

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1624

INTRODUCER: Regulated Industries Committee and Senator Sobel

SUBJECT: Sale of Dogs or Cats

DATE: April 10, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	<b>Fav/CS</b>
2.			CA	
3.			AGG	
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1624 defines “flea market” as an organized event of two or more persons offering merchandise for sale or exchange, such as a swap meet or open air market.

The bill prohibits the willful sale, exchange, or donation, or offer of sale, exchange, or donation of a dog or cat in a flea market, except by a county or city operated animal control agency or a registered non-profit humane organization.

The bill provides that a violation of this section for the first time constitutes a misdemeanor of the second degree, and a violation of a subsequent time constitutes a misdemeanor of a first degree punishable under s. 775.082, F.S., or s. 775.083, F.S.

The bill provides an effective date of July 1, 2014.

**II. Present Situation:**

**Animal Welfare**

In 1966 Congress passed the Animal Welfare Act (AWA), regulating treatment of animals by dealers and enforced by the United States Department of Agriculture (USDA). Under the AWA, the term “dealer” means any person who, in commerce, for compensation or profit, delivers for

transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of an animal as a pet, which does not include a retail pet store.<sup>1</sup> The USDA Animal and Plant Health Inspection Service has established two regulated classes that meet the definition of “dealer,” Class A licensees as breeders that deal only in animals they breed and raise, and Class B licensees conduct business as brokers and operators of auction sales, and they do not usually hold animals in a facility.<sup>2</sup> Facilities that breed and sell their animals to pet stores, brokers, or research facilities are covered under the AWA. The AWA requires that the following breeders/dealers obtain USDA licenses:<sup>3</sup>

- People who breed dogs and cats for use as pets or for other purposes and sell them sight unseen at the retail level; and
- The wholesale dealers who supply these animals to pet stores, brokers, or research facilities.

In order to engage in regulated activities and receive a license from USDA Animal Care Program, a dog/cat breeder or dealer must apply for an AWA license from USDA, pass a pre-license inspection, be in full compliance with all of the AWA standards and regulations, and pay a licensing fee.<sup>4</sup>

As USDA's entity for animal welfare, the Animal Care Program makes sure that proper care is provided to most warm-blooded animals used in research or exhibition, sold for use as pets, or transported in commerce.<sup>5</sup> According to the USDA, the Animal Care Program employs professionals with a range of scientific, technical, and administrative skills to accomplish its mission and facilitate enforcement of the AWA and Horse Protection Act.<sup>6</sup> These professionals are veterinarians, animal care inspectors, computer specialists, program specialists, and other administrative and program support personnel.<sup>7</sup> Enforcement of the AWA is accomplished by field-based employees who are strategically located throughout the 50 states and territories.<sup>8</sup>

The AWA does not cover all animals in all situations, including household pets sold face-to-face at retail, pets owned by individuals, and pets housed in shelters or pounds.<sup>9</sup> USDA's jurisdiction is limited to the authority granted by the AWA, but states and local governments may create and enforce their own laws and regulations to protect animals, which may exceed the AWA standards.<sup>10</sup>

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<sup>1</sup> 7 U.S.C. s. 2132.

<sup>2</sup> USDA, *Animal Welfare Act and Animal Welfare Regulations* (Nov. 2013) available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/Animal%20Care%20Blue%20Book%20-%202013%20-%20FINAL.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/Animal%20Care%20Blue%20Book%20-%202013%20-%20FINAL.pdf) (Last visited April 8, 2014).

<sup>3</sup> Animal and Plant Health Inspection Services, *Animal Care Factsheet* (Feb. 2014), available at [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/faq\\_animal\\_dealers.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_animal_dealers.pdf) (Last visited April 8, 2014).

<sup>4</sup> *Id.*

<sup>5</sup> USDA Animal and Plant Health Inspection Service, *Animal Welfare Act* (last modified Feb. 20, 2014), available at [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_animal\\_welfare%2Fsa\\_landing\\_page%2Fsa\\_spotlights%2Fct\\_awa\\_program\\_information](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_animal_welfare%2Fsa_landing_page%2Fsa_spotlights%2Fct_awa_program_information).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

The Division of Animal Industry under the Florida Department of Agriculture and Consumer Services is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases.<sup>11</sup>

Several petitions opposing flea market sales of pets in Florida have been created, including those on Change.org and the Care2 Petition site.

### **Pet Purchase Protection Laws**

According to the American Veterinary Medical Association, 21 states have lemon laws that provide legal recourse to people who purchase animals from pet dealers, later found to have a disease or defect.<sup>12</sup>

Section 828.29, F.S. provides that the official certificate of veterinary inspection certifying the appropriate administration of tests, vaccines, and anthelmintics<sup>13</sup> must accompany each dog and cat transported into the state for sale. The tests, vaccines, and anthelmintics<sup>14</sup> required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection.<sup>15</sup> The tests, vaccines, and anthelmintics must be administered before the dog or cat is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic may not be administered to that particular dog.<sup>16</sup> Time frames required for such administrations are also provided for depending on the age of a dog or cat.<sup>17</sup>

If a veterinarian finds an animal was unfit for purchase within fourteen days of the purchase or finds within one year of the purchase that there was a misrepresentation as to the animal's breed, sex or health, the buyer has the right to return the animal for a refund plus medical expenses up to the purchase price, replacement plus medical expense up to the purchase price, or reimbursement of veterinary expenses to treat the animal up to the purchase price.<sup>18</sup> Section 828.29(13), F.S., defines "pet dealer" as any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale of more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public, which includes breeders of animals who sell such animals directly to a consumer.

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<sup>11</sup> Division of Animal Industry, Florida Department of Agriculture and Consumer Services, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry>.

<sup>12</sup> See American Veterinary Medical Association, *Pet Purchase Protection Laws* (April 2014), *available at* <https://www.avma.org/Advocacy/StateAndLocal/Pages/pet-lemon-laws.aspx> (Last visited April 4, 2014).

<sup>13</sup> Section 828.29(1)(a), F.S., requires these to be administered within the spectrum of fourteen and thirty days before the dog's entry into the state, s. 828.29(2)(a), F.S., makes these same requirements for the sale of cats.

<sup>14</sup> Anthelmintic are medicines for "expelling or destroying parasitic worms especially of the intestine," *available at* <http://www.merriam-webster.com/dictionary/anthelmintic> (Last visited April 4, 2014).

<sup>15</sup> Section 828.29(1)(b), F.S., and s. 828.29(2)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 828.29(5), F.S.

### III. Effect of Proposed Changes:

The bill creates s. 828.295, F.S., defining “flea market” as an organized event of two or more persons offering merchandise for sale or exchange, such as a swap meet or open air market. Neither “swap meet” nor “flea market” are currently defined in statute.<sup>19</sup>

The bill prohibits the willful sale, exchange, or donation, or offer of sale, exchange, or donation of a dog or cat in a flea market, except by a county or city operated animal control agency or a registered non-profit humane organization.

The bill provides that a violation of this section for the first time constitutes a misdemeanor of the second degree, and a violation of a subsequent time constitutes a misdemeanor of a first degree punishable under s. 775.082, F.S., or s. 775.083, F.S.<sup>20</sup>

**Section 3** of the bill provides an effective date of July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

Unknown

#### B. Private Sector Impact:

This will have an impact on flea market retail sites of dogs and cats, as well as the flea markets who may lose rent from those individuals who are no longer able to sell their inventory in the markets. It is unclear if other events where two or more persons offering merchandise for sale or exchange will be impacted.

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<sup>19</sup> A “swap meet” is defined as “an event at which people can buy, sell, or trade used item.” <http://www.merriam-webster.com/dictionary/swap%20meet> (Last visited April 4, 2014).

<sup>20</sup> Section 775.082, F.S., provides that the penalty for misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days and a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$500 and a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not include a provision prohibiting display of cats and dogs. Therefore, those business owners with an established location other than the flea market may be able to continue displaying their animals to promote their business.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 828.291 and 828.295

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on April 10, 2014:**

CS removes the portion of the bill that requires a person selling a dog or cat under a Class A or Class B license issued by the U.S. Department of Agriculture (USDA) to continuously display the breeder's printed name, city and state of residence, and USDA license number.

B. Amendments:

None.