

DON'T BUY THE DOGGY IN THE WINDOW: ENDING THE CYCLE THAT PERPETUATES COMMERCIAL BREEDING WITH REGULATION OF THE RETAIL PET INDUSTRY

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“He who is cruel to animals becomes hard also in his dealings with men. We can judge the heart of a man by his treatment of animals.” – Immanuel Kant

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I. INTRODUCTION

There are approximately seventy-five million dogs owned in the United States alone.¹ Thirty-nine percent of American households count at least one dog

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1. U.S. Pet Ownership Statistics, The Humane Soc’y of the U.S. (Mar. 17, 2008), http://www.hsus.org/pets/issues_affecting_our_pets/pet_overpopulation_and_ownership_statistics/us_pet_ownership_statistics.html.

as a family member.² After all, it is hard to resist the round eyes, floppy ears, huge paws, and wagging tail of a puppy in a pet store window. While the appeal of a sweet, happy, and well-adjusted puppy in a pet store window is exactly what sellers are going for, it is a far cry from the reality that the majority of the dogs sold in pet stores face.³ As purebred dogs have become a sign of status, or even a fashion accessory, the production of dogs has become a part of the farming industry itself, resulting in over-breeding and deplorable living conditions of the dogs being bred—operations known as “puppy mills.”⁴ While there are many reputable small breeders throughout the United States, the mass production of dogs by commercial breeders has a profoundly detrimental impact on the fate of the animals they produce.⁵ Puppy mills have been created to meet the demand of the pet industry and have resulted in horrifying deviations from proper care and treatment of animals.⁶

The puppy mill industry itself has become a concern of the animal rights community and has spurred a large amount of discussion and advocacy for legislation throughout the United States.⁷ This Note will discuss the problems with legislation and legal barriers created to battle the problems puppy mills pose to dogs bred in the United States. It will then consider the applicability of legislation aimed at dealing with puppy mills at the retail level as a possible cure to the inadequacies of American regulation. This Note will discuss the need for uniform regulation that goes to the heart of what sustains puppy mills, the supply and demand created by retail in the pet industry, using the model of legislation

2. *Id.*

3. Puppy Mills: Dogs Abused for the Pet Trade, People for the Ethical Treatment of Animals, http://www.peta.org/mc/factsheet_display.asp?ID=45 (last visited Oct. 19, 2009).

4. See *Presidential Purebred Pups Are a White House Tradition*, AM. KENNEL CLUB NEWS, July 2, 2008, http://www.akc.org/news/index.cfm?article_id=3541 (describing the tradition of presidents and the purebred pets they have brought to the White House).

5. JANA KOHL, A RARE BREED OF LOVE 3-4 (2008); Joseph Lubinski, comment, *The Cow Says Moo, the Duck Says Quack, and the Dog Says Vote! The Use of the Initiative to Promote Animal Protection*, 74 U. COLO. L. REV. 1109, 1149 (2003).

6. See KOHL, *supra* note 5, at 57; *Inhumane Conditions of Puppy Mills in National Spotlight*, THE HUMANE SOC’Y OF THE U.S., Aug. 22, 2006, http://www.hsus.org/press_and_publications/press_releases/puppy_mills_in_national_spotlight.html [hereinafter *Inhumane Conditions of Puppy Mills in National Spotlight*]; What’s a Puppy Mill?, Best Friends Animal Soc’y, <http://network.bestfriends.org/campaigns/pupmills/media/p/133453.aspx> (last visited Oct. 19, 2009) [hereinafter *What’s a Puppy Mill?*].

7. See generally State Puppy Mill Laws, Humane Soc’y of the U.S., <http://www.hsus.org/web-files/PDF/legislation/puppy-mill-laws-chart.pdf> (last visited Oct. 19, 2009) [hereinafter *State Puppy Mill Laws*] (outlining puppy mill laws that have been enacted throughout the United States).

introduced in Australia, the NSW Animals (Regulation of Sale) Bill.⁸ Before discussing legislation and its implementation for the puppy mill problem, we must first discuss what puppy mills are, how they developed, and what problems they pose.

II. PUPPY MILLS: WHY ARE THEY A PROBLEM?

Puppy mills are commercial breeders which mass-produce purebred puppies that receive pedigree papers from the American Kennel Club (AKC).⁹ These animals are bred and raised in deplorable conditions, which can lead to health and behavioral problems for the pets.¹⁰ Puppy mill dogs are viewed as a crop to their breeders, are bred as a means of profit, and are seen as “a commodity, no different than soybeans or metal widgets.”¹¹ Since commercial breeding supplies the pet industry, puppy mill breeders look to raise the most dogs they can for the lowest cost possible, “churning out massive numbers of puppies in a factory setting—in overcrowded and unsanitary conditions that can lead to genetic disorders, stress and disease.”¹² These animals suffer from inbreeding, minimal or no veterinary care, poor quality or scarce food, limited shelter, lack of human socialization, and overcrowded cages.¹³ The mass production of dogs, in turn, puts reputable breeders at a significant disadvantage in the competitive economic market, since responsible breeding requires the economic investment in proper sanitation, housing, nourishment, and medical care of the animals.¹⁴ As a result, reputable breeders simply cannot afford to sell their puppies in order to compete with the low prices for which pet stores sell purebred dogs.¹⁵

8. See *infra* §§ II, IV.

9. Lubinski, *supra* note 5, at 1149.

10. *Id.*

11. KOHL, *supra* note 5, at 3; Adam J. Fumarola, *With Best Friends Like Us Who Needs Enemies? The Phenomenon of the Puppy Mill, the Failure of Legal Regimes to Manage It, and the Positive Prospects of Animal Rights*, 6 BUFF. ENVTL. L.J. 253, 260 (1999).

12. *Inhumane Conditions of Puppy Mills in National Spotlight*, *supra* note 6.

13. *Puppy Mill Perils: 250 Dogs and Puppies Rescued from Filthy Kennel*, THE HUMANE SOC'Y OF THE U.S., Aug. 23, 2007, http://www.hsus.org/pets/pets_related_news_and_events/puppy_mill_perils_250_dogs_and_puppies_rescued_from_filthy_kennel.html.

14. See Samantha Mortlock, *Standing On New Ground: Underenforcement of Animal Protection Laws Causes Competitive Injury to Complying Entities*, 32 VT. L. REV. 273, 274 (2007).

15. Fumarola, *supra* note 11, at 263.

A. *How Puppy Mills Came Into Existence*

The first puppy mills were formed after World War II when farmers tried alternative means of farming to cope with the failure of conventional crops.¹⁶ The United States Department of Agriculture (USDA) began to promote the practice of raising dogs as a crop, contributing to the rise of the commercial breeding of pets.¹⁷ Because a supply of purebred dogs became readily available, more pet shops came into existence, feeding off of the commercially raised dogs and increasing the demand for pets.¹⁸ Today, pet shops use retailers, acting as middlemen, to purchase the animals they sell.¹⁹ Some pet shops either do not realize or fail to acknowledge that the main source retailers go to for pets are rural commercial breeders, mainly those that fall into the category of puppy mills.²⁰

Many puppy mills directly sell the dogs they breed to consumers through newspaper advertisements and the Internet, often posing as small, family breeders.²¹ These commercial breeders will offer to ship the dog to its new owners.²² They usually do not allow consumers to come to meet the dog and breeder at their home prior to adoption.²³ Other qualities common amongst commercial breeders include having or selling many different breeds of purebred dogs, not requiring an application process for people buying a puppy, and not providing return or contact information so that owners are unable to return the dog to the breeder if at any time during the dog's life they cannot keep the dog.²⁴

B. *The Consequences of Commercial Breeding on Dogs*

Puppy mill dogs are bred as a means of profit, often resulting in malnourished, poorly socialized, unhealthy pets that have developed undesirable behaviors as a result of their breeding and treatment by breeders.²⁵ This leads to

16. *Id.* at 262.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. Puppy Buying Tips, Humane Soc'y of the U.S., Mar. 26, 2009, http://stoppupmills.org/puppy_buying_tips.html.

22. What's a Puppy Mill?, *supra* note 6.

23. *Id.*

24. *Id.*; Robin Tierney, *How Responsible Breeders Differ From Backyard Breeders and Pet Shops*, THE PARTNERSHIP FOR ANIMAL WELFARE, Nov. 20, 2008, http://www.paw-rescue.org/PAW/PETTIPS/DogTip_breedersandpetshops.php.

25. Fumarola, *supra* note 11, at 260; *see also* People for the Ethical Treatment of Animals, *supra* note 3.

high incidents of abandonment, surrender, and expensive veterinary bills for those who purchase puppy mill dogs.²⁶ This contributes to the estimated six to eight million cats and dogs entering animal shelters each year, twenty-five percent of which are purebred dogs.²⁷ Roughly half of the cats and dogs in shelters are euthanized each year.²⁸ While the other half of the cats and dogs in shelters go to good homes, consumers continue to buy dogs from pet stores, thus supporting the cycle of dogs bred in puppy mills entering the marketplace.²⁹ As long as there is a demand for commercial breeding of animals, pet overpopulation will continue to be a problem and “puppy mills will keep breeding and overbreeding for profit.”³⁰

In many instances, operating a commercial breeding kennel, often in deplorable conditions, is not illegal.³¹ Conditions of neglect have been left widely unnoticed by the general public, as puppy mill breeders are unlikely to allow customers a chance to see their property.³² The resources available to implement rules in regard to commercial breeding are inadequate in achieving their purpose, which will be discussed further into this Note.³³ In addition, even those commercial breeders that try to provide clean and appropriate living conditions for their dogs practice inhumane breeding techniques, forcing female dogs to breed every time they come into heat in order to produce the maximum amount of litters.³⁴ On the other hand, reputable breeders protect the health of their dogs by breeding them only a limited number of times, and certainly not every year.³⁵ Puppy mill dogs are confined to cages throughout the entirety of their lives, with very little human socialization or opportunity to do anything more than produce more puppies, clearly a lifestyle no dog should be forced to endure.³⁶

26. See Frequently Asked Questions, Humane Soc’y of the U.S., Mar. 26, 2009, http://www.stoppupmills.org/frequently_asked_questions.html [hereinafter Frequently Asked Questions] (explaining the burden that dogs rescued from puppy mills put on animal shelters and veterinary costs to pet owners).

27. Humane Soc’y of the U.S., HSUS Pet Overpopulation Estimates, July 7, 2008, http://www.hsus.org/pets/issues_affecting_our_pets/pet_overpopulation_and_ownership_statistics/hsus_pet_overpopulation_estimates.html.

28. See *id.* (indicating that each year 3-4 million cats and dogs in shelters are euthanized and that six to eight million are adopted).

29. See KOHL, *supra* note 5, at 56.

30. Tierney, *supra* note 24.

31. Frequently Asked Questions, *supra* note 26.

32. What’s a Puppy Mill?, *supra* note 6.

33. See *infra* § III.

34. What’s a Puppy Mill?, *supra* note 6.

35. Tierney, *supra* note 24.

36. What’s a Puppy Mill?, *supra* note 6.

III. UNITED STATES PUPPY MILL REGULATIONS

In recent years, the movement against puppy mills throughout the United States has resulted in the creation of a significant amount of state legislation in addition to the federal Animal Welfare Act. The majority of these rules, however, deal with breeding standards and licensing requirements in general, as opposed to getting to the root of the puppy mill problem—the cycle between consumers, pet retailers, and commercial breeders that puppy mills create.³⁷ Puppy mills “wouldn’t be there if it weren’t for the public buying [dogs from] them. Puppy-buying dog lovers are a puppy mill’s bread and butter.”³⁸ The USDA is responsible for regulation of commercial breeders on a federal level, through the Animal Welfare Act.³⁹ However, the USDA is only able to regulate “wholesale” breeding facilities that sell animals to businesses that turn around and sell them to the public, not those that sell exclusively to the public.⁴⁰ Because federal licensing is only required for breeders that participate in wholesale sale of dogs to retailers, it is predominantly up to the states to implement legislation to deal with the problem involving commercial breeders. In addition, the USDA’s implementation of the Animal Welfare Act has been plagued by insufficient funding and inconsistency in the enforcement of federal laws regarding animal breeding.⁴¹ Many states do not have legislation in place to deal with commercial breeding and much of the legislation that is in place does not deal with the retail industry, but instead contributes to the puppy mill problem.⁴² State legislation varies greatly from state-to-state, making the laws and enforcement of them incredibly inconsistent throughout the nation.⁴³

A. *The USDA and the Animal Welfare Act*

The Animal Welfare Act seeks to control people who possess and sell animals and the conditions in which they are kept.⁴⁴ It applies only to “wholesale” breeding facilities and is enforced by a subdivision of the USDA, Animal

37. See generally State Puppy Mill Laws, *supra* note 7; *Inhumane Conditions of Puppy Mills in National Spotlight*, *supra* note 6.

38. KOHL, *supra* note 5, at 57.

39. Frequently Asked Questions, *supra* note 26.

40. Mariann Sullivan, *The Animal Welfare Act—What’s That?*, 79 N.Y. ST. B.J. 17, 18 (2007); *Id.*

41. Sullivan, *supra* note 40, at 19.

42. See generally State Puppy Mill Laws, *supra* note 7.

43. See *id.*

44. Animal Welfare Act, 7 U.S.C. § 2131 (2009).

Care.⁴⁵ The Act covers licensing, care standards, and punishment for those who sell and negotiate the sale of dogs, if they earn more than \$500 a year from the enterprise.⁴⁶ This excludes retail pet shops and breeders that sell animals directly to the public.⁴⁷ The Animal Welfare Act also sets forth humane standards for animals, covering the handling, care, treatment, and transportation of animals by dealers.⁴⁸ This requires the USDA to create and effectuate minimum requirements for the handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather, veterinary care, general care, treatment, and exercise for dogs.⁴⁹ While protection of animals and qualifications for valid certification upon the sale of pets are issued within the law, it is important to remember that the USDA's standards set forth minimum business requirements rather than high-quality condition requirements for the dogs being bred.⁵⁰

1. *Plagued Enforcement of the Animal Welfare Act*

Enforcement of the Animal Welfare Act is based upon access to the premises and records of the breeder, as well as the ability to actually inspect them.⁵¹ Each facility is subject to inspection once a year, and if there are deviations from the USDA standards noted upon inspection, follow-up inspections are required until the problems are corrected.⁵² Civil and criminal penalties may result from repeated deviations and vary depending on what the facility is willing to do to improve the way it cares for its animals.⁵³ The penalties afforded for facilities that offer to cooperate with the standards are more innovative, "allow[ing] individuals to invest part or all of their monetary sanctions in facility improvements" rather than paying fines directly to the USDA.⁵⁴ The USDA also avoids participating in prosecution and permits non-complying breeders an opportunity to settle as opposed to being officially charged for deviations from the standards.⁵⁵ While there are penalties put forth for not complying with the standards promulgated by the USDA, the largest penalties associated with the Act are not for vi-

45. Sullivan, *supra* note 40 at 19.

46. Animal Welfare Act, 7 U.S.C. § 2132(f).

47. Sullivan, *supra* note 40, at 18; Companion Animals, U.S. Dep't of Agric., http://awic.nal.usda.gov/nal_display/index.php?info_center=3&tax_level=1&tax_subject=181 (last visited Oct. 19, 2009).

48. Animal Welfare Act, 7 U.S.C. § 2143(a).

49. *Id.*

50. Tierney, *supra* note 24.

51. Animal Welfare Act, 7 U.S.C. § 2146(a).

52. *Id.*

53. Sullivan, *supra* note 40, at 19.

54. *Id.*

55. *Id.* at 19-20.

olating standards, but rather for interfering with inspections.⁵⁶ There are civil penalties, such as license suspension and fines up to \$2,500, as well as criminal penalties of up to \$2,500 and/or up to one year in prison, that have some deterrent power.⁵⁷ However, the inconsistent application of penalties and the ability to avoid being officially charged with non-compliance make the rules set forth by the USDA less of a threat to breeders who refuse to follow the standards of the Animal Welfare Act.⁵⁸

The USDA has indicated its own ineffectiveness in enforcing of the Animal Welfare Act.⁵⁹ Reports from government studies and the USDA have indicated that the penalties relied upon to enforce the Act were “not aggressively collected and were often arbitrarily reduced.”⁶⁰ The reports found that penalties were “often so low that violators regarded them as a cost of doing business” and that the agency “accommodated facilities that repeatedly refused access to inspectors rather than suspending their licenses.”⁶¹ Enforcement is ineffectual without funding backing it, and the USDA has been granted additional appropriations by Congress to put towards enforcement of the Act.⁶² Even with the additional funding for enforcement, however, the agency lacks a sufficient number of personnel to inspect the thousands of facilities scattered across the country that are covered by the Animal Welfare Act.⁶³ It is important to understand that the Animal Welfare Act encompasses a large range of facilities that deal with and house animals, most of which do not participate in commercial breeding practices.⁶⁴ As a result, the USDA lacks the funding, man-power, expertise, and consistent enforcement mechanisms to adequately control the puppy mills it encounters in enforcement of the Act.⁶⁵

56. Animal Welfare Act, 7 U.S.C. §§ 2146(b), 2149(b), 2149(d).

57. Animal Welfare Act, 7 U.S.C. §§ 2149(b), 2149 (d).

58. *Report of the Committee on Legal Issues Pertaining to Animals of the Association of the Bar of the City of New York Regarding Its Recommendation to Amend the Animal Welfare Act*, 9 ANIMAL L. 345, 347 (2003) [hereinafter *Legal Issues Pertaining to Animals*]; see also Sullivan, *supra* note 40, at 20-21.

59. *Legal Issues Pertaining to Animals*, *supra* note 58, at 346-47.

60. *Id.* at 347.

61. *Id.*

62. *Id.* at 348-49.

63. *Id.* at 348.

64. *See id.*

65. *See id.* at 347-49.

2. *A Proposed Amendment to the Animal Welfare Act: The Puppy Uniform Protection Statute*

In the mid-September 2008, the Puppy Uniform Protection and Safety Act (PUPS) was introduced in both the House and Senate.⁶⁶ PUPS aims to amend the Animal Welfare Act to require commercial breeders who produce more than fifty dogs a year and sell directly to the public to be licensed and inspected by the USDA.⁶⁷ The bill also requires sixty minutes of daily exercise for all dogs living in commercial breeding facilities that fall under the Act.⁶⁸ This law, while still up for consideration, is supported by both the Humane Society of the United States and the American Kennel Club (AKC), two organizations usually pinned against one another in the creation of legislation attempting to regulate commercial breeders.⁶⁹ The AKC is responsible for the registration and licensing of purebred dogs throughout the country and has opposed legislation aimed at eradicating commercial breeding of dogs because of the money it earns from the registration of large numbers of dogs from puppy mills.⁷⁰ The AKC supports this bill because it creates standards for commercial breeders to follow “without infringing upon the rights of responsible dog breeders and responsible dog owners.”⁷¹

The PUPS bill is a step towards strengthening the federal regulation of commercial breeders, but it fails to recognize the problems that the USDA has regarding enforcement of the Animal Welfare Act itself as well as the cycle that is perpetuated by puppy mills. As explained earlier, even puppy mills that provide acceptable shelter, nourishment, and playtime for their dogs practice substandard and dangerous breeding practices, forcing female dogs to breed every time they come into heat.⁷² The PUPS bill has also been referred to as “Baby’s Bill,” named in honor of a dog rescued from a puppy mill the day before she was

66. See H.R. 6949, 110th Cong. (2008); S. 3519, 110th Cong. (2008).

67. See H.R. 6949, 110th Cong. § 2 (2008); S. 3519, 110th Cong. § 2 (2008); 7 U.S.C. § 2133 (2008).

68. H.R. 6949, 110th Cong. § 2 (2008); S. 3519, 110th Cong. § 2 (2008).

69. See KOHL, *supra* note 5, at 59 (indicating the AKC’s usual opposition to puppy mill legislation); *Federal Lawmakers Introduce Bill to Crack Down on Abusive Puppy Mills*, THE HUMANE SOCIETY OF THE U.S., Sept. 19, 2008, http://www.hsus.org/pets/pets_related_news_and_events/federal_puppy_mill_bill_091908.html; *Puppy Uniform Protection Statute (PUPS) Legislation Introduced in US Congress*, AM. KENNEL CLUB NEWS, Sept. 25, 2008, http://www.akc.org/news/index.cfm?article_id=3611 [hereinafter AM. KENNEL CLUB NEWS].

70. See *People for the Ethical Treatment of Animals*, *supra* note 3 (explaining the millions of dollars the AKC receives each year from breeders who pay AKC licensing fees).

71. AM. KENNEL CLUB NEWS, *supra* note 69.

72. What’s a Puppy Mill?, *supra* note 6.

scheduled to be killed.⁷³ While the bill itself marks improvements to the standards by which the commercial breeding industry is held, it does not consider the problems of over-breeding that Baby herself faced.⁷⁴ Baby was found with a number tattooed to her ear, known only as a number ninety-four, with her vocal cords cut out so that her captors could not hear her cries as she barked to get out of her cage.⁷⁵ She had her leg amputated after her rescue, partly because she had spent her life in a cage and partly because she had been bred every time she came into heat.⁷⁶ Because she was bred so often, she was forced to nurse new babies every year, twice a year.⁷⁷ This forced breeding severely depleted the calcium in her bones, leading to osteoporosis.⁷⁸ Had the PUPS bill been implemented and followed by her breeders before her rescue, Baby would have gotten only an hour of time out of her cage each day, and the excessive breeding she was subject to would not have changed at all.⁷⁹

While the PUPS bill and the AKC do not consider the damage that over-breeding does to the animals living in commercial breeding facilities and the cycle that consumers perpetuate, the bill does leave room open for state laws that have requirements greater than those in the Animal Welfare Act.⁸⁰ As such, state laws seem to be an effective way of adding to the restrictions on puppy mills that the PUPS bill has introduced.

B. State Laws Against Puppy Mills

States have, to a certain degree, recognized the existence of puppy mills and the serious problems posed to animals resulting from commercial breeding. However, the present legislation varies greatly from state-to-state in terms of the kind of laws set forth by state-created legislation.⁸¹ This means that the rules that apply to breeders in one state will not necessarily apply to those in other states.⁸² Twenty-one states introduced legislation aimed at dealing with the puppy mill

73. KOHL, *supra* note 5, at 7-8; Humane Soc'y of the U.S., *Puppy Mill Survivor Inspires Mission, New Book*, Aug. 11, 2008, http://www.hsus.org/pets/pets_related_news_and_events/puppy_mill_survivor_inspires_book_053008.html.

74. *See* KOHL, *supra* note 5, at 7-8.

75. *Id.* at 9.

76. *Id.* at 7-8.

77. *Id.*

78. *Id.*

79. *See id.* at 59 (referring to the cycle of puppy mills and its perpetuation by buyers). *See generally* H.R. 6949, 110th Cong. (2008); S. 3519, 110th Cong. (2008).

80. H.R. 6949, 110th Cong. § 3 (2008); S. 3519, 110th Cong. § 3 (2008).

81. *See generally* State Puppy Mill Laws, *supra* note 7.

82. *See generally id.*

problem in 2008.⁸³ Each state approaches the situation from a different standpoint, making it hard to categorize what each state is actually trying to do.⁸⁴ There is a range of different legislation coming from state-to-state, including pet shop lemon laws, state humane breeding standards, laws requiring pet shops to provide veterinary care for sick pets, restrictions on the number of litters to be sold by breeders, laws against excessive breeding, and mandatory lists of disclosures pet dealers must share upon the sale of dogs.⁸⁵

The most common kind of state regulations that have been successfully passed are animal licensing laws.⁸⁶ While these laws do seek to regulate actors in the puppy mill industry, the terminology and definition of the entity being regulated is unclear from state-to-state.⁸⁷ Some states refer to licensing for “kennels,”⁸⁸ “pet animal facilities,”⁸⁹ “pet shops,”⁹⁰ “commercial breeders,”⁹¹ and “dealers,”⁹² but each state has a different definition for what the varying terms relate to within their statutes and to what activities the licensing applies. As such, there is little uniformity amongst state laws that allows one to understand the actual definition of who is regulated without going to each state’s law and sorting through legislation.⁹³ While any regulation is better than nothing, regulation that is inconsistent on a state-to-state basis allows commercial breeders to forum shop, enabling them to dodge states that have regulations which make their type of operation illegal.⁹⁴

It is important to note that while many states are considering any one of a variety of legislative cures for the puppy mill problem, proposed legislation is not passed at a consistent rate.⁹⁵ In addition, many of these state laws set forth standards of care, housing, sanitation, and food for animals, but, like the standards in

83. See Humane Soc’y Legislative Fund, 2008 State Legislation Pertaining to Puppy Mills, <http://www.hsus.typepad.com/wayne/2008-puppy-mill-bills-chart-for-web.pdf> (last visited Oct. 19, 2009).

84. See *id.* (providing a description of different puppy mill bills introduced in 2008).

85. See *id.*

86. See State Puppy Mill Laws, *supra* note 7.

87. See *id.*

88. MASS. GEN. LAWS ch. 140 §§ 136(a), 137(a) (2008).

89. COLO. REV. STAT. §§ 35-80-102, 35-80-106 (2008).

90. VA. CODE ANN. §§ 3.1-796.66, 3.1-796.71 (2008).

91. IOWA CODE §§ 162.2, 162.8, 162.12 (2009).

92. R.I. GEN. LAWS § 4-19-2 (2008).

93. See *generally* State Puppy Mill Laws, *supra* note 7.

94. See Frequently Asked Questions, *supra* note 26 (indicating that, depending on where it is located, “operating a commercial breeding kennel may not be illegal”).

95. See Humane Soc’y Legislative Fund, *supra* note 83 (many of the laws on this list have remained unenacted in committee or have been “killed” while sitting in committee).

the Animal Welfare Act, they represent only minimum standards.⁹⁶ There is legislation being introduced in many states on a year-to-year basis, but a number of the proposed statutes are left pending until they die in committee.⁹⁷ Some of the legislation proposed during 2008 has become actual law, including a Maine law providing standards regarding care and shelter to be provided to animals, as well as a licensing procedure for commercial breeders.⁹⁸ Another notable state bill that was passed in 2008 took place in Virginia.⁹⁹ This legislation modified many of Virginia's pre-existing animal welfare standards, including definitions of adequate shelter, food, water, and care.¹⁰⁰ While enactment of the Maine and Virginia legislation provides hope that other states will also follow suit and seek to regulate commercial breeders in an effective manner, the laws enacted remain unique to the state they are in, and are only effective within state borders. Thus, with other states refusing to pass legislation regarding the issue, there remain plenty of other places for commercial breeders to operate within the United States.¹⁰¹

Most of the regulation that is passed to deal with puppy mills within the states tries to implement regulation of the commercial breeding industry, but is unsuccessful for the same reasons as Animal Welfare Act.¹⁰² It is very difficult to enforce laws against an industry that remains hidden from the public view by residing mainly in rural Midwestern and Great Plains communities, and the demand for mass-produced purebred animals is sustained so long as pet shops and consumers continue to purchase puppy-mill-pets without knowing they are doing

96. See generally KOHL, *supra* note 5, at 58 (explaining that the requirements of the Animal Welfare Act set forth only minimum standards of animal care); State Puppy Mill Laws, *supra* note 7.

97. See, e.g., S.F. 2293, 82d Gen. Assem., Reg. Sess. (Iowa 2008) (restricting the amount of litters a commercial breeder can produce); H.F. 2469, 85th Sess. (Minn. 2007) (proposing standards in care, licensing, and inspection of commercial dog and cat breeders, as well as penalties for and seizure of animals for not complying with regulation); H.B. 518, 2008 Reg. Sess. (Ky. 2008) (regulating the sale of animals in pet stores); H.B. 3192, 51st Leg., 2d Sess. (Okla. 2008) (providing for regulation of commercial breeders through licensing requirements and related enforcement mechanisms); H.B. 2914, 105th Gen. Assem., Reg. Sess. (Tenn. 2008) (extending the licensing process for commercial breeders); S. 341, 2008 Gen. Assem. (Vt. 2008) (regulating dog breeders by imposing minimum requirements); H.B. 2511, 60th Leg., 2008 Reg. Sess. (Wash. 2008) (creating a list of information breeders must disclose upon the sale of a dog, as well as making it illegal to sell a dog with obvious sickness or disease).

98. See An Act to Amend the Animal Welfare Laws, 2009 Me. Legis. Serv. Ch. 343 (West 2009).

99. VA. CODE ANN. §§ 3.1-796.66–3.1-796.72 (2008).

100. VA. CODE ANN. § 3.1-796.66 (2008).

101. See Frequently Asked Questions, *supra* note 26.

102. See *supra* § III (discussing problems with enforcing the Animal Welfare Act).

so.¹⁰³ These issues are complicated by the varying types and degrees of legislation from state-to-state, which have rendered the laws dealing with commercial breeding inconsistent throughout the United States. While many states do provide legislation dealing with puppy mills, they do not eradicate commercial breeding altogether and only put limits on what commercial breeders can do; this eliminates some of the problems but still allows the cycle of commercial breeding to continue, similar to the federal laws.¹⁰⁴

The states that do not have adequate legislation to limit commercial breeders to certain standards provide a place for even the most deplorable puppy mills to operate in a legal manner.¹⁰⁵ In fact, the states that fell into the bottom tier of the 2007 State Animal Protection Law Rankings did so for a number of reasons, including: a lack of statutory definitions of what constitutes cruelty or neglect; an inadequate range of definitions or prohibitions regarding standard care; no reporting mechanisms for instances of animal abuse; and a lack of penalties for offenders.¹⁰⁶ While there are states with some regulations on commercial breeders, there remain many states that do not have any regulation pertaining to puppy mills, and those that do regulate the industry do not have adequate legislation in place to effectuate their goals, leaving commercial breeders free to raise animals as they please.¹⁰⁷

The reality is that for many farmers, dogs are their most valuable “crop,” meaning that the main problem surrounding puppy mill regulation is based on economics.¹⁰⁸ Commercial breeders, or “farmers,” seek to breed dogs at the lowest cost possible; it is costly for breeders to comply with rules regarding the care of the animals they produce, since spending more money for care of animals re-

103. See Int’l Soc’y for Animal Rights, Dog Overpopulation and Puppy Mills, http://www.isaronline.org/f/Dog_Overpopulation_and_Puppy_Mills.pdf (last visited Oct. 19, 2009) (indicating the large concentration of puppy mills throughout the Midwest and Great Plains regions of the United States); see also *supra* § III.

104. See, e.g., IOWA CODE §§ 162.1–162.18 (2008) (requiring licensing for “commercial breeders” and creating minimum guidelines concerning the feeding, watering, cleaning, and shelter provided to animals at the facility); PA. STAT. ANN. §§ 21.21–21.30 (West 2008) (enforcing licensing for breeders depending on the number of dogs and enforcing sanitary and humane conditions); W. VA. CODE § 19-20-3 (2008) (requiring a registration fee for kennels; places “wherein dogs are bred, kept, boarded or sold as a commercial venture for profit” but providing no additional requirements for these facilities).

105. See Frequently Asked Questions, *supra* note 26.

106. See STEPHEN K. OTTO, ANIMAL LEGAL DEFENSE FUND, 2007 ANIMAL PROTECTION LAWS RANKINGS 3 (2007), http://www.aldf.org/downloads/591_2007staterankingsreport.pdf.

107. See Frequently Asked Questions, *supra* note 26.

108. Puppies Are Biodegradable, Definition: What Is a Puppy Mill?, <http://web.archive.org/web/20070709013137/http://www.puppiesarebiodegradable.com/define.html> (last visited Oct 19, 2009).

sults in a lower profit per animal once they are sold.¹⁰⁹ Regulation regarding the commercial breeding of dogs has been hard to pass in many states, and those states that have passed laws have not altogether eradicated commercial breeding, but only put restraints on it. In addition, state laws that do address commercial breeding are inconsistent in definition and enforcement from other states trying to do the same. Furthermore, the states that have lower degrees of regulation on commercial breeding provide a friendly home for puppy mill owners to operate their business without interference of the law.

IV. REGULATION OF PUPPY MILLS STARTING AT THE ROOT OF THE PROBLEM: THE COMMERCIAL BREEDING OF DOGS

The main reason puppy mills continue to exist throughout the United States, despite their clear deviations from proper dog breeding principles, is ineffective regulation.¹¹⁰ While the Animal Welfare Act and state regulations do continue to evolve in creating minimum living standards for animals and registration processes for breeders, they do not effectively eliminate the cycle that supports and perpetuates the existence of puppy mills.¹¹¹ This allows them to profit from inhumane treatment of animals as a means of everyday business.¹¹² Commercial breeders exist because there is a demand for their goods. The demand created by pet retailers that want to purchase dogs at the lowest possible cost encourages breeders to cut corners and ignore proper breeding procedures in raising animals, putting breeders who follow proper breeding procedures at a disadvantage.¹¹³ As long as people continue to buy animals in pet shops, online, or through the newspaper without inquiring from where they come, commercial breeders will continue to benefit from the mass-production of dogs.¹¹⁴

As we consider the problems that puppy mills pose as a whole, from how they came into existence to the state and federal regulations that try to deal with them, the cycle perpetuated by the demand of the pet industry is a constant aspect of the commercial breeding business that has yet to be broken. So, how do we eliminate the inhumane practices of commercial breeding seen in puppy mills throughout the United States? We break the cycle by eradicating the demand.

109. See Mortlock, *supra* note 14, at 274.

110. See *supra* § III.

111. See *id.*

112. See *id.*

113. See KOHL, *supra* note 5, at 57; Mortlock, *supra* note 14 at 274.

114. See KOHL, *supra* note 5, at 57.

A. *The NSW Animals (Regulation of Sale) Bill*

At the end of 2008, the Australian State of New South Wales (NSW) introduced legislation deemed the Animals (Regulation of Sale) Bill in the state parliament.¹¹⁵ The legislation goes beyond regulation of breeders and gets to the root of the puppy mill problem—the sale of the dogs that are bred.¹¹⁶ The main function of the legislation is to eliminate the sale of dogs and cats in pet shops and in markets throughout the state.¹¹⁷ If passed, the bill will make it illegal for pet stores to sell animals in the store unless they are pets from pet shelters up for adoption.¹¹⁸ Breeders recognized by the state will still be allowed to sell animals, but are subject to other requirements of the bill, including a mandatory explanation of the basic care that the pet being sold will require and the responsibilities the owner of the dog will need to fulfill throughout its lifetime.¹¹⁹ The bill also requires that there be regulations setting forth the standards of breeding to become a breeder recognized by the state.¹²⁰ The legislation, as a whole, contains other requirements meant to reduce the number of pets that end up in pet shelters due to owners' inability to properly care for them and ensures the health and safety of animals being kept for sale as well as the end of pet overpopulation that has been perpetuated by the mass production of dogs.¹²¹

B. *The Animals (Regulation of Sale) Bill as a Model for Effective Regulation of Commercial Breeding in the United States*

The Animals (Regulation of Sale) Bill has the potential of providing Americans with a model of a new means of reforming American legislation to break the cycle that the supply and demand of the pet industry perpetuates.¹²² By cutting out the pet industry that requires a constant supply of purebred puppies to keep their businesses profitable, breeders will no longer have to, nor have reason to, raise pets in sub-standard conditions.¹²³ In addition, this will force breeders who want to sell their animals to conform to state regulations on proper, humane

115. Animals (Regulation of Sale) Bill 2008 (NSW).

116. *See generally id.*

117. *Id.* at pt. 2 div. 1.

118. *Id.* at pt. 2 div. 2.

119. *Id.*

120. *Id.* at pt. 4.

121. *See* Clover Moore, Lord Mayor of Sydney, Parliament of N.S.W., Legislative Assembly Minister's Agreement in Principle Speech: Animals (Regulation of Sale) Bill 2008 (Nov. 14, 2008).

122. *See id.*

123. *See id.*

breeding.¹²⁴ Breeders that have always participated in proper breeding, care, and placement of their dogs will be allowed to continue operation, and will no longer have to compete in a market that encourages the improper treatment of dogs as a means of making money.¹²⁵

Opposition to this kind of legislation in the United States is absolutely certain. The pet industry thrives off of the sale of animals from pet shop windows and the impulse-buyers who get dogs because they are available right then and there, and do not consider asking questions about the origins of the puppy or contemplate the responsibilities related to owning a dog.¹²⁶ In addition, major lobbying groups like the AKC are certain to dispute this sort of legislation, because the AKC makes a great deal of revenue from the purebred papers it generates for the massive amount of animals produced by commercial breeders each year.¹²⁷ There is no doubt that groups of commercial breeders, who maintain their livelihood based upon the sale of their “crop”—puppies—will be wholeheartedly opposed to such legislation. While there are major barriers to the passage of legislation that is reformative to the cruelty of the commercial breeding industry, these obstacles are not insurmountable:

Those of us who champion animal-welfare reform have to be vigilant when it comes to those who lobby to maintain the status quo (the American Kennel Club among others). They claim to care for dogs and yet have opposed various animal-welfare reform legislation which would improve their condition. In the end we will prevail, because we have truth on our side, namely the horrible evidence of abuse and cruelty at many of the commercial dog-breeding facilities.¹²⁸

By allowing recognized breeders who adhere to standard, humane breeding practices to continue to operate pursuant to the mandates of the legislation the American standard of free market sale and enterprise can be maintained while allowing for more humane treatment of the animals produced for sale. Pet stores will not have to close down, but rather, concentrate solely upon selling supplies for cats and dogs rather than the animals themselves—a practice which many pet stores already employ. Breeders will not need to stop breeding, but simply adhere to the legislative requirements based upon proper and humane breeding practices.

124. *See id.*

125. *See id.*

126. *See id.*

127. *See KOHL, supra* note 5, at 64-65; People for the Ethical Treatment of Animals, *supra* note 3 (explaining the thousands of dogs the AKC registers each year from breeders who pay AKC licensing fees).

128. KOHL, *supra* note 5, at 64-65.

There are numerous benefits to this sort of legislation. By making the sale of animals in pet stores illegal: (1) breeders will need to adhere to proper breeding standards in order to make a profit; (2) pet consumers will be required to seek out a breeder and consider adoption before “impulse-buying”; and (3) shelters will benefit from being able to place homeless animals in adoptive homes effectively, working with the pet industry.¹²⁹ Pet stores that want to have dogs in their stores will be able to work with local pet shelters and adoption agencies to provide for in-store adoption and home placement for homeless animals. While these adoptions will not bring in revenue for the store based on the actual sale of an animal, it will create patronage from customers who found the family pet in the store as well as provide a community service by helping reduce the number of homeless and unwanted pets crowding shelters.

Eradicating inhumane commercial breeding practices with legislation similar to the Animals (Regulation of Sale) Bill is not without its limitations. In fact, it may be plagued with the many problems faced by current federal and state regulations on commercial breeding. Funding and the proper means of implementation are always key issues. Legislation that removes the sale of animals from pet shops may be more successful because it is a highly visible industry within communities. Thus, it will be evident if a pet store is selling animals that are not associated with pet-shelter adoption. By making it illegal to sell animals in pet stores, it will help effectuate regulation of the commercial breeding industry by exposing it to the community. Non-compliant pet stores that continue to sell animals will be visible to the public, making identification of non-compliant facilities a simple task.

Regulation of recognized breeders, on the other hand, will require frequent inspection of breeding facilities and practices as well as an effective means of implementing the standards. To avoid problems similar to those associated with the Animal Welfare Act, punishment for not adhering to the breeding standards of the legislation for recognized breeders must be strictly and consistently enforced to be effective. Enforcement requires frequent and proper inspection practices that necessitate significant funding, which are the same problems that plague the Animal Welfare Act and need to be seriously considered in order to deal with the issues commercial breeding has created.¹³⁰

Finances are going to be a major roadblock in implementing regulation like the Animals (Regulation of Sale) Bill. While legislation is a key component of fixing the problems of commercial breeding, it must be enforced. Enforce-

129. See Moore, *supra* note 121 (explaining “the aim . . . of puppy farms . . . is to mass-produce cute . . . puppies to get more impulse sales in pet shops”).

130. See *supra* § III (referring to the difficulty in implementing state and federal laws dealing with commercial breeding because of lack of enforcement, funding, and personnel).

ment requires funding, and it is hard to get funding if the public is unwilling to support it. Thus, the success of this sort of legislation is highly dependant upon public awareness of puppy mills and the problems they pose, in addition to advocacy for effective regulatory legislation.

At least some of the funding for continued regulation of the commercial breeding industry may be included in the legislation itself. The state may be able to address funding issues associated with the legislation by requiring a licensing fee for all pet stores and recognized breeders. This extra means of funding can be used to effectuate the legislation and could provide inspections of premises to ensure compliance with the regulatory laws. As a result, the mandatory licensing fee can alleviate at least some of the financial burden it creates.

The consideration of legislation similar to the NSW Animals (Regulation of Sale) Bill also has the potential of stirring some waves, creating media response, and therefore further exposing the issue of puppy mills to the public eye. This exposure can activate a higher degree of public awareness in regard to the inhumanity of commercial breeding, which in turn can affect the amount of public support for expanded funding for the regulation of dog breeders. Educating more people about the existence of puppy mills through the introduction of legislation can help cut down on sales of puppy mill dogs without even passing legislation, thus lowering the demand for puppies that perpetuates the cycle of commercial breeding.¹³¹

While public funding is necessary to adequately enforce any regulation of the commercial breeding industry, support for regulation can be fostered by making more of the public aware of the problems it poses. This is an important step in gaining critical support for legislation eradicating the commercial breeding industry. Although Americans may not be willing to undertake the financial burden legislation modeled after the Animals (Regulation of Sale) Bill, introducing it in state legislatures would not be futile. It can have the effect of opening up more dialogue regarding commercial breeding and, thus, set the stage for more public to support and even demand for legislation dealing with the industry as people become aware of the cruelty the sale of puppy mill dogs perpetuates.

V. CONCLUSION

The inhumane treatment of dogs bred in puppy mills is an issue yet to be adequately tackled in the United States, and will continue to be a problem until the proper funding and public awareness of the cruelty of commercial breeding is

131. See KOHL, *supra* note 5, at 60 (discussing the use of public education as a means of decreasing the demand for commercially bred dogs).

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achieved. The NSW Animals (Regulation of Sale) Bill provides Americans with model legislation that goes at commercial breeding from what created it from the start—the pet industry demand for a large supply of puppies to sell to an animal-loving public. Pursuing legislation that attacks the cycle that perpetuates puppy mills requires the financial means and public dedication to attack commercial breeding head-on. However, for thirty-nine percent of Americans who own dogs and consider them a part of their family, the least we can do to ensure the humane treatment of man’s best friend is to speak out, educate the public, and pursue legislation that adequately eradicates the existence of puppy mills.