



NATIONAL ANIMAL INTEREST ALLIANCE

Supporting the people who care for America's animals

The Honorable Richard Durbin
711 Hart Senate Office Building,
District of Columbia 20510
Fax: (202) 228-0400

September 5, 2013

Dear Senator Durbin:

Letter in Opposition to HR 847 and S 395, the PUPS bill as currently drafted

I am writing on behalf of the National Animal Interest Alliance (NAIA) to share our concerns about H.R. 847 and S. 395, the Puppy Uniform Protection and Safety Act, (PUPS) and to suggest changes. NAIA is a national organization founded in 1991 and dedicated to securing high standards of animal care and treatment, and to preserving the human-animal bond. Our members are dog and cat enthusiasts, breeders and pet owners, animal professionals, scientists, and veterinarians, as well as businesses and organizations that support our mission. We have members in every state.

Although we support the stated goals of PUPS, we oppose the bill as it is currently drafted because it includes some provisions that will compound existing problems and lead to unintended consequences.

Dog breeding was first regulated under the AWA at a time when most large scale commercial breeders sold their dogs through middlemen to pet stores. The regulations were intended to protect the welfare of dogs from inhumane treatment, and to provide consumer protection to purchasers of pet store puppies who were unable to see and judge the conditions under which their puppy was produced. Accordingly, the AWA regulated just those breeders who sold through middlemen (pet stores) rather than breeders who sold directly to the public where such conditions and practices could be observed and acted upon by the buying public. Hence, the AWA exempts *retail pet stores*, a category which includes breeders who sell directly to the public. Losing this exemption would negatively impact the quality of dogs available to American consumers.

Today, a huge segment of large scale commercial breeders (including many who previously sold their dogs to pet stores) sell their dogs over the Internet to consumers who (like the pet store purchasers), are unable to see the environment in which their puppy was bred because the puppy is shipped to them rather than selected in person at the seller's home or kennel. The purpose of PUPS is to update federal oversight regulations of commercial dog breeders by extending coverage to breeders who, while not using middlemen and pet stores, nonetheless sell to consumers who do not have the opportunity to see the puppy they are buying or the environment in which it was raised and bred before purchase. The lack of opportunity to see their puppy or where it was raised prior to purchase is the issue that needs to be addressed.

Commercial breeders who sell through middlemen or other indirect means, which generally limit or prohibit the public from being able to see their puppy or where their puppy came from, and/or from being able to interact directly with the seller prior to the sale, should be the focus of PUPS. It should scrupulously avoid regulating breeders beyond this group at the risk of weakening the best source of puppies in the US. Misdirected regulations create underground markets for dogs rather than improvements.

Casting the net beyond this group – beyond people who are in the business of producing and selling a large number of dogs – to people who maintain small personal kennels which are open to the public (as the PUPS bill does), would stretch the resources of USDA beyond its budgetary and operating capacity, reduce coverage in the areas with the greatest risk, and unnecessarily duplicate efforts by state and local agencies, and dog registries like the AKC that conduct significant inspection programs.

Hobbyists, casual breeders and even commercial breeders *who sell directly to the public* are not, and have never been considered appropriate targets for federal regulation. The reasons for their exclusion from federal regulation as *retail pet stores* were reaffirmed as recently as 2003 in the Doris Day Animal League vs. Veneman (USDA) decision, US Court of Appeals, DC Circuit. <http://caselaw.findlaw.com/us-dc-circuit/1362167.html>).

As much as the Internet has changed the marketplace for commercial dog breeders who use the Internet to sell all or most of their puppies, it's also important to keep in mind that today most dog breeders, hobbyists, and even casual breeders *who sell directly to the public* use the Internet to *advertise* their puppies. The Internet is the leading vehicle for disseminating information and advertising today. As a result, selling over the Internet - as important as it is - cannot be used as a *sole criterion* for determining who should be regulated under an updated version of the AWA. Instead several criteria need to be considered, combined and utilized to establish a profile of who should be regulated. Here are some of the most important questions and considerations impacting our concerns about the current PUPS draft:

1) The most important factor to consider is whether or not the breeder sells directly to the public or indirectly through middlemen or over the Internet to consumers who generally do not have the opportunity to see where their puppy was born and raised or to interact directly with the seller. New regulations should focus only on large scale breeders who sell indirectly to the public and therefore cannot be exempted as retail pet stores.

2) The size of breeding operations matter, **but it is the volume of puppies sold, not the number of dogs owned that is of primary concern**. Ownership of a particular number of intact females is a secondary factor, only to be considered after establishing that a potential licensee meets the basic threshold for licensure by selling 50 dogs or more to consumers through middlemen or other indirect means. By itself, the number of dogs owned is irrelevant and potentially harmful to the purpose of the AWA. Many hobbyists and sportsmen keep intact females they never breed. As far as federal breeder regulations are concerned, the number of intact females owned should be left to local zoning and state laws unless they are used for producing and selling more than 50 puppies.

3) It is not realistic or useful to attempt to regulate breeders with an ownership interest in **one or more breeding female dogs** as the PUPS bill would do. Doing so would be an enforcement nightmare and would divert resources from larger kennels where oversight is needed.

4) Using the PUPS bill definition of an **ownership interest** would muddy the waters rather than clarify the enforcement goals of the AWA. Many hobbyists and sportsmen who breed dogs, **co-own** dogs with other breeders or sports enthusiasts. This is a common practice that has resulted from growing urbanization and the inability of serious breeders to maintain the number of dogs they need in order to keep their bloodlines healthy and capable of fulfilling their historic role. The “**ownership interest**” language would expand the USDA's licensure and enforcement duties beyond the group that needs oversight into private households and kennels that are open to the public, relatively small and already subject to state and local licensure and enforcement actions.

5) **PUPS defines a high volume breeder as one who “... offers for sale ... more than 50 puppies...”** While Internet or print offerings of 50 or more puppies for sale provide good evidence that a breeder may be selling 50 or more dogs a year, licensure requirements and enforcement actions must be based on the number of dogs actually sold.

6) PUPS incorrectly defines a breeding female as being an intact female that is 4 months of age or older. Because female dogs rarely come into season the first time until closer to 6 months and vets generally advise against breeding until subsequent seasons, using 4 months as a threshold age is misleading rather than helpful. In addition, unlike commercial breeders who are in the business of producing puppies for the pet marketplace, many hobbyists and sportsmen keep intact females they never breed so this language weakens the definition.

7) PUPS' kennel standards are not appropriate for many small-scale, residential or hunting dog breeders whose dogs are often household pets or hunting dogs that have superior quarters to the more industrial kennels required under PUPS.

8) Requiring dealers to provide their dog with access to exercise sufficient to maintain good muscle tone is a good addition, but the language prohibiting forced activity confuses the issue, and should not be imposed.

NAIA supports amending the AWA to keep up with changes in the way dogs are delivered to the marketplace and consumer, but only if it is done in a way that stays within the original scope and purpose of the Act. The category of breeders regulated needs to be defined carefully so that it does not expand federal oversight to breeders who sell directly to the public, breed and sell 50 or fewer dogs per year, including hobbyists, working and hunting dog enthusiasts and sportsmen who produce puppies as a hobby or avocation in their homes, which are open to the public.

Finally, NAIA believes that USDA has the statutory authority to regulate this group of breeders based on the current AWA by modifying the definition of retail pet store and we would welcome a rulemaking proposal designed to do so. The lack of updated regulations hurts dogs, consumers and prevents good breeders from being able to distinguish themselves from those who wish to fly under the radar. As you review PUPS, we ask that you **please consider the serious concerns we've raised and amend the current draft**. Meantime NAIA offers our assistance on future animal welfare issues and proposals. Please call on us at any time.

Sincerely,



Patti Strand, NAIA Chairman