



June 23, 2020

VIA ELECTRONIC MAIL AND FIRST-CLASS MAIL

Jennifer Jones
Executive Director
Texas Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711

RE: *THLN's Response to the Texas Dog & Cat Breeder Act Recommendation in Sunset's Staff Report on TDLR*

Dear Ms. Jones and members of the Sunset Commission:

Thank you for the opportunity to respond to the Staff Report regarding TDLR and specifically the Texas Licensed Breeders Program (hereinafter Texas Licensed Breeders Program or the "Program"). While we disagree with the staff recommendation to abolish the Program, we commend the staff's work and their understanding of the Program. The purpose of this correspondence is twofold: (1) for the Texas Humane Legislation Network to show its support for continuation of the Texas Dog & Cat Breeder Act overseen by the Texas Department of Licensing and Regulation (TDLR); and (2) to recommend statutory improvements to better ensure program effectiveness.

I. BACKGROUND ON THE TEXAS HUMANE LEGISLATION NETWORK.

I am the Executive Director for the Texas Humane Legislation Network ("THLN"), a forty-five-year-old statewide organization whose mission is to promote the humane treatment of animals through legislation, education and advocacy. THLN has over 27,000 supporters throughout the state of Texas. We are a Texas-only organization and do not follow a national agenda, only what is right for Texas. We are devoted to the humane treatment of dogs and cats in breeding facilities in Texas and as this law was our premiere piece of legislation in 2011, we are also incredibly invested in its success.

II. SUMMARY.

As demonstrated below, the Texas Licensed Breeders Program has been successful and warrants preservation. At the same time, there are two statutory ways to improve the Program: (1) remove the minimum number of pet sales altogether and (2) lower the number of breeding females from 11 to five for the licensing requirement to apply to a breeder.

III. INTRODUCTION.

In 2011, the Texas Licensed Breeders Program was created at TDLR through enactment of HB 1451 and the establishment of the nine-member Licensed Breeder Advisory Committee. As Representative Thompson stated during the HB 1451 hearing in 2011, the intent of the bill was to require and ensure the humane and proper care and treatment of dogs and cats living in large-scale breeding facilities.¹ TDLR indicates that there are currently 154 licensed Texas breeders decreasing from 174 in 2018.² TDLR's Field Operations Division is responsible for conducting pre-license, periodic and out-of-cycle inspections.

IV. TEXAS LICENSED BREEDERS PROGRAM WARRANTS PRESERVATION.

Many reasons exist to preserve the Texas Licensed Breeders Program. The Program, designed and brought together by a bipartisan coalition of Texas agencies and animal welfare organizations in 2011, is designed to enact basic standards of care in commercial breeding facilities while preventing animal cruelty before it happens.

A. The Program prevents Texas breeders with a history of animal cruelty becoming licensed.

An important aspect of the Program is ensuring that an applicant will not receive a breeder license if their criminal background check includes animal cruelty crimes.³ Specifically, TDLR will deny issuance of a license to, or refuse to renew the license of, a dog or cat breeder if that breeder pled guilty to, has been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.⁴ Without the Program in place, there is no consistent way to track whether breeders with animal cruelty convictions are applying to breed and sell dogs and cats in Texas. The law would prevent even more breeders with a history of animal cruelty becoming licensed if the number of breeding females is lowered.

B. The Program prevents animal cruelty from happening in Texas' commercial breeding facilities.

- 1. The Program keeps breeders in check and without the Program, there would be many more costly large-scale seizures burdening taxpayers and non-profits alike.**

Law enforcement agencies are not equipped to handle on their own large-scale seizures of dogs and cats from unscrupulous commercial breeding facilities. Texas sheriffs and police chiefs heavily depend on charitable organizations and animal welfare non-profits (like the SPCA of Texas, Inc.) because their departments do not have the resources to remove and care for hundreds of dogs or cats from cruel situations.⁵ These charitable organizations are few and far between, but they assist law enforcement in seizing the animals and humanely caring for the animals while the courts decide who should own them.⁶ Texas is rural and most of the 254 counties don't have this safety net, therefore most Texas law enforcement agencies have to fend for themselves. By inspecting large scale breeding operations **before they are licensed**, the Program prevents large-scale seizures of puppy mill operations. With no licensing program and no inspections, the number of large-scale seizures already occurring will more than likely double, draining municipal and county budgets while costing taxpayers large sums of money.⁷

As a clear example, in 2009 before the Program and its inspections began, authorities seized more than 500 dogs from "Klassie Kennels" in Kaufman, Texas.⁸ The Sheriff's Department took part in the rescue assisted by three animal welfare organizations.⁹ To remove, give vet attention to and house more than 500 dogs was incredibly expensive, depleting resources from the already stretched law enforcement budgets for Kaufman County and local humane societies. If TDLR's Program and its inspections had been in place, animal cruelty problems may have been prevented or rectified much earlier.

- 2. TDLR's out-of-cycle inspections are crucial to preventing animal cruelty.**

TDLR performs additional inspections when necessary to ensure compliance at facilities with serious or repeated violations. Specifically, if the periodic inspection reveals a serious or repeated violation relating to sanitation violations or failure to timely remedy violations or commission orders, TDLR is to inspect the facility twice a year. Moreover, if repeated or serious violations related to shelter, food, water, and medical treatment or examinations occur, TDLR is to inspect the facility four times a year.¹⁰ TDLR charges a \$150 fee for out-of-cycle inspections.

C. The Program regulates Texas breeders that are outside of the USDA's purview.

The Program codifies the very basic standards of care that responsible breeders are already or should be exercising. Based on numbers provided by the United States Department of Agriculture (USDA), Texas remains the 8th largest state in terms of breeders.¹¹ According to TDLR, USDA inspects "some" Texas dog and cat breeders, but many are exempt from federal oversight since USDA only regulates wholesale breeders.¹² USDA's own statistics show that it only monitors about 25 percent of breeders. However, to avoid duplication, Class A USDA-licensed breeders who apply to become TDLR-licensed breeders are exempt from TDLR's initial facility inspection.¹³

D. The Program is not redundant; conversely, it plays a vital role in tandem with Texas' other animal-cruelty laws.

TDLR's Licensed Breeder Program prevents suffering and animal cruelty before it starts and makes law enforcement's job easier. While the Program is proactive and preventative, the other laws are reactive after it is too late to fix any violations and animals are already harmed. Texas has an animal cruelty statute.¹⁴ For the animal cruelty law to apply to a breeding situation, the animal cruelty has to have already occurred.¹⁵ Texas also has a civil seizure statute and criminal seizure statute where both allow seizures of dogs and cats from unscrupulous breeders who are treating the dogs and cats inhumanely.¹⁶ These laws operate when animals are cruelly treated and law enforcement handles the investigation. TDLR's Program complements criminal penalties for maltreatment to create a strong safety net for these animals in total.

E. The Program is an important consumer resource for Texans.

The Program serves as a tool for those Texas citizens who want to make an informed decision about a breeder before purchasing a puppy from them. For example, but for the Program, consumers would have never known about the violations at a breeder in East Texas selling "show quality" puppies, but was fined \$5,750 by the state of Texas in 2019 for repeatedly selling puppies under an expired license, failure to obtain required veterinary exams and rabies vaccines and many more problems.¹⁷ Without the Program, consumers have no such source of essential information.

V. STATUTORY CHANGES ARE NEEDED TO STRENGTHEN THE TEXAS LICENSED BREEDER'S PROGRAM.

Beyond the essential need to continue TDLR's Licensed Breeders Program, improvements are needed to better prevent cruelty, and both protect animals and the Texans buying them.

A. Regulation of breeders in Texas.

A Texas breeder is defined as a person who (1) possesses 11 or more adult intact female animals (*the number of breeding females requirement*); (2) is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration; and (3) who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year (*the sales requirement*).¹⁸ TDLR has done its job licensing breeders, but its effectiveness in preventing animal cruelty is limited by two problematic statutory provisions: the unenforceable minimum sales requirement and the high breeding females threshold.

B. The unenforceable sales requirement.

One of the easiest ways to improve the Texas Licensed Breeders Program is to remove the application of the Program to only those who sell 20 puppies/kittens or more per year. Currently, a "breeder" is defined as a person "who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year."¹⁹ Based on presentations given by TDLR inspectors since 2011, TDLR inspectors say determining whether an unlicensed breeder is truthful about his or her sales numbers is all but impossible.²⁰ Many of the sales are untracked cash transactions. Unlike other areas of TDLR licensure, determining whether a breeder should have a license and be inspected is difficult. How does a TDLR inspector prove that a suspected unlicensed breeder sold 20 or more puppies/kittens during a calendar year when he or she denies it? The Sunset staff report correctly says that disciplinary action against unlicensed breeders is rare. This finding is not surprising given the difficulty inspectors have proving that 20 sales have occurred. This problem can be easily fixed in statute.

C. The excessive number of breeding females requirement.

Currently, a breeder must possess 11 or more adult intact female animals to be subject to licensure.²¹ Breeders with less than 11 female animals may never be inspected. THLN recommends that the number of breeding females be lowered to five (which is parallel with the USDA requirement). The high number of female animals required before a breeder must be licensed results in the vast majority of complaints against breeders being

about *unlicensed* facilities. In a presentation in 2015, TDLR provided the following complaint information:

Fiscal Year	Complaints Against <u>Licensed</u> Breeders	Complaints Against <u>Unlicensed</u> Breeders
2013	5	156
2014	4	146
2015	8	111
2016	3	53
Total	20	466

These figures make evident that suspected unlicensed breeders are either choosing to not come into compliance and/or the threshold is too high to meet the definition of breeders.²²

VI. THLN’S SUNSET RECOMMENDATIONS.

The Texas Licensed Breeders Program is vital to the safety and welfare of our vulnerable pet animal populations. This sounds nice, but let’s be clear. We are talking about ensuring the proper regulation of puppy mills. Non-regulation in the past has led to horrific conditions at some breeders as you can see in the photos in Appendix II. Based on a 2015 poll, nine in ten (89%) U.S. adults say the solution to puppy mills is to have tougher breeder standards that crack down on illegal operators.²³ THLN believes that TDLR is the right agency to continue the Program and has successfully managed the program it was given. However, the Program can be made more effective and THLN would greatly appreciate consideration and inclusion of the following recommendations.

A. Continue the Texas Licensed Breeder Program.

The Sunset staff recommendation to eliminate the Program would place all responsibility for puppy mills on law enforcement who can only act after animal cruelty takes place. Conversely, the Program is prospective by requiring regular inspections and administrative enforcement action before animal cruelty rises to the level of law enforcement. The Program saves money for law enforcement and the humane organizations that must take in and treat mistreated pups and kittens. We are not talking about two or three animals, but sometimes a hundred or more at one facility.²⁴

The staff report indicates that breeders meeting USDA licensing requirements would be regulated and inspected. Unfortunately, that is not the case. Due to wide exceptions in federal law, USDA only licenses about 64 Texas breeders, while TDLR licenses 154 --even

with their statutory limitations discussed below. Further, reports show that USDA animal welfare enforcement cases have dropped 92 percent in the past three years.²⁵

B. Remove the unenforceable statutory loophole that excludes breeders with annual sales of less than 20 animals from the Program.

The Sunset staff report states “TDLR staff consistently encounter breeders who sidestep (sales) record-keeping requirements...”, thus avoiding Texas’ regulatory oversight. Cash sales are notoriously hard to prove. But the Sunset staff found more than 400 breeders advertising in Texas. Clearly, many breeders are going unregulated. THLN is aware of numerous law enforcement seizures of mistreated animals at unregulated facilities. And the biggest area of complaints is against commercial breeders who are unlicensed. In fact, only three other states even have a sales threshold at all. This recommendation removes this unnecessary and unenforceable loophole.

C. Reduce the number of breeding females requirement from 11 to five.

You may know someone who raises full-bred puppies/kittens for sale. This recommendation does not affect them or anyone who breeds with less than five female dogs or cats. These are the “mom and pop breeders”, or hobbyists. But it is unlikely that a hobbyist has 10 breeding female dogs or cats with many puppies or kittens for sale. This situation illustrates a commercial breeder; however, the current TDLR program does not apply to them. Further, as previously discussed, the biggest area of complaints is against unlicensed commercial breeders. This recommendation brings breeders with five or more breeding dogs or cats under the state’s regulatory tent.

D. Fiscal impact.

These recommendations should have a positive fiscal impact for TDLR. The reduction from 11 to five breeding females will increase the number of licensees, most of whom will likely be subject to the \$300 annual licensing fee. However, the number of new licensees cannot be estimated. Since TDLR inspectors already respond to far more complaints concerning currently unlicensed breeders, their inspection activity should not significantly increase as these breeders come into the regulatory fold. The elimination of the 20-animal sales requirement will allow TDLR Program inspectors to more quickly and efficiently act on unlicensed violators. This change should also bring more currently unlicensed breeders into state licensing, also increasing fee revenue.

Please let me know if you have any further questions or require additional information.

Sincerely,



Shelby L. Bobosky, Esq.
Executive Director

CC: Members, Sunset Commission:
Senator Dawn Buckingham, M.D.
Senator Pat Fallon
Senator Bob Hall
Senator Eddie Lucio, Jr.
Senator Angela Paxton
Ralph Duggins, Public Member
Rep. John Cyrier
Rep. Terry Canales
Rep. Craig Goldman
Rep. Stan Lambert
Rep. Chris Paddie
Julie Harris-Lawrence, Public Member

¹ See https://tlchouse.granicus.com/MediaPlayer.php?view_id=26&clip_id=3843 (beginning around mark 21:00).

² See <https://www.tdlr.texas.gov/Agency%20Reports/TDLR%20Sunset%20Self-Evaluation%20Report-Final.pdf> at p. 162.

³ See TEX. OCC. CODE § 802.107.

⁴ See TEX. OCC. CODE § 802.107.

⁵ "All states have passed laws to prevent various forms of neglect. However, animal neglect cases can be challenging to identify, investigate and prosecute. Additional issues arise in mass animal neglect cases, such as hoarding or puppy mills, and a concern as to housing and caring for the animals when resources are limited." See <https://www.sheriffs.org/Animal-Neglect> (citing the National Sheriff's Association statement on Animal Neglect).

⁶ The SPCA of Texas, Inc. has various Memorandums of Understanding ("MOUs") with different counties who hold the TCOLE license for some of the SPCA cruelty investigators. The number of MOUs is in flux depending on funding for their cruelty investigations department. Upon informal conversations with large Texas humane societies, a seizure of 50 or more dogs from a suspected breeding facility can cost at a minimum \$20,000 for the first 10 days depending on the condition of the dogs, the health of the dogs, and whether the dogs have been socialized.

⁷ See, for example, <https://www.sPCA.org/page.aspx?pid=992> (SPCA Large Scale Seizures of Suspected Puppy Mills, 2011-Present).

⁸ See <http://www.digitaljournal.com/article/306391>.

⁹ *Id.*

¹⁰ See 16 TEX. ADMIN. CODE § 91.53.

¹¹ See Appendix III. See <https://maps.bailingoutbenji.com/>. If the TDLR licensed breeders were included with the USDA Texas breeders, Texas would be considered the 7th largest state breeding puppies.

¹² See SELF-EVALUATION REPORT SUBMITTED TO THE SUNSET ADVISORY COMMISSION, THE TEXAS COMMISSION OF LICENSING AND

REGULATION AND TEXAS DEPARTMENT OF LICENSING AND REGULATION (Sept. 2019); *see also*, (<https://www.tdlr.texas.gov/Agency%20Reports/TDLR%20Sunset%20Self-Evaluation%20Report-Final.pdf>) (the Texas breeders under USDA regulations is 64 Class A breeders and 73 brokers). Additionally, the USDA's own statistics demonstrate that it is only monitoring about 25% of all breeders.

¹³ *See id.*

¹⁴ *See generally*, TEX. PENAL CODE § 42.092.

¹⁵ "During our investigations and inspections, we are looking for whether the facility requires a license and if so are TDLR safety and sanitation law and rules being followed. The Department is also looking for any signs of animal cruelty and neglect. In such cases, this information is forwarded to the adequate authorities (criminal investigators)." *See* TDLR Presentation to the Austin Bar Association, **TEXAS LICENSED BREEDER PROGRAM OVERVIEW** by Sharesa Y. Alexander, TDLR Prosecutor, Donaciano D. Vara, TDLR Lead Investigator, and Jennifer Harless, TDLR Field Operations Facilitator, February 26, 2014, Austin Bar Association, Austin, Texas.

¹⁶ *See* Section 821.001 et seq., TEX. HEALTH & SAFETY CODE.

¹⁷ *See*

https://www.humanesociety.org/sites/default/files/docs/2019-Horrible-Hundred.pdf?credit=blog_post_051419_id10590 at p. 55.

¹⁸ *See* TEX. OCC. CODE § 802.002(8) and 16 TEX. ADMIN. CODE § 91.10(8).

¹⁹ *See* TEX. OCC. CODE § 802.002(8).

²⁰ *See* TDLR Presentation to the Austin Bar Association, **TEXAS LICENSED BREEDER PROGRAM OVERVIEW** by Sharesa Y. Alexander, TDLR Prosecutor, Donaciano D. Vara, TDLR Lead Investigator, and Jennifer Harless, TDLR Field Operations Facilitator, February 26, 2014, Austin Bar Association, Austin, Texas.

²¹ *See* TEX. OCC. CODE § 802.002(8).

²² *See* TDLR Presentation to the Austin Bar Association, **TEXAS LICENSED BREEDER PROGRAM OVERVIEW** by Sharesa Y. Alexander, TDLR Prosecutor, Donaciano D. Vara, TDLR Lead Investigator, and Jennifer Harless, TDLR Field Operations Facilitator, February 26, 2014, Austin Bar Association, Austin, Texas.

²³ *See* <https://www.24-7pressrelease.com/press-release/412435/harris-poll-americans-support-higher-breederstandards-over-pet-store-sales-bans> (citing when asked the best way to deal with substandard breeding practices, Americans opted for enacting and enforcing higher standards for dog breeders and cracking down on illegal operators rather than banning the sale of pets in pet stores by a more than 2 to 1 margin (67 to 33 percent)).

²⁴ *See* photos in Appendix II.

²⁵ *See* <https://www.washingtonpost.com/science/2018/10/18/usdas-enforcement-animal-welfare-laws-plummetedagency-figures-show/>.