or has died from an injury sustained or illness likely to have been contracted on or before the date of sale and delivery, you have the following options:....

Third and fourth bulleted paragraphs: Complete or partial refund

Both paragraphs indicate that one remedy available to the purchaser of an unhealthy dog is to “return the dog for a complete refund.” However, Section 9.3(b)(1) of the Law states that the purchaser may receive “a complete refund of the purchase price, not including the sales tax” [emphasis added]. The typical practice for refunds is to include the sales tax because the sale becomes null and void. In fact, the regulations of the Department of Revenue (Department) at 61 Pa. Code § 33.3 allow both vendors and purchasers to file a claim for credit or refund when a sale is cancelled, property is returned or an allowance is made for defective merchandise. By excluding the sales tax from the refund, Act 27 will create unnecessary confusion if both vendors and purchasers file claims for sales tax refunds with the Department. The OAG, Department and General Assembly should examine Section 9.3(b)(1) of the Law for consistency with other statutes and regulations relating to sales tax refunds.

Fourth bulleted paragraph: Adversely affects the animal’s health

The fourth bulleted paragraph pertains to congenital or hereditary defects. The Park City Pet Center notes that the paragraph does not include another important phrase from the final paragraph of Subsection 9.3(b) of the Law. It states that the dog must have a congenital or hereditary defect “which adversely affects or affected the health of the animal.” In other words,

the purchaser is entitled to a refund for a defect *only if it adversely affects the dog's health*. The notice's summary of the rights of purchasers should include this phrase. The fourth bulleted paragraph could begin with the following phrase:

If, within 30 days of purchase, a licensed veterinarian determines that your dog has a congenital or hereditary defect which adversely affects the animal's health or that your dog died from a congenital or hereditary defect, you have the following options:....

Fifth bulleted paragraph: Notifying seller within two business days

The first phrase in this paragraph reads: "Failure to notify the seller within 2 business days of veterinarian's certification of illness will result in forfeiture of rights." Although the two-business-day rule is consistent with Act 27, there is one problem with the phrase. It limits this rule to certification of illness with no mention of death or defect.

According to Section 9.3(c) of the Law, the purchaser must notify the seller of the examining veterinarian's name, address and telephone number, within two business days of certification of "illness, defect or death." The fifth bulleted paragraph should emphasize the two-business-day rule and include illness, defect or death. For example, it could read:

Within 2 business days of a veterinarian's certification of your dog's illness, defect or death, you must notify the seller of the name, address and telephone number of the examining veterinarian. Failure to notify the seller within 2 business days will result in forfeiture of rights.

Fifth bulleted paragraph: Implementing two business days notice requirement

There are two problems with the two-business-days notice requirement. First, two days is a short period of time. This is especially true if the purchaser traveled a long distance to buy the dog. In addition, some sellers may take steps to avoid or frustrate delivery of the notice. The OAG and General Assembly should closely monitor consumers' experience with Act 27 to see if there is a need to address potential problems with the "two business days" rule.

Second, the regulation provides no guidance for delivery of the notice. Is personal delivery required? If not, can the notice be sent electronically by telephone, e-mail or facsimile, or must it be sent by first class mail or certified mail? If the notice is mailed, will a postmark within two business days be sufficient to meet the statutory deadline? How does the purchaser verify the seller's receipt of the notice?

Fifth bulleted paragraph: Misplaced disclosure provision

PIJAC, PLAN and PFDC note what appears to be a misplaced clause in the fifth bulleted paragraph. The final phrase reads: "... unless a health certificate issued by a veterinarian was provided by the seller and it disclosed that health problem." This disclosure protection for the seller should be included in the third and fourth bulleted paragraphs, not in the fifth paragraph.

5. Establishing OAG-approved forms – Statutory Authority, Reasonableness and Clarity.

Act 27 contains provisions for at least six different types of certifications and other documents. The OAG has already developed forms for three of these documents. We suggest that the OAG develop standard forms for all of these documents. The OAG could then initiate a separate rulemaking to require the use of OAG-approved forms in conjunction with the required notice.

The need for OAG-prescribed forms is demonstrated by a letter from Senator Greenleaf dated February 18, 1999. The letter advised the OAG's Bureau of Consumer Protection of a pet store giving customers its own warranty and veterinarian examination form. The concern is that important provisions in the store's warranty do not match Act 27's minimum requirements.

The OAG has the authority in Section 3.1 of the Law to promulgate additional regulations to implement the Law. This section states that the OAG "may adopt, after public hearing, such rules and regulations as may be necessary for the enforcement and administration of the Law." Requiring the use of standard OAG forms or prescribed language for forms produced by a seller will assist pet stores and other sellers in complying with Act 27, ease enforcement and reduce consumer confusion.