

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

BOYLE VENTURES, LLC

PLAINTIFF

v. CASE NO. _____

CITY OF FAYETTEVILLE, ARKANSAS

DEFENDANTS

COMPLAINT AND MOTION FOR INJUNCTIVE RELIEF

Plaintiff Boyle Ventures, LLC (“Boyle Ventures”), pursuant to Arkansas Code Annotated §16-123-105, §16-111-101 *et. seq.*, and Ark. R. Civ. P. 65 submits the following Complaint and Motion for Injunctive Relief against the City of Fayetteville, Arkansas (“Fayetteville”):

INTRODUCTION, JURISDICTION AND VENUE

- 1) This action concerns a request for declaratory relief, a preliminary injunction, a permanent injunction, and one for damages against Fayetteville by Boyle Ventures for Fayetteville’s violation of the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105 in that Fayetteville (after Boyle Ventures was registered with the State of Arkansas Department of Health as a Retail Pet Store, and after Boyle Ventures was established as a business licensed to operate within Fayetteville) adopted Ordinance No. 6857, to be enacted August 20, 2022, which prohibits the display or sale of puppies or kittens, dogs or cats unless such animals are obtained from the Fayetteville Animal Shelter or a rescues agency in cooperation with the Fayetteville Animal Shelter. See Exhibits A (Arkansas DOH registered Retail Pet Stores), B (Business License Acquisition of

Plaintiff, 12/2021), C (Fayetteville Ordinance 6587).¹ Ordinance 6587 is patently inconsistent and contrary to Arkansas law and is therefore unconstitutional and unenforceable.

- 2) Boyle Ventures is a foreign limited liability company registered to do business in the State of Arkansas. It owns two operational registered Retail Pet Stores in Arkansas, one in Rogers and one in Fayetteville. Its member is Samantha Boyle, a resident of Rogers, Arkansas. Boyle Ventures citizenship is that of Arkansas. *Jet Midwest International Co., Ltd. v. Jet Midwest Group, LLC*, 932 F.3d 1102, 1104 (8th Cir. 2019) [The citizenship of non-incorporated entities like limited liability companies depends on the citizenship of their members.]
- 3) Fayetteville is an Arkansas municipal corporation of the first class created pursuant to the Arkansas Code and Arkansas Constitution, and the powers provided thereby. As the City of Fayetteville is aware, “municipal corporations have only the power bestowed on them by statute or the Arkansas Constitution.” *Protect Fayetteville v. Fayetteville*, 565 S.W.3d 477, 479-480; 2019 Ark. 30.
- 4) Jurisdiction is proper in this action under Ark. Code Ann. § 16-123-105 and Ark. Code Ann. § 16-111-101 *et. seq.* Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-101 in that the Plaintiff, being an entity, maintains its principal place of business in Rogers, Arkansas and that its member is a resident of Benton County.

¹ The Plaintiff may maintain additional claims, including but not limited to a claim that Ordinance 6587 is not applicable to its registered Retail Pet Store in Fayetteville (as it is already an open business with vested business and property interests in that store), and reserve the right to make that or any other claim by amendment to this Complaint.

STATEMENT OF FACTS

- 5) Boyle Ventures operates two Petland franchise registered Retail Pet Stores in Arkansas.
- 6) It sells puppies and kittens, obtained from United States Department of Agriculture regulated breeders and other sources.
- 7) In 2019, it opened its Rogers location, which is in operation today.
- 8) In December 2021, it obtained a business license to operate in Fayetteville. Exhibit B.
- 9) After building out its leased space, it began selling puppies in its Fayetteville location this July.
- 10) Earlier in July, as the Plaintiff completed its construction and prepared to open, the City Council, advanced an ordinance attempting to restrict a Pet Stores ability to sell animals obtained from anyone other the Animal Shelter or a rescue agency it approved. Exhibit C.
- 11) Upon review of Fayetteville employee and City Council member records provided in response to an Arkansas FOIA request, that Ordinance was written DUE TO Boyle Venture's opening a store in Fayetteville.
- 12) At the City Council Meeting on July 19, the Council introduced the Ordinance, waived the second and third readings (in contradiction to its Rules of Procedure ["Unless there is clearly no opposition or concern about the ordinance, it should be read and open for public discussion during at least two City Council meetings]) and adopted Ordinance 6587. See Exhibit C.
- 13) The ordinance adopted the following section to add to Fayetteville Ordinance, Title IX, § 92.04:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 92.04 by enacting a new subsection (C) as shown below:

“(C) It shall be unlawful for a pet shop to offer for sale or to display any dog, cat, puppy, or kitten unless obtained from and in cooperation with the Fayetteville Animal Shelter, a government or nonprofit animal shelter approved by Fayetteville Animal Services, or a nonprofit animal rescue organization approved by Fayetteville Animal Services. Every pet shop offering for sale or displaying any dog, cat, puppy, or kitten shall display a label stating the name and address of the organization supplying said animal on the animal’s cage”.

- 14) While the drafted Ordinance contained an emergency clause, as Plaintiff was about to start selling its animals, that clause failed to pass, resulting in an enactment date of August 20, 2022.
- 15) The Plaintiff continued its work completing its leased space, received its certificate of occupancy, and in late July, engaged in selling pets as a registered Retail Pet Store, including dogs to customers, in accordance with Arkansas law and in compliance with the regulations of the Arkansas Department of Health.
- 16) On August 12, the City Attorney wrote a memo to the City Council and Mayor about some of the potential claims of the Plaintiff which might be brought if the Ordinance went into effect should Fayetteville attempt to enforce the Ordinance against it, highlighting especially the risks related to Ark. Code Ann. § 14-54-1105. See Exhibit D, Memo from City Attorney, Pgs. 5-8.
- 17) That memo criticized and analyzed the possible causes of action, but recognized that the Working Animal Protection Act, Ark. Code Ann. § 14-54-1105, depending on the definition of Animal Enterprise, may be in violation of (or, in other words, contrary to) State Law and unconstitutional and unenforceable. Exhibit D at 5-8.
- 18) The memo also recognized that the Supreme Court had not ruled in favor of the City upon its enactment of a contrary Ordinance related to employment discrimination. See *Protect Fayetteville, supra*.

- 19) By its clear terms the Working Animal Protection Act prohibits a municipality from adopting an ordinance which bans, effectively bans, or creates an undue hardship on the operations of an Animal Enterprise. See Ark. Code Ann. § 14-54-1105(b)(2).
- 20) While it does permit a municipality to adopt an ordinance for public safety and welfare or to regulate animal care (which would have to be consistent with State law as explained above), it does not permit the municipality to pass an ordinance regulating Animal Enterprises – such as Pet Stores – as to where it must purchase or obtain inventory (here, the Fayetteville Animal Shelter or a rescue agency the Animal Shelter approves).
- 21) By the terms of Ordinance 6587, the Plaintiff would be theoretically prohibited from obtaining, displaying, or selling any bred animal (its primary enterprise) and would only be able to “sell” rescue dogs obtained from or with the approval of the Fayetteville Animal Shelter from an animal rescue agency (with that term undefined).
- 22) Such a restriction would not only cause an undue hardship on its enterprise but would also eliminate its ability to comply with the Retail Pet Store Consumer Protection Act (discussed *infra*).
- 23) While Ark. Code Ann. § 14-54-1105 does not define “Animal Enterprise,” the phrase is not ambiguous (or subject to one or more interpretation).
- 24) A pet store is an enterprise (or business) in commerce which sells animals.
- 25) Further, and overwhelmingly persuasive is that 18 U.S.C. § 43(d) does define Animal Enterprise. It includes in the definition for Animal Enterprise those who sell animals for profit and further specifically includes “Pet Stores.”

(d) DEFINITIONS.—As used in this section—

(1) the term “[animal enterprise](#)” means—

(A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;

(B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or

(C) any fair or similar event intended to advance agricultural arts and sciences;

26) On August 15, 2022, City Attorney Williams, an elected official with the City of Fayetteville, appeared on television and suggested that the Ordinance’s enactment should be postponed and that his obligation was to ensure the City Council and the Mayor complied with State Law. See Exhibit E, Transcription of 5NEWS Report of August 15, 2022 (excerpt below).

21	KIT WILLIAMS: As City Attorney, I want to do
22	what the City Council wants to do and the Mayor wants to do,
23	but I also want to make sure that we follow state law.

<https://www.5newsonline.com/video/life/animals/fayettevilles-ordinance-banning-the-retail-sale-of-puppies-scheduled-to-take-effect-this-week-could-be-postponed/527-aadab42c-116b-4534-a3f2-69892c477927> (accessed August 17, 2022).

27) Beyond the Ordinance’s conflict with the Working Animal Protection Act, each of Plaintiff’s stores is registered with the Arkansas Department of Health in accordance with the Arkansas Retail Pet Store Consumer Protection Act (“Pet Store Act”), 4-97-101 *et. seq.* See Exhibits A; F (Pet Store Act); G (Regulations for the Pet Store Consumer).

28) As is required by the Pet Store Act and its regulations for each animal it sells, Plaintiff ensures that it has appropriate veterinary procedures, records and notates the

information required², and provides the requisite protection to each of its customers related to the animal's health. It is also subject to claims made under the act by consumers.

29) The Pet Store Act's regulations authorize the Plaintiff to receive animals from sellers, breeders, and brokers, among other entities. See Exhibit G, Section 5.

30) Failure to comply with the record keeping terms of the Act constitutes a Class A Misdemeanor. See Ark. Code Ann. § 4-97-108, Exhibit F at 5.

31) The Pet Store Act further requires consumer guarantees (at Ark. Code Ann. § 4-97-105) which would not be able to be provided for animals which were taken in by a rescue agency or the Shelter as Plaintiff would insufficient history or information to guarantee its health.

32) If the Plaintiff was mandated only to sell animals which were taken in by the Fayetteville Animal Shelter or other animal rescue agency (undefined) with the Fayetteville Animal Shelter's approval, it would not be able to satisfy its record keeping requirements under the Pet Store Act. See Note 2.

CAUSES OF ACTION COUNTS 1 & 2 – DECLARATORY JUDGMENTS

33) The Plaintiff requests two declaratory judgments pursuant to Ark. Code. Ann. § 16-111-101 *et. seq.* which provides Courts to determine any question of construction or validity arising under...statute, ordinance, ... and obtain a declaration of rights, status or other legal relations thereunder.

² In compliance with the Pet Store Act Regulations, Section 5, Acquisition of Animals, the Plaintiff maintains a permanent record on the vital information (identifying number, description including birthdate, breed, sex, and color, date of arrival, date of exit, or death, information on the person from whom the animal was received, the name of the person who received the animal from the store, the information of the animal's breeder, and the name of any broker, dealer, or other agent from whom the animal passed prior to being acquired by the store), Upon FOIA to the City of Fayetteville for the scope of detailed records kept, a significant portion of these requirements were not available including birthdate, breed, breeder, broker's name, and dealer's name. See Exhibit G at Sec. 5.

- 34) Article 12, § 4 of the Arkansas Constitution (with this principle being reflected in both Ark. Code Ann. §§14-55-101, 102 as stated *infra*) states that "[n]o municipal corporation shall be authorized to pass any laws contrary to the general laws of the state." See also *Protect Fayetteville* at 479-480, *supra*.
- 35) "Municipal corporations have only the power bestowed on them by statute or the Arkansas Constitution." *Protect Fayetteville v. Fayetteville*, 565 S.W.3d 477, 479-480; 2019 Ark. 30.
- 36) Municipalities have the power to make ordinances, **not inconsistent with the laws of the state**, for carrying into effect or discharging the powers or duties conferred by the provisions of Subtitle 3 of Title 14 of the Arkansas Code. See Ark Code Ann. § 14-55-101 (emphasis added).
- 37) Municipal corporations have the power to make ordinances, **not inconsistent with the laws of this state**, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof. See Ark Code Ann. § 14-55-102 (emphasis added).
- 38) As it is claimed to pertain to this case, those municipal powers would include ordinances that are *not inconsistent* with the laws of this state (Ark. Code Ann. § 14-55-101, 102; Ark. Const. Art. 12, § 4) which protect against animal cruelty or provide for animal care, public health, or public safety. See Ark. Code Ann. § 14-55-1105(c)-(e), citing Ark. Code Ann. § 14-54-103.

COUNT 1

FAYETTEVILLE ORDINANCE 6587 IS CONTRARY TO AND INCONSISTENT WITH THE ARKANSAS RETAIL PET STORE CONSUMER PROTECTION ACT OF 1991

- 39) Retail Pet Stores and their procurement and treatment of animals, keeping of inventory, and sales are governed by Ark. Code Ann. § 4-97-101 *et. seq.* and regulated

by the Arkansas Department of Health. Exhibit F, Ark. Ann. § 4-97-101 *et. seq.* and the corresponding Department of Health Regulations, Exhibit E.

40) While Ark. Code Ann. § 4-97-109 does state that “[n]othing in this chapter shall be construed to prevent or limit the application of any other law,” in this instance, because Ordinance 6587 would make compliance with the Pet Store Act impossible and therefore subject the Plaintiff to criminal liability, its inconsistency and contrary nature renders the Ordinance unconstitutional. See Note 2 [detailing impossible compliance if the Plaintiff were forced to only sell rescue animals.]

41) Municipal corporations have not been bestowed the power to regulate pet sales and the attempt of Fayetteville to do so is entirely inconsistent and contrary to the Pet Store Act.

42) As a result, Ordinance 6587 is directly contrary to the Requirements of an Authorization to an Arkansas registered Retail Pet Store to sell pets at retail, bred and obtained from breeders, brokers, or any other source.

43) Ordinance 6587 is thus unconstitutional in violation of Article 12 § 4 of the Arkansas Constitution in that it is contrary to the Arkansas Retail Pet Store Consumer Protection Act of 1991.

COUNT 2
FAYETTEVILLE ORDINANCE 6587 IS CONTRARY TO AND INCONSISTENT WITH
THE WORKING ANIMAL PROTECTION ACT

44) Additionally, or alternatively, the Working Animal Protection Act states that any “ordinance or resolution shall not be enacted by a municipality that terminates, bans, effectively bans, or creates an undue hardship relating to [an] animal enterprise in commerce...entertainment, education, or exhibition.” See. Ark. Code Ann. § 14-54-1105 attached as Exhibit H.

45) Although Ordinance 6587 claims to derive from a desire to protect animals from cruelty and to be for the health and welfare of the public, it was adopted based upon no allegation that the Plaintiff or any Retail Pet Store in Fayetteville was engaging in cruelty to animals, but that the undefined term “puppy mills” were to blame. See Exhibit C, Preamble. It was further adopted with no information as to how the prohibition of the sale of bred puppies and/or kittens from an otherwise registered Retail Pet Store acting in compliance with the Pet Store Act would be in the actual interest of public health and welfare.

46) Even Council Member Mike Wiederkehr stated at the meeting that “the issue isn’t the sale of animals, the issue isn’t the puppies, the issue is the breed animals themselves, and that’s beyond our ability to regulate.” See https://accessfayetteville.granicus.com/player/clip/8168?view_id=14&redirect=true at 3:42:00-3:42:25.

47) In fact, Fayetteville’s City Ordinance § 92.04, prior to the adoption of Ordinance 6587, protected against cruel treatment to animals by “pet shops” in a way that was consistent with the Pet Store Act.

“92.04 - Sale of Diseased Animals; Kennel And Pet Shop Regulation

(A)It shall be unlawful for any person, pet shop, or kennel to sell, offer to sell, or expose any diseased or poisonous animal or any animal the sale of which is prohibited by federal law.

(B)Every place used as a kennel or pet shop shall be kept in a clean and sanitary condition, and no refuse or waste materials shall be allowed to remain thereon for more than twenty-four (24) hours. The owner or operator of a kennel or pet shop shall properly treat any diseased animal and shall properly isolate those animals having a disease contagious to animal or human life; provided, any animal which is diseased past recovery shall be euthanized. All animals in a kennel or pet shop shall be humanely treated and properly nourished. Animals shall not be confined in one area in such numbers that access to food and water is not readily available.”

48) Ordinance 6587 does not prevent direct cruelty to animals in any form.

- 49) The Ordinance merely forces an Arkansas registered Retail Pet Store, wholly controlled by state law and regulations in its obtaining and disposing of pets, to attempt to limit its sale of animals to those received from the Fayetteville Animal Shelter or from some undefined rescue agency that the Fayetteville Animal Shelter approves.
- 50) It therefore effectively bans and unduly burdens the Plaintiff's (a clear animal enterprise in commerce) ability to sell animals it purchases lawfully from regulated breeders or other sources as allowed by the State, which for the Plaintiff's enterprise are pure bred and designer hybrid puppies and kittens in compliance with the Arkansas Retail Pet Store Consumer Protection Act.
- 51) Ordinance 6587 is a type of ordinance prohibited by the Working Animal Protection Act and is patently contrary thereto. As such, it is unconstitutional in violation of Article 12 § 4 of the Arkansas Constitution.

**COUNT 3
VIOLATION OF THE ARKANSAS CIVIL RIGHTS ACT**

- 52) The Citizens of Arkansas have a right to be free from municipal ordinances that are contrary to the Arkansas Code. See Article 12 § 4 of the Arkansas Constitution.
- 53) Ark Code Ann. § 16-123-105(a) of the Arkansas Civil Rights Act ("ACRA") provides in relevant part that:
- (a) Every person who, under color of any...ordinance... of...any...political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.
- (b) In the discretion of the court, a party held liable under this section shall also pay the injured party's cost of litigation and a reasonable attorney's fee in an amount to be fixed by the court.
- 54) Here, Fayetteville, by and through the actions of its City Council, knew (by advice of the City Attorney Williams – including on television – at best, and because knowledge of the law is presumed at worst), knew, or should have known that the Ordinance 6587

was contrary to Arkansas Law at Ark. Code Ann. § 14-54-1105 which prohibits any ordinance banning, effectively banning, or unduly burdening an animal enterprise in commerce.

55) Further, the Council and Mayor knew or should have known that the ability to regulate animals sold by Retail Pet Stores as defined by Arkansas law was not authorized by the “Regulation of Animals” section (Ark. Code Ann. § 14-54-1101 *et. seq.*), and that any regulation adopted to regulate Retail Pet Stores could not be inconsistent with the Arkansas Retail Pet Store Act of 1991, and yet have done nothing following its passing on July 19th to prevent it from taking effect and being unlawfully enforced.

56) Instead, Mayor Jordan pushed the Council to pass Ordinance 6587 based on his own personal disdain for pet stores and further, he pushed the Council to pass the ordinance, certain of which at that council meeting members were requesting more time to consider the issues, by waiving recommended readings and passing it on the date it was introduced.

57) Council Member Turk, at the Council meeting approving the Ordinance stated “I think we need more information...I’m feeling like this is being really rushed...this issue was way more complex than I realized...I would like not to make the final vote tonight...” Then, Sonia Harvey asked to do the same. The matter went to the third reading. See https://accessfayetteville.granicus.com/player/clip/8168?view_id=14&redirect=true at 3:35:43-3:36:40.

58) The City then failed, after a memo alerting him and Fayetteville to the risk of violation of state law, and after televised advice from his City Attorney to call a special meeting, which he has the power to unilaterally do, to stop the enactment of the patently unconstitutional act, further causing Boyle Ventures damages.

59) As a result of this ordinance being adopted, Boyle Ventures has lost business, lost customer relationships, and suffered costs and attorneys' fees which should be all awarded to them under the Arkansas Civil Rights Act, in addition to any other damages proven at trial.

MOTION FOR PRELIMINARY AND PERMANT INJUNCTION

60) ACRA also permits the Plaintiff to seek and receive equitable relief. In this case, it moves for preliminary and permanent injunctive relief and incorporates the rules under which that is sought as its statement of law.

61) Pursuant to Ark. R. Civ. P. 65 and Ark. Code Ann. 16-113-201 *et. seq.*, the Plaintiff moves for a preliminary and permanent injunction, preventing Fayetteville from enforcing Ordinance 6587.

62) Plaintiff has provided notice of this request to Fayetteville's City Attorney, Kit Williams.

63) The irreparable harm that will be endured if this Preliminary Injunction is not granted is that Fayetteville may attempt through its Animal Control to seize the animals owned by the Plaintiff (if that may even be possible under the penalty section of the ordinance – Sec. 92.99 provides for a maximum penalty of \$100.00 per day for violation of Section 92.04 with each day as a separate offence). Plaintiff is unsure, other than that fine, what Fayetteville's mechanism of enforcement will be, and should seizure take place, the City of Fayetteville may not be capable of caring for those animals along with those at the Fayetteville Animal Shelter. Further, it is unclear as to any other mechanisms of enforcement of Fayetteville's Ordinance it may choose to employ, whether that be police intervention, closing the store with animals inside, or other measures, all while the Plaintiff acts in complete compliance with the requirements of the Pet Store Act. As stated above It is anticipated that the likely response will be to fine the Plaintiff each day by citation for a misdemeanor, which if this matter is

determined as the Plaintiff requests, would unnecessarily add to the District Court cases related to the “display” (also an unconstitutional violation of the Arkansas’ Constitutional protection of speech) or sale of these animals which are not obtained from the custody of the Fayetteville Animal Shelter. Such a charge would be a void criminal charge which the owner or potentially, the employees, would then be compelled to defend.

64) Considering that Mr. Williams has recognized the likelihood of this action and its reasoning and potential success, the City of Fayetteville will suffer no harm nor damage (in fact it would benefit by sales tax revenue) should the Plaintiff be permitted to continue its operation during the pendency of this action.

65) The Plaintiff is likely to prevail on the merits of this action in that *Protect Fayetteville v. Fayetteville* clearly set out that the City of Fayetteville cannot enact ordinances which are contrary to Arkansas law with Ordinance 6587 clearly contradictory to state law as set out above.

66) Finally, any bond which could be set should be minimal as the prospective “fines” related to violation of Ordinance 92.04 appears to be restricted to \$100.00 per day. The Plaintiff suggests a bond of \$1,000.00 for this preliminary injunction to compensate Fayetteville for potentially being wrongfully enjoined.

MISCELLANEOUS

67) Boyle Ventures reserves the right to request a jury trial on those issues in this case which may be so triable.

68) Boyle Ventures further reserves the right to amend this Complaint further.

69) Boyle Ventures, due to its request as to judgment of the constitutionality of Fayetteville’s Ordinance 6587 has notified the Attorney General of this matter.

WHEREFORE, Plaintiff Boyle Ventures requests that this Court grant the following relief:

- (1) Hear this matter and set it for an immediate hearing, if not otherwise determined or agreed, on the Plaintiff's request for Preliminary Injunction, accepting this verified complaint as an affidavit of the Plaintiff.
- (2) Declare that Fayetteville Ordinance 6587 is unconstitutional as contrary to either or both Ark. Code Ann. § 14-54-1105 and Ark. Code Ann. § 4-97-101 *et. seq.*
- (3) If the Ordinance may be found unconstitutional, award Plaintiff all damages suffered by the actions of the City Council caused by Ordinance 6587 permitting the unconstitutional act to impair the Plaintiff's rights to be free from such an unconstitutional violation.
- (4) Grant any and all other relief to which Plaintiff is entitled, including the award of attorneys' fees and costs if appropriate.

Respectfully Submitted,
Boyle Ventures, LLC

By: /s/George M. Rozzell IV, ABA # 2008032
Miller | Butler | Schneider | Pawlik | Rozzell PLLC
323 W. Spring St.
Fayetteville, AR 72701
Ph. 479-935-4995
Fax 479-631-6890
grozzell@arkattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that on the date of filing listed hereupon I served the foregoing Pleading and Motion upon the Arkansas Attorney General by electronic mail.

By: /s/George M. Rozzell IV, ABA # 2008032

VERIFICATION

STATE OF ARKANSAS)

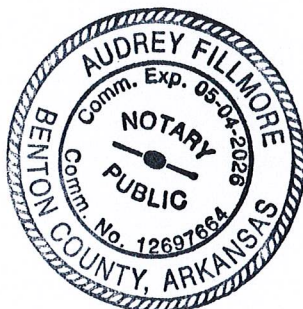
) ss:

COUNTY OF WASHINGTON)

I, Samantha Boyle, on the oath state that I am member of Boyle Ventures, LLC, the Plaintiff in the above-entitled case, and as such state that I have read the allegation and statements contained in the foregoing and that same are true and correct to the best of my knowledge, information, and belief.

Samantha Boyle
Samantha Boyle

Subscribed and Sworn to before me, a Notary Public, this 18th day of August, 2022.



Audrey Fillmore
Notary Public

5-4-26
My Commission Expires



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Asa Hutchinson

Renee Mallory, RN, BSN, Interim Secretary of Health

Jennifer Dillaha, MD, Director

	Address				Phone
Lady Boss Grooming & World of Pets		Barling			
Middle Earth Pet Shop		Ft. Smith			
Pet Supplies Plus (Cabot)	210 South Rockwood Rd, Ste A				
Pet Supplies Plus (Rogers)	4327 S. Pleasant Crossing Blvd, Ste E	Rogers	AR	72756	479-636-0526
Petland (Fayetteville)	637 E. Joyce Blvd., Ste 102	Fayetteville	AR	72703	417-388-8050
Petland (Rogers)	2203 Promenade Blvd. Suite 5165	Rogers	AR	72758	417-388-8050
Puppy Dreams	10101 Mabelvale Plaza, Ste 5	Little Rock	AR	72209	214-336-7300
Spa City Puppies	3814 Central Ave Ste. E	Hot Springs	AR	71903	501-617-6559
The Fish Bowl	2117 E. Race	Searcy	AR	72143	501-279-2995
The Pet Shop	972 Washington St.	Camden	AR	71701	870-836-2441

[illegible]



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Ordinance: 6587

File Number: 2022-0618

**AMEND §92.04 SALE OF DISEASED ANIMALS; KENNEL AND PET SHOP
REGULATION:**

AN ORDINANCE TO AMEND § 92.04 **SALE OF DISEASED ANIMALS; KENNEL AND
PET SHOP REGULATION** TO PROHIBIT THE RETAIL SALE OF DOGS, CATS, PUPPIES,
AND KITTENS UNLESS OBTAINED FROM AND IN COOPERATION WITH THE
FAYETTEVILLE ANIMAL SHELTER OR ANOTHER ANIMAL RESCUE ORGANIZATION

WHEREAS, the City of Fayetteville has an interest in maintaining the public safety and welfare of
citizens and residents of Fayetteville and its visitors; and

WHEREAS, Ark. Code Ann. § 14-54-103(7) provides that cities shall have the power to prevent
cruelty to animals; and

WHEREAS, the Humane Society of the United States estimates that there are at least 10,000 puppy
mills in the United States, fewer than 3,000 of which are regulated by the United States Department of
Agriculture; and

WHEREAS, according to the Humane Society of the United States, puppy mills are high volume dog
breeding facilities that churn out puppies for profit, ignoring the needs of the pups and their mothers;
and

WHEREAS, according to the Humane Society of the United States, puppy mills commonly sell
through retail pet stores and the majority of puppies sold in pet stores are from puppy mills; and

WHEREAS, current state and federal regulations do not adequately address the sale of puppy and
kitten mill dogs and cats in retail pet shops; and

WHEREAS, Petco and Petsmart, the City's largest pet supply stores, have corporate mandates against the sale of dogs and cats and both work with local pet rescues and shelters to allow pet adoptions through those organizations at their store locations; and

WHEREAS, it is in the interest of the City of Fayetteville to promote and ensure humane approaches and standards for animal disposition and ownership by encouraging the adoption of rescue dogs and cats.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends § 92.04 by enacting a new subsection (C) as shown below:

“(C) It shall be unlawful for a pet shop to offer for sale or to display any dog, cat, puppy, or kitten unless obtained from and in cooperation with the Fayetteville Animal Shelter, a government or nonprofit animal shelter approved by Fayetteville Animal Services, or a nonprofit animal rescue organization approved by Fayetteville Animal Services. Every pet shop offering for sale or displaying any dog, cat, puppy, or kitten shall display a label stating the name and address of the organization supplying said animal on the animal's cage”.

PASSED and APPROVED on 7/19/2022

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer





OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Justine Lentz, Animal Services Superintendent

FROM: **Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: **August 11, 2022**

RE: **Pet Store Regulatory Ordinance**

Most of the ordinance prohibiting the sale of puppies and kittens in pet stores in Fayetteville had been drafted and finalized in early 2020 before the pandemic caused a great change of focus and energy by the City of Fayetteville. Thus, it was not presented until mid-July of this year upon the request of Animal Services and others who had heard a new pet store might soon begin selling puppies supplied by large volume breeders which are subject only to inadequate federal regulations. Very reasonably, the City Council sought to prevent a new outlet from being established in Fayetteville for large volume breeders without requiring improved humane operating conditions and procedures. The citizens and Council were concerned that Petland would become a local outlet for what some would term "puppy mills."

I realized the City of Fayetteville could be threatened with numerous claims if the City Council passed the ordinance. However, even though I had had only a short time to review the two year previously drafted ordinance, I thought the City could withstand all those attacks. A City ordinance is presumed constitutional and legal just like a state statute with a heavy burden on anyone challenging its legality.

"It goes without saying that in the case at bar the ordinance is presumed to be constitutional and the burden of showing its

invalidity is upon the appellee." *Board of Adjustment of Fayetteville v. Osage Oil and Transportation, Inc.*, 522 S.W. 2d 836, 838, (Ark. 1975).

On July 21, 2022, I received an email from George Rozzell who informed me he was Petland's attorney. He cited me to A.C.A. §4-97-101 et. seq. and the Department of Health *Rules and Regulations For Pet Store Act 96 of 1991* as a possible preemption of a local ordinance regulating a pet store. I carefully read this long statute, **Arkansas Retail Pet Store Consumer Protection Act of 1991**, and learned it was a well written, reasonable and beneficial statute protecting rights of persons purchasing an animal from a pet store. It did not expressly give a pet store the right to sell dogs and cats. Rather than preempting the City from further regulation, it stated:

"Nothing in this section shall be construed in any way to limit rights or remedies which are otherwise available to a consumer under any law."

That is the opposite of normal preemption law that expressly excludes cities from further regulation. Thus, I was not concerned that the Council's ordinance would be in violation of this state statute.

By August 2, 2022, the attorney for Petland did threaten suit and named many claims including: a dormant Commerce Clause violation, an intentional interference with business expectancy, a violation of state law (presumably the **Arkansas Retail Pet Store Consumer Protection Act**), a due process of law claim based upon vagueness, a lack of general power to regulate the sale of puppies, and a claim of arbitrary and capricious action. A copy of this email is attached. I then informed Petland's attorney that: "I will share your legal claims against the ordinance with the City Council after I have done some more legal research about those claims so I can discuss legal precedents. This will take about a week. At that time you may wish to formally request mediation."

My legal research confirmed my initial conclusion that the City could likely prevail against a claim that the City had violated the dormant Commerce Clause (preventing local favoritism of commercial activity).

"Modern dormant Commerce Clause jurisprudence primarily 'is driven by concern about economic protectionism-that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *National Association of*

Optometrists & Opticians v. Harris, 682 F.3d 1144, 1148 (9th Circuit, 2012).

“The central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism.” *Id.*

Our ordinance treated every pet store in Fayetteville the same way by not permitting any of them to sell or display puppies and kittens for sale. There were no measures designed to benefit in-state pet stores as against out-of-state pet stores. This made it a facially-neutral ordinance.

“Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Arkansas Tobacco Control Board v. Santa Fe Natural Tobacco Company*, 360 Ark. 32, 43 (2004).

The Arkansas Supreme Court continued: “When evaluating a facially-neutral statute, however, the only question is whether the regulation is rationally related to the achievement of the statutory purpose.” *Id.* at 47. The City’s purpose to protect its citizens’ health, safety and welfare from the substantial problems of puppy mill puppies being brought into and sold in Fayetteville and to protect the breeding dogs used in puppy mills is a rational and reasonable objective. As the United States Supreme Court has held: “states are not required to convince the courts of the correctness of their legislative judgments.” *Minnesota v. Clover Leaf Creamery Company*, 449 U.S. 456, 464 (1981). The City Council’s legislative enactment of the ordinance is entitled to the same legislative deference by the Courts.

My research also reaffirmed my confidence that the City’s police power to regulate business would be sustained if that “regulation ... is exercised for the protection of the health and morals of the people.” *Fayetteville v. S&H, Inc.* 261 Ark. 148, 154 (1977). “The mere ownership of property which could be utilized for the conduct of a lawful business does not constitute a right to so utilize it.” *Id.*

I researched Petland’s attorney’s allegation that the City of Fayetteville was guilty of an intentional interference with business expectancy and contracts since the City had not been sued for that intentional tort before. I was concerned

because potential liability for such a claim could be substantial. I read many cases to determine the essential elements that a plaintiff must prove to win such a case.

Washington County Circuit Court Judge William Storey ruled against a plaintiff alleging the tort of interference with contractual relationships or a business expectancy in a local case. The Arkansas Supreme Court affirmed and explained the elements which must be proven for a plaintiff to prevail on such claim.

"The elements of tortious interference that must be proved are: (1) the existence of a valid contractual relationship or a business expectancy; (2) knowledge of the relationship or expectancy on the part of the interfering party; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted. Our law requires that the conduct of the defendants be at least 'improper.' ... In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:

- (a) The nature of the actor's conduct,
- (b) The actor's motive,
- (c) The interests of the other with which the actor's conduct interferes,
- (d) The interests sought to be advanced by the actor,
- (e) The social interests in protecting the freedom of action of the actor and the contractual interest of the other,
- (f) The proximity or remoteness of the actor's conduct to the interference and the relations between the parties." *K.C. Properties of N.W. Arkansas, Inc. and Buildings Inc. v. Lowell Investment Partners LLC*, 373 Ark. 14, 26 (2008) (citations omitted).

First, the City Council had only beneficial motives to protect dogs and cats, not harm any businesses. Second, there are substantial "social interests" in protecting the freedom of action of the elected representatives of Fayetteville citizens to protect the health, welfare, and safety of citizens and their pets in Fayetteville. Third, I do not believe that the City had actual knowledge of any terms (or even the existence) of a possible lease that Petland may have had. Certainly, Petland could continue to operate even with the City Council's ordinance's limitation on their sale of puppies. Fourth, I also believed that the

Council's enactment of the ordinance should not be determined to be "improper." The City Council and any elected governing body must be allowed to reasonably legislate to protect the health, safety and peace of its citizens without fear that its reasonable, nondiscriminatory regulations could cause the loss of public revenue.

"Tortious interference with a contractual relationship or a business expectancy is intentional and improper conduct by a person that induces or otherwise causes a third person not to perform a contract." *Quality Optical of Jonesboro, Inc. v. Trusty Optical, LLC*, 365 Ark. 106, 109 (2006).

The Council did not even know about any contract Petland may have entered into. The Council certainly does not wish harm to Petland. Thus, as long as enacting the ordinance was not improper, the City would be safe from any claim of tortious interference with a contractual relationship or business expectancy. "We require that the defendant's conduct be at least improper." *Stewart Title Guarantee Company v. American Abstract and Title Company*, 363 Ark. 530, 549 (2005).

Petland's attorney also claims that the ordinance was unconstitutionally void for vagueness. This does not appear to be well founded, nor properly explained by Petland's attorney. The ordinance clearly bans the sale or display of puppies and kittens produced by mass breeding operations while allowing the display of dogs and cats from government and nonprofit shelters and rescue organizations. I do not believe this is vague especially when considered with the presumption of legality and constitutionality of City ordinances.

Just when I thought my legal research had confirmed my initial belief that the City Council was on strong legal ground when passing the prohibition of pet stores to sell puppies and kittens, I received another email on Tuesday afternoon (August 9th) from Petland's attorney (attached). For the first time he claimed a new statute passed last year "prevented Municipalities from enacting the type of ordinance that Fayetteville just enacted." I immediately reviewed this new statute codified at A.C.A. §14-54-1105 and entitled **Working Animal Protection - Definitions**.

My first thought is that pets are inherently not "working animals." Indeed a "working animal" by ordinary dictionary meaning and usage is the antithesis of a "pet." Petland sells pets, not working animals. The dictionary defines "pet"

as "a domesticated animal kept for pleasure **rather than utility.**" *Merriam-Webster's Collegiate Dictionary 10th Edition*. (emphasis added). How could this statute affect the regulation of puppies and kittens sold as pets, rather than "working" animals?

Dogs can certainly be "working animals" if they are trained as police canine officers, drug detection dogs, service dogs for sight impaired persons, or other persons with needs a dog can be trained to assist with. But I believe Petland sells puppies as pets (as in their name), not as police or service trained dogs. The stated definition of working animal in the statute (copy enclosed) also does not sound like a pet to me: "As used in this section, 'working animal' means a nonhuman animal used for the **purpose of performing a specific duty or function** in commerce or animal enterprise, including without limitation human service, transportation, education, competition, or exhibition." A.C.A. §14-54-1105 (a)(1)(emphasis added).

I also doubt if many, if any at all, of the puppies Petland sells would be "show quality," recognized dog breeds by the AKC that its purchasers planned to use to compete in dog shows or trials. Even a later statutory "guarantee" implies a "working animal" is not a "pet." "(T)he right to **utilize a working animal** for the benefit and welfare of the working animal or the individual the **working animals serves** is guaranteed." A.C.A. §14-54-1105 (b)(1)(emphasis added). It certainly does not appear reasonable "to utilize a" pet, nor that a pet "serves" the owner. But even if it is clear that pets are not "working animals," there is a later dangerous section in A.C.A. §14-54-1105 that may widen its restrictions on cities to regulate an "animal enterprise" in addition to regulating a working animal.

"(2) An ordinance or resolution shall not be enacted by a municipality that terminates, bans, effectively bans, or creates an undue hardship relating to the job or use of a working animal **or animal enterprise in commerce**, service, legal hunting, agriculture, husbandry, transportation, ranching, entertainment, education, or exhibition." (emphasis added)

The dangerous wording is "**or animal enterprise in commerce...**" Could this reasonably mean "pet store"? The most relevant meaning of "enterprise" is "a unit of economic organization or activity; *esp*: a business organization." *Merriam-Webster's Collegiate Dictionary, 10th Edition*. This is certainly a much broader definition than a "pet store." It remains somewhat unclear what "animal

enterprise" means. If the Legislature meant "pet store", why did it not use that term?

The Legislature listed many types of domesticated animals it excluded from its definition of "working animals." The Legislature **did not exclude dogs, cats, or horses**. Was it the Legislature's intention to guaranteed protection of the owner/seller's right to use these animals in an animal enterprise for "commerce, ... ranching, entertainment, education, or exhibition?" Was this statute requested by pet stores or race horse breeders? We should examine this statute using the established rules of statutory interpretation/construction.

"This court's rules regarding statutory construction are clear and well established. The basic rule of statutory construction is to give effect to the intent of the legislature. *Calaway v. Practice Mgmt. Servs., Inc.*, 2010 Ark. 432. Where the language of a statute is plain and unambiguous, this court determines legislative intent from the ordinary meaning of the language used. *Id.* In considering the meaning of a statute, this court construes it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* This court construes the statute so that no word is left void, superfluous, or insignificant, and this court gives meaning and effect to every word in the statute, if possible. *Id.* If the language of a statute is clear and unambiguous and conveys a clear and definite meaning, it is unnecessary to resort to the rules of statutory interpretation. *Brown v. State*, 375 Ark. 499, 292 S.W.3d 288 (2009).

A statute is considered ambiguous if it is open to more than one construction. *Pulaski Cnty. v. Ark. Democrat-Gazette, Inc.*, 370 Ark. 435, 260 S.W.3d 718 (2007). When a statute is ambiguous, this court must interpret it according to legislative intent and our review becomes an examination of the whole act. *Helena-W. Helena Sch. Dist. v. Fluker*, 371 Ark. 574, 580, 268 S.W.3d 879, 884 (2007). In reviewing the act in its entirety, this court will reconcile provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part. *Williams v. Little Rock Sch. Dist.*, 347 Ark. 637, 66 S.W.3d 590 (2002). In addition, this court must look at the legislative history, the language, and the subject matter involved. *Id.* However, when a statute is clear, it is given its plain meaning and this court will not search for legislative intent. *Cave City Nursing Home, Inc. v. Ark. Dep't of Human Servs.*, 351 Ark. 13, 89 S.W.3d 884 (2002)." *Patty Simpson v. Calvary SPV I, LLC*, 2014 Ark. 363, at pages 3-4.

I wish A.C.A. §14-54-1105 was more clear. One section states: "(d) This section does not prohibit a municipality from establishing or altering an ordinance regarding animal care, public health or public safety." The most egregious animal care that needs further regulation must certainly occur not at the pet store, but at the mass-breeding center producing puppies and treating their breeding parents inhumanely. However, these puppy mills are usually beyond the city limits and therefore the City's power to regulate except indirectly by trying to deny them a profitable outlet for their mass-produced puppies. Thus, this statutorily saved power to ensure proper "animal care" is important, but may not be enough to ensure our current ordinance is valid.

The bottom line is that this new statute may present enough doubt as to the City's power to enact this ordinance that we should seek a compromise with Petland in an attempt to ensure their contracted providers of puppies treat their breeding parents and puppies in a much more humane manner than is currently required by federal regulations.

It is still damaging to Fayetteville, our citizens and resident pets for any pet store to bring into Fayetteville and our region mass-produced puppies when our shelters and rescue groups have more quality, adoptable dogs than they can adopt out to our citizens. We struggle to remain a "no-kill" shelter when only terminally ill or injured pets or unadoptable dangerous animals are euthanized. Every puppy brought in by Petland and sold to Fayetteville residents makes maintaining our ability to remain a no-kill shelter harder. One of these days, a Fayetteville resident's purchase of a puppy from Petland could be signing a death warrant for a not cute enough dog which could not find an adoption family.

CONCLUSION

If the City Council does not wish to seek a compromise, I will defend with all my might the ordinance that at least until last year's enactment of **Working Animal Protection** was on very strong legal grounds. The City still has legal defenses for this ordinance which I will defend in Court if necessary. I should note that the Arkansas Supreme Court was not very receptive to Fayetteville's efforts to protect the civil rights of our LGBT citizens. Would it be more receptive to our efforts to protect dogs, cats, puppies and kittens? If we force new litigation, we would be susceptible to possibly large damages and maybe even attorney fees which we did not risk nor have to pay in my three plus years litigation against the Arkansas Attorney General's lawyers while I defended our citizen-enacted **Uniform Protection of Civil Rights**.

One option the City Council could choose would be to authorize me to at least attempt a compromise with Petland and delay enforcement of the ordinance for a month or two during this negotiation. This option comes from my head, not from my heart. However, my duty is to present the fairest assessment of legal considerations to you as I can, as well as the potential financial risks to our taxpayers. I also should provide potential options to try to accomplish as much of the goal and purpose of your ordinance as possible and present as little risk of substantial financial liability as possible. It is then for the Mayor and City Council to decide the best course of action for our City.

If the City Council wishes me to negotiate with Petland's attorney, the City Council would need to pass an ordinance to delay the effective date of the current ordinance for a month to two. Any Council Member wanting to use negotiation will need to **contact me promptly** and then walk-on an ordinance delaying the effective date of the ordinance at your August 16th meeting.

TRANSCRIPT OF NEWS SEGMENT

Source: 5newsonline.com - August 15, 2022

DAREN BOBB: A newly-opened pet store in Fayetteville could soon have to stop selling puppies after opening its doors less than a month ago.

Thanks for joining us for your 5 News at 10. I'm Daren Bobb. Erika has the night off. 5 News reporter Micah Wilson is live in Fayetteville.

Micah, this is because of a Fayetteville City Ordinance that is supposed to take effect this week.

MICAH WILSON: Yeah, Daren, it's supposed to take effect this weekend, but the City Attorney is suggesting that the City hold off because of a state law.

To promote the adoption of puppies and kittens, the City of Fayetteville passed an ordinance in July banning the retail sale of them.

KIT WILLIAMS: We're concerned with a pet store being opened up in Fayetteville.

MICAH WILSON: Petland recently opened its doors off Joyce Boulevard in Fayetteville and is selling puppies.

KIT WILLIAMS: Which is their legal right to do so now. The ordinance will not be effective until this weekend.

MICAH WILSON: But Williams suggests postponing when the ordinance goes into effect.

1 KIT WILLIAMS: We discovered a new state law
2 that was passed last year that is ambiguous but gives me a
3 little concern.

4 MICAHA WILSON: He's talking about the Working
5 Animal Protection Act, and it states an ordinance should not be
6 enacted by a municipality that bans a "animal enterprise in
7 commerce."

8 Williams said he is not sure if that includes pet stores,
9 giving the City two options.

10 KIT WILLIAMS: Postpone the effective date of
11 this while I can negotiate with Petland a little bit about
12 that. And the other thing that could happen is that Petland
13 has threatened to sue us.

14 MICAHA WILSON: Either could keep the ordinance
15 from going into effect if Petland files a prelim injunction.

16 In a statement to 5 News, they wrote in part, "Its focus
17 will always be ensuring the health and safety of its animals
18 and it hopes to continue working with Fayetteville toward that
19 end. While that happens, any comment on prospective litigation
20 is premature."

21 KIT WILLIAMS: As City Attorney, I want to do
22 what the City Council wants to do and the Mayor wants to do,
23 but I also want to make sure that we follow state law.

24 MICAHA WILSON: And as of right now, Williams
25 says the decision of what to do is left up in the City

1 Council's hands.

2 For now we're live here in Fayetteville covering news
3 where you live.

4 Micah Wilson, 5 News.

5 DAREN BOBB: All right, Micah. Thanks.

6 (THIS SEGMENT ENDS AND NEXT SEGMENT BEGINS.)

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C E R T I F I C A T E

STATE OF ARKANSAS)
) SS
COUNTY OF WASHINGTON)

I, REBECCA CARROLL-ROSS, Certified Court Reporter in and for the aforesaid county and state, do hereby certify that the attached transcript is my transcription of the News Segment on 5 News at 10 as found on 5news online.com on August 15, 2022. It was sent to me on August 17, 2022, by Attorney George Rozzell for transcription. It was transcribed to the best of my understanding and ability with the recording that was provided. It includes [inaudible] in areas I could not understand or where speakers were speaking over each other. I did not record these proceedings and can not verify that the recording given to me was not altered in any way. The speakers identified were the names shown in the segment.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 17th day of August, 2022.



Rebecca Jones

REBECCA CARROLL-ROSS, CCR, CVR-M, RVR
Certified Court Reporter and
Notary Public
Arkansas License No. 612

Chapter 97. Retail Pet Stores

4-97-101. Title.

This chapter may be cited as the "Arkansas Retail Pet Store Consumer Protection Act of 1991".

4-97-102. Legislative intent.

It is the purpose of this chapter to require certain guarantees from retail pet stores to the purchasers of dogs and cats which are consistent with their unique status as companions rather than commodities. A further purpose is to provide a means by which it can be ensured that the treatment, care, and disposition of those animals is humane and that the treatment, care, and disposition are consistent with providing to the retail consumer animals which are physically and temperamentally sound, healthy, and fit as companions; to provide a means by which the acquisition and care of those animals can be monitored; and to ensure that the animals and facilities are managed in a manner noninjurious to the public health. Therefore, it is hereby determined and declared that the supervision by the state of the sale of dogs and cats by retail pet stores, and the inspection of such animals, whether or not found within the public area of the store, is within the public interest.

History. Acts 1991, No. 1225, § 2.

4-97-103. Definitions.

For the purposes of this chapter:

- (1) "Animal" means a dog or cat of any age;
- (2) "Authorized person" means the Director of the Department of Health or his or her delegate, or any law enforcement officer;
- (3) "Cattery" means an enterprise wherein or whereon the business of grooming or boarding cats, or breeding cats for sale, and selling those cats, is carried on, and which does not in its usual course of business acquire cats for resale to the public;
- (4) "Consumer" means any individual purchasing an animal from a retail pet store. A retail pet store shall not be considered a consumer;
- (5) "D.V.M." means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education, and who has a valid license to practice veterinary medicine within the State of Arkansas;
- (6) "Director" means the Director of the Department of Health;

(7) "Euthanasia" means the humane killing of an animal accomplished by a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death, and administered by a licensed veterinarian or a euthanasia technician licensed by the Drug Enforcement Administration and certified by the Department of Health;

(8) "Kennel" means an enterprise wherein or whereon the business of grooming or boarding dogs, or breeding dogs for sale, and selling such dogs, is carried on, and which does not in its usual course of business acquire dogs for resale to the public;

(9) "Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity;

(10) "Records" of a retail pet store means:

(A) The permanent record of each animal's health history showing the animal's vaccinations, inoculations, wormings, and other veterinary medical procedures performed on that animal; and

(B) The permanent journal giving a perpetual, sequential listing of animals which are kept at the retail pet store for thirty (30) days or longer. The journal shall contain the animal's identifying number, arrival date, exit date, and disposition; and

(11) (A) "Retail pet store" means any room or group of rooms, run, cage, compartment, exhibition pen, or tether, any part of which is within the State of Arkansas, wherein any animal is sold or kept, displayed, or offered for sale, to the public. It excludes kennels and catteries which sell animals directly to consumers. Also excluded are duly authorized animal shelters and duly incorporated humane societies dedicated to the care of unwanted animals which make those animals available for adoption, whether or not a fee for such adoption is charged.

(B) As used in this chapter, the term "retail pet store" includes its owners, officers, agents, operators, managers, and employees, and refers to any such enterprise whether in fact registered or not.

History. Acts 1991, No. 1225, § 3.

4-97-104. Registration required.

(a)(1) Any person who owns, operates, or establishes a retail pet store within the State of Arkansas shall register, by reporting in writing to the director:

(A) The name of the retail pet store;

(B) The location of each housing facility for animals owned by it, or in its care, custody, or control;

(C) The name and address of its principal agent; and

(D) The date its operation began.

(2) The report shall reflect the name and position of the individual under whose direction it is prepared and shall be made under oath before a notary public.

(b) Each registration shall be valid for a period of one (1) year. On or before the anniversary date of the original registration, reregistration shall be required, except that if at any time prior to the required reregistration date the information originally reported to the director changes or requires additions, that fact shall be reported to the director without delay.

(c)(1) A retail pet store in operation on or before April 10, 1991, shall register within ninety (90) days after April 10, 1991.

(2) A retail pet store which begins operation within ninety (90) days after April 10, 1991, shall register within thirty (30) days after the beginning of operation.

(3) A retail pet store which begins operation subsequent to ninety (90) days after April 10, 1991, shall register at least thirty (30) days prior to the beginning of operation.

(4) The date of the first acquisition of an animal for retail sale shall be deemed the date on which the operation begins.

(d) A fee of one hundred dollars (\$100) shall accompany the initial registration, and a fee of fifty dollars (\$50.00) shall accompany each subsequent reregistration. No fee shall be required for interim reports of change or addition.

(e) Each instance of failure to register or report as required by this chapter is a Class A misdemeanor.

(f)(1) The director shall maintain a list of registered retail pet stores containing all information reported with the initial registration, including the date thereof, and the dates and information provided with all subsequent amendments and reregistrations.

(2) The director shall make the list of registered retail pet stores available to the public, upon request, at no charge.

History. Acts 1991, No. 1225, § 4.

4-97-105. Consumer guarantees.

(a)(1) A retail pet store shall provide to the consumer at the time of sale of an animal a written notice, printed or typed, setting forth the rights provided in subsection (b) of this section.

(2) The notice of rights shall have added to it by the retail pet store:

(A) The animal's identifying number;

(B) A description of the animal, including its breed, sex, and color;

(C) The date of sale;

(D) The name, address, and telephone number of the consumer; and

(E) The sales price of the animal.

(3)(A) The notice may be contained in a written contract, an animal history certificate, or a separate document, provided such notice is in 10-point boldface type.

(B) The retail pet store shall certify the information by signing the document in which it is contained.

(b)(1) If, within ten (10) days following the sale of an animal subject to this chapter, a licensed veterinarian of the consumer's choosing certifies such animal

to be unfit for purchase due to illness, a congenital malformation which adversely affects the health of the animal, or the presence of symptoms of a contagious or infectious disease, the retail pet store, in addition to any other warranty, shall afford the consumer the right to retain the animal and to receive reimbursement from the retail pet store for veterinary services from a licensed veterinarian of the consumer's choosing, for the purpose of curing or attempting to cure the animal.

(2) The reasonable value of reimbursable services rendered to cure or attempt to cure the animal shall not exceed the purchase price of the animal. The value of such services is reasonable if comparable to the value of similar services rendered by other licensed veterinarians in proximity to the treating veterinarian.

(3) The reimbursement shall not include the costs of initial veterinary examination fees and diagnostic fees not directly related to the veterinarian's certification that the animal is unfit for purchase pursuant to this section.

(c) The certification that an animal is unfit for purchase, which shall be provided by an examining veterinarian to a consumer upon the examination of an animal subject to the provisions of this section, shall include, but not be limited to, information which identifies the type of animal, its breed, sex, and color, the owner, the date, and diagnosis of the animal, the treatment recommended if any, and an estimate or the actual cost of such treatment. Such form shall also include the notice prescribed in subsection (a) of this section.

(d)(1) The reimbursement required by subsection (b) of this section shall be made by the retail pet store not later than ten (10) business days following receipt of a signed veterinary certification as herein required.

(2) Such certification shall be presented to the retail pet store not later than three

(3) business days following receipt thereof by the consumer.

(e)(1) A veterinary finding of intestinal parasites shall not be grounds for declaring the animal unfit for sale unless the animal is clinically ill due to such condition.

(2) An animal may not be found unfit for sale on account of an injury sustained or illness contracted subsequent to the consumer's taking possession thereof.

(f)(1) In the event that a retail pet store wishes to contest a demand for reimbursement made by a consumer pursuant to this section, such retail pet store shall have the right to require the consumer to produce the animal for examination by a licensed veterinarian designated by such retail pet store.

(2) Upon such examination, if the consumer and the retail pet store are unable to reach an agreement within ten (10) business days following receipt of the animal for such examination, the consumer may initiate an action in a court of competent jurisdiction to recover or obtain such reimbursement.

(g) Nothing in this section shall be construed in any way to limit the rights or remedies which are otherwise available to a consumer under any law.

History. Acts 1991, No. 1225, § 5.

4-97-106. Public health - Enforcement.

The State Board of Health may propose, adopt, promulgate, and enforce, in accordance with the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq., such additional rules, regulations, and standards as may be necessary to carry out the intent of this chapter.

History. Acts 1991, No. 1225, § 6.

4-97-107. Unlawful disposition of animals.

(a) It is unlawful for a retail pet store to knowingly give, sell, exchange, barter, or otherwise transfer an animal to any other person if the ultimate destination of the animal is research or killing for dissection.

(b) It is unlawful for a retail pet store to kill any animal in its care, custody, or control without a prior written or oral recommendation from a doctor of veterinary medicine citing the animal's interest justifying the killing of the animal.

(c) It is unlawful for a retail pet store, its owners, officers, agents, operator, manager, or employees, or any other person, to kill any animal in its care, custody, or control by any means other than euthanasia as defined in § [4-97-103](#).

(d) Violations of this chapter or regulations promulgated hereunder shall constitute Class A misdemeanors.

History. Acts 1991, No. 1225, § 7.

4-97-108. Inspection - Public notice.

(a) Any authorized person is entitled to inspect the premises and records of a retail pet store at reasonable hours.

(b) Retail pet stores shall make their premises available for inspection by authorized persons at reasonable hours.

(c) Each failure to make premises or records available to an authorized person whose identity is made known to an owner, officer, agent, operator, manager, or employee of a retail pet store is a Class A misdemeanor.

(d)(1)(A) Every retail pet store required to be registered shall post a public notice on each of its premises, in type not less than one inch (1") in height, in a location conspicuous to the public, that complaints regarding treatment or care of its animals may be made to the State Board of Health or to any law enforcement officer.

(B) The public notice shall refer to this chapter.

(2) Failure to post the public notice is a Class A misdemeanor.

(e) Within thirty (30) days of the receipt by the director of an initial registration report, and the receipt of proper fees therefor, the director shall provide a public notice conforming with subsection (d) of this section to the registrant. Additional public notices for multiple locations and replacements of notices already provided may be obtained from the director upon the payment of a fee of ten dollars (\$10.00) for each additional public notice.

History. Acts 1991, No. 1225, § 8.

4-97-109. Applicability to other laws.

Nothing in this chapter shall be construed to prevent or limit the application of any other law.

History. Acts 1991, No. 1225, § 10.

RULES AND REGULATIONS
PERTAINING TO

THE ARKANSAS RETAIL PET STORE
CONSUMER PROTECTION ACT

Promulgated Under the Authority of

Act 96 of 1991
as amended, and
Act 1225 of 1991

ARKANSAS DEPARTMENT OF HEALTH
LITTLE ROCK, ARKANSAS

April 10, 1991

RULES AND REGULATIONS PERTAINING

TO ACT 1225 OF 1991

THE ARKANSAS RETAIL PET STORE CONSUMER PROTECTION ACT

PART 1. AUTHORITY.--

Authority for the promulgation of these regulations is derived from Section 6 of Act 1225 of 1991, the "Arkansas Retail Pet Store Consumer Protection Act of 1991", which states:

The State Board of Health may propose, adopt, promulgate, and enforce, in accordance with the Administrative Procedures Act, 25-15-201 et seq., such additional rules, regulations, and standards as may be necessary to carry out the intent of this act.

PART 2. PURPOSE.--

The 78th General Assembly of the State of Arkansas has found and declared that abuses exist within the pet store industry regarding selling sick and injured animals to the public; failing to provide consumer guarantees for these animals consistent with their status as companions; failing to provide proper veterinary care; maintaining unsanitary and otherwise unhealthful conditions; and inhumane methods of killing sick and unwanted animals, and animals returned for failure of guarantee; and that such abuses should be minimized or eliminated immediately.

The intent of Act 1225 of 1991, the "Arkansas Retail Pet Store Consumer Protection Act of 1991", and therefore the purposes of these regulations, is:

- (1) to require certain guarantees from retail pet stores to the purchasers of dogs and cats, which are consistent with their unique status as companions rather than commodities; See Section 5 Consumer Guarantees Act 1225 of 1991
- (2) to provide a means by which it can be insured that the treatment, care, and disposition of those animals is humane and that said treatment, care, and disposition is consistent with providing to the retail consumer animals which are physically and temperamentally sound, healthy, and fit as companions;
- (3) to provide a means by which the acquisition and care of those animals can be monitored; and

(4) to ensure that the animals and facilities are managed in a manner non injurious to the public health.

It has been further determined and declared by the General Assembly of the State of Arkansas that the supervision by the State of the sale of dogs and cats by retail pet stores, and the inspection of such animals, whether or not found within the public area of the store, is within the public interest.

PART 3. DEFINITIONS.--

For the purposes of these regulations,

(a) "Ambient temperature" means the air temperature surrounding the animal which must be between 72° F and 82° F at all times.

(b) "Animal" means a dog or cat of any age.

(c) "Authorized person" means the Director of the State Department of Health or his delegate, or any law enforcement officer.

(d) "Cat" means any live or dead cat (Felis catus or Felis domesticus), kitten or adult of either sex, or any cat-hybrid cross.

(e) "Cattery" means an enterprise wherein or whereon the business of grooming or boarding cats, or breeding cats for sale, and selling such cats, is carried on, and which does not in its usual course of business acquire cats for resale to the public.

(f) "Clean" means free from dirt, contamination or disease.

(g) "Consumer" means any individual purchasing an animal from a retail pet store. A retail pet store shall not be considered a consumer.

(h) "D.V.M." means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education, and who has a valid license to practice veterinary medicine within the State of Arkansas.

(i) "Director" means the Director of the State Department of Health.

(j) "Dog" means any live or dead dog (Canis familiaris), puppy or adult of either sex, or any dog-hybrid cross.

(k) "Effective temperature" means the ambient temperature adjusted to compensate for the effect of air circulating in proximity to the animal.

(l) "Euthanasia" means the humane killing of an animal accomplished by a method that utilizes anesthesia produced by an agent that causes painless loss of consciousness and subsequent death, and administered by a licensed veterinarian or a euthanasia technician certified as competent by a licensed Veterinarian.

(m) "General area" means any part of a retail pet store in which animals are confined and handled, and which is segregated from the Quarantine area and Isolation area of the facility.

(n) "Handling" means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working, and moving, or any similar activity with respect to any animal.

(o) "Housing facility" means any land, premises, shed, barn, building, trailer, or other structure or area housing intended to house animals.

(p) "Hybrid cross" means an animal resulting from the crossbreeding between two different species or types of animals.

(q) "Identifying number" means a number assigned to every animal received at any housing facility of a retail pet store. The identifying numbers for each species shall be sequential.

(r) "Impervious surface" means a surface that does not permit the absorption of fluids. Such surfaces are those that can be thoroughly and repeatedly cleaned and disinfected, will not retain odors, and from which fluids bead up and run off or can be removed without their being absorbed into the surface material.

(s) "Infant animal" means an animal under the age of six (6) months.

(t) "Intake examination" means an initial examination by a D.V.M. for illness, injury, and genetic defect.

(u) "Isolation area" means that part of a retail pet store set aside for confining and handling animals with contagious conditions as diagnosed by a D.V.M., and which is segregated from the Quarantine area and General areas of the facility.

(v) "Kennel" means an enterprise wherein or whereon the business of grooming or boarding dogs, or breeding dogs for sale, and selling such dogs, is carried on, and which does not in its usual course of business acquire dogs for resale to the public.

(w) "Licensed veterinarian" means a person who has graduated from an accredited school of veterinary medicine or has received equivalent formal education, and who has a valid license to practice veterinary medicine in some State.

(x) "Newly received animal" means any animal which has been at any housing facility of the retail pet store less than seventy two (72) hours.

(y) "Permanent journal" means a perpetual sequential listing of animals who are received for sale at the pet store. Such journal shall contain the animal's identifying number, age, sex, species, breed, arrival date, exit date, and disposition for the customer to see.

(z) "Permanent record" of an animal means a record prepared for each and every animal received at a retail pet store, and retained for a period of three (3) years after the animal's sale, death, or other disposition. The permanent record shall contain such information as required in these regulations.

(aa) "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

(bb) "Positive physical contact" means petting, stroking, or other touching by human beings, which is beneficial to the well-being of the animal and contributes to its socialization and fitness as a companion.

(cc) "Primary enclosure" means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, or compartment.

(dd) "Quarantine area" means that part of a retail pet store, segregated from the Isolation area and General area, set aside for confining and handling newly received animals until such time as each animal has been on the premises for a period of seventy-two (72) hours and is found to be healthy prior to transfer to the General area.

(ee) "Records" of a retail pet store means:

(1) The permanent record of each animal's health history showing the animal's vaccinations, inoculations, wormings, and other veterinary medical procedures performed on that animal, as well as such other data as may be required by these regulations to be maintained in or with each animal's permanent record for a three year period.

(2) The permanent journal giving a perpetual, sequential listing of animals which are received at the pet store. Such journal shall contain the animal's identifying number, birth date, sex, species, breed, arrival date, exit date and disposition.

(ff) "Retail pet store" means any room or group of rooms, runs, cages, compartments, exhibition pens, any part of which is within the State of Arkansas, wherein any animal is sold or kept, displayed, or offered for sale to the public. It includes all housing facilities, areas, locations, and premises owned, operated, controlled or used by such an enterprise, whether or not open to the public. It excludes kennels and catteries which sell animals wholesale or directly to a consumer, if those kennels and catteries primarily breed and train animals and do not in their usual course of business acquire animals for resale to the public. This type of facility is inspected by US Department of Agriculture inspectors as required by the Federal Animal Welfare Act. Also excluded are duly authorized animal shelters and duly incorporated humane societies dedicated to the care of unwanted animals which make such animals available for adoption, whether or not a fee for such adoption is charged. As used in this act, the term "retail pet store" includes its owner(s), officers, agents, operators, managers, and employees, and refers to any such enterprise whether in fact registered or not.

(gg) "Sanitize" means to make physically clean and to remove and destroy, to the maximum degree that is practical, agents injurious to health.

(hh) "Standards" means the requirements with respect to the humane housing, exhibition, handling, care, treatment, and transportation of animals by retail pet stores, their owners, officers, agents, operators, managers, and employees, at any housing facility owned, operated, controlled, or used by a retail pet store.

(ii) "Young animal" means an animal at least six (6) months but less than fourteen (14) months of age.

(jj) "Tether" means something (rope or chain) by which an animal is fastened so it can range only in a set radius.

PART 4. REGISTRATION.--

Registration is governed by Section 4 of Act 1225 of 1991 and all subparts thereto.

PART 5. ACQUISITION OF ANIMALS.--

(a) A retail pet store shall maintain a permanent record for each animal received by it, containing the following: the animal's indentifying number, a description of the animal including its birth date, breed, sex, and color; the date of the animal's arrival at any housing facility owned, operated, controlled or used by a retail pet store; and the date of the animal's exit from the retail pet store, or death. The permanent record shall contain the name, address, and telephone number of the person from whom the retail pet store received the animal; and the name, address, telephone number, and signature of the person into whose ownership, possession, care, custody or control the animal passed upon exit from the retail pet store.

(b) In addition to the information specified in subsection (a) of this section, the permanent record of each animal received by a retail pet store shall contain the name, address, telephone number of the animal's breeder, and the name of any broker, dealer, or other agent through whom the animal passed prior to being acquired by the retail pet store.

(c) It is unlawful for a retail pet store to receive or acquire an animal, whether from within or without the State of Arkansas, unless the animal is accompanied by a Health Certificate, signed by a licensed veterinarian certifying such animal to be free from obvious signs of disease. Should animals be received at a pet store without a Health Certificate, they must be examined by a Veterinarian within seventy two (72) hours of arrival and a Health Certificate issued and made a part of the permanent record. Animals that fail to pass a Veterinary examination will be removed from the premises. Such certificate shall be maintained with the animal's permanent record.

(d) It is unlawful for a retail pet store to receive or acquire an animal that was shipped or transported under eight (8) weeks of age.

PART 6. MINIMUM STANDARDS OF CARE.--

(a) A retail pet store shall advise all employees, whether or not directly involved with animal care, of the minimum standards of care required by this section. A retail pet store shall post such minimum standards of care at any housing facility owned, operated, controlled, or used by it, in a location conspicuous to its owners, officers, agents, operators, managers, and employees. A retail pet store shall require each owner, officer, agent, operator, manager, and employee to sign and date an Acknowledgment of Advice of Minimum Standards of Care required by this Section. Such acknowledgments shall be retained permanently by the retail pet store and made available for inspection by authorized persons at reasonable hours. A retail pet store shall post the names and telephone numbers of at least two (2) D.V.M.'s, and all persons associated with the retail pet store shall be instructed to contact a D.V.M. in the case of an emergency.

(b) A retail pet store shall maintain a Quarantine area, an Isolation area, and General area for confining and handling animals at any facility owned, operated, controlled or used by it. The Quarantine area and Isolation area in new and remodeled retail pet stores shall be separate, physically defined spaces removed from the general population. Existing facilities shall make the best practical use of existing space to maintain three (3) separate areas.

(c) Animals received into the Quarantine area shall not be housed with animals other than their litter mates or shipping mates.

(d) Animals in the Isolation area shall not be housed with other animals except upon the advice of a D.V.M., noted on the animal's permanent record.

(e) Animals in the General area shall be housed with other animals of compatible species, age, size, and temperament. No animal housed in the General area shall be isolated from other animals except upon the written recommendation from a D.V.M. citing the reason therefor, no animals shall be housed with or otherwise exposed to a vicious animal.

(f) Every animal which arrives at a retail pet store, or at any housing facility owned, operated, controlled, or used by it, or otherwise possessed, actually or constructively by a retail pet store, shall be examined by a D.V.M. for illness, injury, and genetic defect within seventy two (72) hours of its arrival and thereafter as needed. If the animal is accompanied by a Health Certificate signed by a Veterinarian within seventy two (72) hours of arrival, a repeat examination by a veterinarian is not necessary providing an examination by qualified pet shop personnel is conducted. All newly arrived animals shall be placed in Quarantine area for at least seventy two (72) hours before transferring to the General area for resale. If an animal dies before it receives an intake examination, the body shall be preserved and handled in accordance with this Section. Failure to maintain a permanent record for an animal which has been delivered to a retail pet store at or near its premises, or delivered to its owner(s), officers, agents, operators, managers, and employees, and which dies or is killed prior to an intake examination is a violation of this regulation.

(g) Every animal that dies while under the care and control of a retail Pet Store shall be examined by a Veterinarian and the cause of death determined. As an alternative, the attending veterinarian or pet shop manager may present the animal to the Diagnostic Laboratory of the Arkansas Livestock and Poultry Commission for necropsy. The autopsy report shall be preserved with the animal's permanent record. Failure to present the body for necropsy when indicated is a violation of this regulation.

(h) Each animal shall be examined daily by competent personnel for signs of disease or injury. Every sick, diseased or injured animal shall be provided appropriate veterinary care and treatment by a D.V.M. until cured or euthanized in the manner prescribed in Section 3 of these regulations. A record of the illness or injury will be placed in the permanent record.

(i) A retail pet store shall provide for its animals inoculations and parasite treatment as recommended by a D.V.M. A record of each such inoculation or treatment shall be maintained in the animal's permanent record.

(j) A commercially acceptable food shall be provided daily, including Sundays and holidays. The food shall be free from contamination and shall be served in a clean container. Infant animals shall receive food at least three (3) times a day. Young animals shall receive food at least two (2) times a day.

(k) Clean water shall be available at all times and shall be changed daily. Water shall be available in a removable vessel secured to prevent tipping. Water containers shall be cleaned and sanitized.

(l) A retail pet store shall maintain healthy and comfortable environmental temperatures suitable for the age and type of animal in accordance with the recommendations of a D.V.M. and shall not expose any animal to conditions detrimental to its health or well-being. A working thermometer shall be displayed in each housing area.

(m) The primary enclosure for any animal shall be made of non-absorbent and non-corrosive materials and shall be constructed in a manner which will protect the animals' legs from injury. No wooden materials shall be used in the construction of any cage or enclosure unless it is covered with water resistant coating. A cushioned resting surface of a size sufficient to permit the animal to lie down fully extended shall be available in each primary enclosure. Such resting surface shall be made of impervious material with insulating qualities. The primary enclosure for cats shall have a resting surface elevated above the litter area. Wire or grid flooring shall not be used for cats.

(n) Primary enclosures shall be of sufficient size to permit each animal contained therein to:

- (1) Stand normally to its full height;
- (2) Turn around easily and execute normal postural adjustments; and
- (3) Lie down fully extended.

(o) Primary enclosures for dogs, including puppies, may have wire or grid flooring, provided that the following conditions are met:

(1) The gauge of the wire or grid material shall be of adequate size to support the dog or puppy and to prevent sagging.

(2) The mesh openings shall be no more than 1/4 inch for puppies and 3/8 inch for larger dogs and shall not permit the dog or puppy's feet or pads to pass through or become caught. If wire or grid of small enough size is not available to protect the feet and legs of the smallest puppies and dogs, such puppies and dogs shall not be maintained on wire or grid at any time, whether in a primary enclosure or otherwise. The wire should be covered with vinyl or rubber. A cushioned resting surface of a size sufficient to permit the animal to lie down fully extended shall be available in each primary enclosure. Puppies shall be provided teething devices as recommended by a D.V.M. Such animals shall be afforded all care necessary to prevent their becoming soiled or chilled by feces or urine.

(p) Animal feces and urine shall be removed from each enclosure, primary or otherwise, as often as is necessary and under no circumstances less than twice each day, including Sundays and holidays. Each enclosure in the Isolation area shall be sanitized as directed by a D.V.M. Enclosures in the General area shall be cleaned daily and sanitized as needed.

(q) Proper ventilation shall be provided so that animals are not exposed to concentrations of ammonia or other noxious gases generated by animal urine or feces.

(r) It is unlawful to tether animals owned by, or in the care, custody, or control of a retail pet store.

(s) It is unlawful for a retail pet store to withhold food, water, shelter, or veterinary care from any animal in its care, custody, and control, except that food or water may be withheld with prior written consent of a D.V.M. citing the medical reason for the withholding thereof and specifying the limited time therefor. Such written consent shall be maintained with the animal's permanent record.

(t) Each well animal shall receive at least two (2) hours every day, including Sundays and holidays, of play and exercise. Such periods may be divided. The times and durations of such periods shall be noted and signed by the supervising individual in the permanent record of each animal.

PART 7. DISPOSITION OF ANIMALS.--

Disposition of animals is governed by Section 7 of Act 1225 of 1991, subsections A,B and C.

PART 8. INSPECTION.--

Inspection is governed by Section 8 of Act 1225 of 1991, subsection A,B, and C.

--END--

SEVERABILITY

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Rules and Regulations which can be given effect without the invalid provision or application and to this end the provisions of these Rules and Regulations are declared to be severable.

REPEAL

All Regulations and parts of Regulations in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing Rules and Regulations Pertaining to Act 1225 of 1991 "The Retail Pet Store Consumer Protection Act" were adopted by the Arkansas State Board of Health at a regular session of the Board held in Little Rock, Arkansas on the 21st Day of October, 1992 and after a Public Hearing on the 16th Day of July, 1992 held in Little Rock, Arkansas at the State Health Department Building.

M. Joycelyn Elders, M.D.
M. Joycelyn Elders, M.D.
Secretary
Arkansas Board of Health

The foregoing Rules and Regulations having been filed in my office are hereby adopted on the 7th Day of December, 1992.

Bill Clinton
Bill Clinton
Governor of Arkansas

FILED
REGISTERED CIV.
92 NOV 17 PM 12:00
LITTLE ROCK, ARKANSAS

§ 14-54-1105. Working animal protection - Definition

(a)

(1) As used in this section, "working animal" means a nonhuman animal used for the purpose of performing a specific duty or function in commerce or animal enterprise, including without limitation human service, transportation, education, competition, or exhibition.

(2) As used in this section, "working animal" does not mean poultry, swine, dairy cows, beef cattle, sheep, goats, or other similar nonperformance production enterprise.

(b)

(1) Notwithstanding any other provision of law to the contrary, the right to utilize a working animal for the benefit and welfare of the working animal or the individual the working animal serves is guaranteed.

(2) An ordinance or resolution shall not be enacted by a municipality that terminates, bans, effectively bans, or creates an undue hardship relating to the job or use of a working animal or animal enterprise in commerce, service, legal hunting, agriculture, husbandry, transportation, ranching, entertainment, education, or exhibition.

(c) This section does not alter state laws or rules that regulate animal care, public health, or public safety, including without limitation §5-62-101 et seq., and §14-54-103.

(d) This section does not prohibit a municipality from establishing or altering an ordinance regarding animal care, public health, or public safety.

(e) This section supersedes a municipal ordinance, resolution, or rule that conflicts with this section but does not supersede a municipal zoning ordinance under §14-56-401 et seq.

History:

Added by Act 2021, No. 1091, §1, eff. 7/28/2021.