



NEIL AMBERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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KEALI'I S. LOPEZ
DIRECTOR

**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

**TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND JUDICIARY**

**THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012**

**Wednesday, February 15, 2012
2:00 p.m.**

TESTIMONY ON HOUSE BILL NO. 2161, H.D. 1, RELATING TO DOGS.

**TO THE HONORABLE ROBERT N. HERKES, AND GILBERT S.C. KEITH-AGARAN,
CHAIRS, AND MEMBERS OF THE COMMITTEES:**

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify concerning H.B. No. 2161, H.D. 1. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP cannot support H.B. No. 2161, H.D. 1 in its present form and offers the following comments.

The Director of the DCCA is the consumer counsel for the State of Hawaii. The Director enforces the consumer protection laws of Hawaii through OCP. OCP enforces a wide variety of state consumer protection laws, primarily through enforcement of Haw. Rev. Stat. section 480-2.

OCP is concerned that the bill as drafted will place significant enforcement responsibilities on OCP without providing the funding to do so.

To the extent the bill provides for the promulgation of rules to delineate the content of notices to consumers, OCP suggests that the committee consider less expensive and less time-consuming alternatives, such as setting forth the content of the disclosure in the bill, or mandating disclosures of certain sections of the bill.

In addition, the bill calls for the DCCA to enforce certain enumerated warranties between the seller and buyer. A buyer today already possesses the right to enforce any actual or implied warranties or personal claims against the seller for unfair and deceptive acts and practices under HRS Chap. 480 in Small Claims Court. The jurisdictional limit for Small Claims Court was recently increased to claims up to \$5,000.00. See HRS § 633-27(a)(1). The current jurisdictional amount for District Court actions is \$20,000.00.

Finally, the bill provides at page 12, line 2 for penalties to be paid to the general fund. OCP, however, is an agency funded in its entirety by the compliance resolution fund, and its revenue includes the fines it collects. The unfunded responsibilities set forth in this bill would be a financial hardship for OCP if it were compelled to assume

additional oversight and enforcement responsibilities without a corresponding funding mechanism to pay for such costs.

Thus, while OCP believes the bill's intent has merit, we cannot support it in its present form.

Thank you for the opportunity to submit testimony on H.B. No. 2161, H.D. 1. I would be happy to respond to any questions the members may have.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 13, 2012 7:20 PM

To: CPCtestimony

Cc: lisaparker808@aol.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Lisa M. Parker
Organization: Individual
E-mail: lisaparker808@aol.com
Submitted on: 2/13/2012

Comments:

This bill is very unreasonable. With the information available on the internet, on just about every breed, there is no reason a Buyer is unable to do their own due diligence prior to even contacting a breeder. How can anyone guaranty the health of a living animal for two years? The Breeder doesn't have control of the pets environment or diet once they leave their kennel/cattery. Also, there are not tests developed for all hereditary or genetic issues. Most reputable dog breeders do numerous tests for those things that they can test for. This is like telling Mr. and Mrs. Smith that their child will be guaranteed disease free for the first two years of life...

I have adopted two pets from the Humane Society in my life. Both ended up costing me a fortune and both died within a year of adoption. That was a long time ago and I know they have improved their screening of sick and diseased animals. Th point is that is when I began my own research and contacted reputable breeders of both cats and dogs and ASKED THE RIGHT QUESTIONS of them. Educating the public is the only way to protect them from unscrupulous breeders of pets.

This is like telling Mr. and Mrs. Smith that their child will be guaranteed disease free for the first two years of life...

All I see in this Bill is attorney fees and veterinarians refusing to get involved for fear of additional liability to them.

I suggest a committee of a cross-section of breeders, vets, and HSUS be formed to determine what will really work. This should have been done in the first place. This Bill as written will only support your favorite attorney.

I strongly oppose HB2161. I am a member of the local Shetland Sheepdog club and our national American Shetland Sheepdog Association and have been involved in showing and occasionally have had litters of Shetland Sheepdogs over the past 37 years. I currently do not breed or show my dogs; however I feel that HB2161 will severely impair the ability of reputable breeders to produce quality dogs that uphold the standard of the breed as approved by the American Kennel Club. In the past, I have imported dogs from the mainland and only bred to produce quality dogs with the aim to show them at AKC sanctioned shows. I can say that in the years I have been in dogs that I have spent considerable amounts of money on my dogs and have definitely not made a profit.

As a dog fancier, I am passionate about the care and placement of my puppies with families, who are first interviewed and then and only then placed into their homes. My contact with these puppy people goes far beyond the initial placement of a puppy. As my dogs are part of my family, these people then become part of my family and any advice or assistance needed by them continues for the life of the dog placed with them and in some instances, it becomes a forever friendship beyond the life of the dog placed with them. I believe this is common of all reputable breeders.

I have specific concerns about this bill:

1. What is the definition of "available"? Is a show-quality puppy being kept by the breeder considered "available"?
2. What is the definition of "replacement dog of equal or comparable value"? Is a show-quality puppy considered "comparable" to a pet-quality puppy (that was sold because it would not or could not be shown in an AKC show) and who makes that determination?
3. If it does go to court and I believe it will; is a judge qualified to determine the "comparable value" for an AKC registered breed? Will the State pay for an AKC judge qualified for that specific breed to make this determination?
4. What is the definition of "severely affects the health of the dog"?
5. Will the State reimburse the veterinarians for likely liability issues for having to determine if a defect is solely hereditary or if there are environmental causes (while in the care of the "purchaser").

I believe that there are major flaws in this bill and as such, HB2161 should be killed. Our show-quality prospects are precious to a breeder and this bill introduces questionable legislation that puts puppies we expended much time, money and effort to rear into jeopardy. I understand the initiative to this bill is the atrocious treatment of dogs found in Waimanalo but this bill will harm a greater majority of people who love their animals and go to their utmost to care for them. Please kill HB2161 and any modification of this bill as there should instead be legislation to criminally prosecute and punish the people who run sub-standard operations rather than controlling/punishing reputable breeders.

Thank you for your consideration, Janice Ibaraki

I am a dog owner and I vote.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 14, 2012 7:52 AM

To: CPCtestimony

Cc: lchunt1@hawaiiantel.net

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: LINDA HUNT

Organization: Individual

E-mail: lchunt1@hawaiiantel.net

Submitted on: 2/14/2012

Comments:

Most AKC breeder that I know already stand behind their breed and have signed agreements with buyers. There is no guarantee that any pet will stay healthy, any more than you can guarantee no child will get cancer or a life threatening condition. Animal's health is influenced by genetics, environment, food, exercise or work just like people. If you stress a young dog, you can get all kinds of reactions and ailments. Wrong inoculations, too much or too little exercise, poor diet, chemical exposure all lead to tragic results, which the breeder should not be held responsible, and will only benefit the lawyers and tie up the courts. This is ALL TOO MUCH MICROMANAGING of the private sector, and again, if it is the puppy mills you are going after, this won't work as they will close down and reopen under another name to avoid prosecution. The private dog breeder will be the one taking it on the chin, and perhaps ending up in court because they would not sell a dog to someone due to your regulations. go after the ones who don't care about their dogs and sell to anyone, take the money and run. those are the dogs ending up at the humane society! this is more proof of the DEATH OF COMMON SENSE in action. If I sell a car, and the owner does not take care of it, is it my responsibility in two years if it falls apart or needs a new engine? Hell no! If this kind of bill passes we better get more courts and lawyers as there is no limit to what stupid people do. I will base my voting influence on those really working on what is important business for the state versus trying to regulate people (individuals) who are already responsible breeders. What next? livestock? agriculture? farming?



**THE HUMANE SOCIETY
OF THE UNITED STATES**

TO: Honorable Chairs Keith-Agaran and Herkes and Committee Members

Committees on Judiciary and Consumer Protection, 2-15-12, 200pm, Rm 325

RE: SUPPORT for HB2161 HD1; Relating to Dogs- Dog Purchaser Protection

Submitted by: Inga Gibson, Hawaii State Director, The Humane Society of the United States,
P.O. Box 89131, Honolulu, HI 96830, igibson@hsus.org, 808-922-9910

Thank you for the opportunity to provide support for HB2161 HD 1; Relating to Dogs, with your consideration of the below suggested amendments.

Puppies from puppy mills are more likely to have health problems and, due to poor care, many consumers are faced with significant veterinary bills or even the death of their puppy soon after purchase. Therefore, in addition to this measure, laws are needed to regulate large-scale commercial dog breeders and the pet stores and "roadside" pet sellers who sadly, often put profit over welfare.

In an attempt to hold pet sellers responsible, 18 states have passed consumer protection laws, also known as "puppy lemon laws" such as the proposed. Under this proposed law, a dog purchaser is offered a number of remedies in the event they purchase an ill or diseased animal and is provided critical information as to the health and history of the animal at the time of sale. An effective "puppy lemon law" can provide at least some recourse to unsuspecting families who purchase sick puppies, and may provide a financial incentive for pet sellers to provide improved conditions and veterinary attention for the dogs and puppies in their care.

An additional concern is dog "sellers" who sell animals on roadsides, out of the back of a truck, in parking lots and other public places. These pet sellers are completely unregulated and it is virtually impossible to ensure, and enforce, that these sellers are held to these or any standards. Responsible breeders would never sell animals in a public place but insist that the potential purchaser visit their home so they may see the condition the animal was raised in, meet the dogs parents and siblings and equally screen the potential purchaser's ability to provide a loving, life-long home for the dog. In addition most internet pup sellers and "backyard breeders" who advertise on Craigslist or via classified advertisements meet unsuspecting consumers in public places, never allowing the purchaser to see the condition the dog was bred or raised in.

Thus, we respectfully request the following amendment to explicitly prohibit the selling of dogs in a public place, as defined in HRS 711-110:

- Sale of dogs and cats in a public place prohibited. (a)
Notwithstanding any ordinance, law or rule to the contrary,
it shall be unlawful for any person to sell, exchange, give

away, display for commercial purposes or trade for monetary or other compensation any dog in any public place; provided that this section shall not apply to humane societies, or animal control, rescue, or care organizations exempt under title 26 United States Code section 501(c)(3) facilitating the adoption of animals.

- "Public place" means a place to which the public or a substantial group of persons has access and includes public roads, parking lots, sidewalks, highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

Thank you for your support for HB2161 HD 1 and your consideration of the above amendments.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, February 11, 2012 9:19 PM

To: CPCtestimony

Cc: pikrik94@aol.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Pam Kutaka

Organization: Individual

E-mail: pikrik94@aol.com

Submitted on: 2/11/2012

Comments:

Testimony in Opposition to HB2161

Submitted by: Michiro Iwanaga
Before: Consumer Protection & Commerce and
Judiciary Committees
Date: Wednesday, February 15, 2012 at 9:00
a.m.

For the past nine years, I have exhibited shelties at all-breed and specialty dog shows in Hawaii. I am an officer of the Shetland Sheepdog Club of Hawaii and board members of the West Oahu Kennel Club and the Obedience Training Club of Hawaii.

I oppose HB2161.

I breed shelties. I do so not for profit but in hopes of getting puppies suitable for eventual exhibition purposes. Consequently, I spend a lot of money (a) to find and secure the best stud dog—often a well-known champion on the mainland—, (b) to provide the best prenatal and postnatal care, including appropriate inoculations, and (c) to provide the best nutrition and environment for the female dog (sorry, we call them “bitches”) and her puppies. In the end, the puppies I do not keep for competition are sold at a loss. Nevertheless, the public benefits tremendously because although not keep for competition, the puppies being sold are healthy, well bred, and have received superior care.

HB2161 should define “available” to protect responsible breeders and to encourage them to continue. HB2161 is severely flawed because it leaves a

critical term, "available," vague and undefined. The bill gives the aggrieved puppy buyer the legal remedy of his or her choice of a replacement puppy if one is "available." An inherent problem of the bill is that exhibitor/breeders ordinarily conduct breedings: (1) to get that pick puppy or puppies for himself or herself and/or (2) to fulfill obligations to the stud dog owner or to co-owners of the bitch. In other words, a number of puppies in an exhibitor/breeder's litter are often unavailable. (Please note that when puppies are eight weeks of age—the typical age when they are put up for sale—, there are often several puppies in the running for the "pick." The exhibitor/breeder will often hold on to those puppies until they mature further.) Because "available" is undefined, a well-meaning but misguided or misinformed judge might award to the aggrieved puppy buyer one of the puppies being held either as picks or to fulfill breeding or ownership commitments. In short, a judge is free to take away the very reasons for the exhibitor/breeder's diligent, responsible, and, frankly, already unprofitable efforts. This possibility will discourage the reputable breeders from bringing pure bred puppies into this world.

In light of the above, HB2161 should provide that a seller may designate in writing before or at the time of sale which remaining puppies are "unavailable."

Remedies Should Be Limited to the Price of the Puppy.

HB2161 is also objectionable because it penalizes exhibitor/breeders, who are not breeding puppies for purposes of profit. Exhibitor/breeders are not in a position

to spread their losses or to bear the loss as a cost of doing business. As a result, at a minimum, exhibitor/breeders—if not all “sellers”—should be allowed in their sales contracts to limit their damage exposure to the price of the puppy or to limit remedies to a refund and return of the puppy. (Buyers can limited their own damages by returning the puppy promptly, as already contemplated by HB2161.)

HB2161 should exclude responsible breeders. Finally, and probably most important, HB2161 should not apply at all to exhibitor/breeders. Exhibitor/breeders—and I use that term to include participants in obedience and conformation competition and former participants—are not engaged in breeding primarily for profit and already engage in responsible breeding practices. Moreover, the codes of ethics of most national breed clubs, such as the American Shetland Sheepdog Association, prohibit the sale of puppies to puppy brokers or pet shops. As a result, the second sentence of the definition of “seller” should provide: “The term ‘seller’ shall not include nonprofit animal welfare organizations that facilitate the adoption of dogs and individuals whose breeding activities are not primarily for profit and who do not sell their dogs from premises open to the general public.”

Thank you for your time. This is a difficult area. Let’s not legislate with a meat cleaver. Let’s use some judgment and finesse.

Michiro Iwanaga, Attorney at Law

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 12, 2012 10:36 AM

To: CPCtestimony

Cc: damaocc@hawaii.rr.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: CHERYL S CHANG
Organization: Individual
E-mail: damaocc@hawaii.rr.com
Submitted on: 2/12/2012

Comments:

This bill has problems: This would be the equivalent of a person purchasing slippers for \$2.00 and 2 years later moved to Alaska. Before they left they went back the store and returned used slippers and demanded that the seller give them the \$200 boots off the sellers feet! Ridiculous!!!

Responsible purebred fanciers already sell their dogs with contracts. We all have slightly different versions depending on the breed.

Questions: Who are the people making these decisions regarding a responsible breeder? Where is the money coming from? How will you find the substandard breeders? (responsible breeders are visible almost every weekend at an AKC licensed/sanctioned event-ready and able to EDUCATE the public on Responsible dog ownership.)

Please table this bill until you can sit down with TRUE LOCAL breeders and not take the information from Mainland Lobbyists.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 12, 2012 1:54 PM

To: CPCtestimony

Cc: ran@hawaii.rr.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Winifred Nakatsu

Organization: Individual

E-mail: ran@hawaii.rr.com

Submitted on: 2/12/2012

Comments:

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 12, 2012 9:39 PM

To: CPCtestimony

Cc: darsaw9@gmail.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Darlene Sawamura

Organization: Individual

E-mail: darsaw9@gmail.com

Submitted on: 2/12/2012

Comments:

I OPPOSE this House Bill. While animal welfare is close to my heart, this bill is absolutely ridiculous. Why are you attempting to regulate pet owners instead of concentrating on the issues that we voted you into office such as unemployment, the increasing number of street people, crime and recreational drugs?

We didn't vote you into office to push through pet legislation. We put you into office to improve the lives and standard of living for Hawaii's people.

Shame on the Representative who sponsored this bill and shame on Clayton Hee for the same reason.

Clayton Hee is merely a politician that is anxious to grab the limelight for his political aspirations.

It has been published that Senator Hee reported he received campaign donations from Pamela Burns and Inga Gibson (HSUS). He also reported he received campaign donations from Stephanie Ryan and Alicia Maluafiti.

The Hawaii business license records show that a Stephanie Ryan is the agent and president of the Oahu Society for the Prevention of Cruelty to Animals and Alicia Maluafiti is a registrant, and president, of a humane organization called Poi Dogs and Popoki.

Makes a person wonder why so many pet legislation bills were introduced this year. Then again, after reading the investigative report, it is quite evident that there have been back-door dealings between the HSUS and Senator Hee, which would beg an investigative report on the representative who introduced this bill as well.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 12, 2012 9:35 PM

To: CPCtestimony

Cc: sns808@gmail.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Sherrie Sawamura

Organization: Individual

E-mail: sns808@gmail.com

Submitted on: 2/12/2012

Comments:

I OPPOSE this House Bill. While animal welfare is close to my heart, this bill is absolutely ridiculous. Why are you attempting to legislate pet owners instead of concentrating on the issues that we voted you in for like unemployment, the increasing number of street people, crime and recreational drugs?

Take a smell of that coffee, folks. We didn't vote you into office to push through pet legislation. We put you into office to improve the lives and standard of living for Hawaii's people.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 12, 2012 9:23 PM

To: CPCtestimony

Cc: seiriosshelties@gmail.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Blanche Sawamura

Organization: Individual

E-mail: seiriosshelties@gmail.com

Submitted on: 2/12/2012

Comments:

I OPPOSE this House Bill. It is astounding to me that the House and Senate are both introducing pet legislation instead of working on more important issues that directly affect tax payers and voters like unemployment, the increasing number of street people, recreational drugs and the like. What is wrong with this picture???

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 13, 2012 11:04 AM

To: CPCtestimony

Cc: lynroc@hawaii.rr.com

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Jacqueline Thuener

Organization: Individual

E-mail: lynroc@hawaii.rr.com

Submitted on: 2/13/2012

Comments:

As an AKC Breeder of merit we must have our breedable stock go through a barrage of test before considering breeding them. As a "hobby breeder" I make sure that I do this. It is what has in thirty-two years of showing and breeding gotten me repeat clients when they have lost their pet as well as kept my dogs in the ribbons because of their health and stamina.

However, to hold us responsible for 24 months is absolutely ludicrous. Just for example if you take two children and raise them socially and morally different you may end up with two adults that are genetically alike yet one ends up a scholar and the other on skid row.

Puppies are guaranteed on paper by reputable breeders for at least 72 hours and come with a health check from reputable vets. Most of us do take puppies back even after that for various reasons including the breakup of the home, etc. I have yet to have one come back for health reasons. To put reputable breeders in the same category as these puppy mills is an insult.

As a member in good standing of the American Shetland Sheepdog Association, Shetland Sheepdog Club of Hawaii, Hawaiian Kennel Club, Obedience Training Club of Hawaii, Hawaiian Herding Dog Association and an "AKC Breeder of Merit" these stipulations and bills introduced by people who know nothing of what we do is purely asinine. After all would you let your child be taught by the village idiot? Or would you send them to a reputable school?



Support

Dear Chair Herkes, Vice Chair Yamane and members of the committee,

My name is Theresa Donnelly and I am the owner of Hawaii Military Pets an online resource with 1,140 Facebook fans and numerous web hits/comments to our blog. We educate via traditional media, social media and other sources on responsible pet ownership among Hawaii military pet owners.

I am the secretary of nonprofit Boxer Club of Hawaii, an American Kennel Club sanctioned dog club in existence since 1946 with 40 members, 300 Facebook fans and more than 500 people who receive our email updates. The club advocates ethical breeding practices and promotes responsible Boxer dog ownership. As the secretary, I am the point of contact for all communications concerning Boxers in the state of Hawaii.

I am testifying on behalf of Hawaii Military Pets, drawing upon my three years of experience with involvement in the dog show fancy and volunteering with animal shelters, including the Hawaiian Humane Society during the Waimanalo puppy mill rescue.

In Hawaii, we have no protections or minimum standards of care for animals bought through pet stores or directly from breeders. Numerous states have already adopted some measures. These modest protections help ensure our animals are protected by knowing who is breeding animals and knowing they were seen by a veterinarian prior to sale. For far too long, the public has had no idea where animals sold at pet stores really come from, or had any regulations to address health conditions directly resulting from inhumane breeding.

Thank you so much for your time in reading my testimony.

Theresa Donnelly,
Owner, Hawaii Military Pets
Secretary Boxer Club of Hawaii
3021 Anderson Ave
Honolulu, HI 96818
(808)-388-3423

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 15, 2012 7:46 AM

To: CPCtestimony

Cc: michael@pijac.org

Attachments: PIJAC Testimony on HI HB 2~1.pdf (101 KB)

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Michael Maddox

Organization: Pet Industry Joint Advisory Council

E-mail: michael@pijac.org

Submitted on: 2/15/2012

Comments:



**TESTIMONY OF PET INDUSTRY JOINT ADVISORY COUNCIL
BEFORE THE HOUSE COMMITTEES ON
JUDICIARY AND CONSUMER PROTECTION
HOUSE BILL 2161**

February 15, 2012

Position: Qualified Opposition

As the world's largest pet trade association, the Pet Industry Joint Advisory Council (PIJAC) appreciates the opportunity to offer these esteemed committees our views on House Bill 2161. Representing the interests of all segments of the pet industry throughout the United States, PIJAC counts among its thousands of members various associations, organizations, corporations and individuals involved in the commercial pet trade. More specifically, we represent pet breeders, pet product manufacturers, distributors, retailers and pet owners in Hawaii who would be significantly impacted by the legislation before you today.

Let me emphasize that nobody cares more about healthy pets than does PIJAC. We have, for many years, provided a highly respected animal care certification program intended to ensure that employees are well trained in the care of the animals they sell; a program that is widely utilized not only by persons in the commercial pet trade but also shelters and humane societies throughout the country, and one that has even been adopted as a statutory standard. PIJAC has worked closely with the USDA on effective implementation of the Animal Welfare Act for pets since its inception over three decades ago, and has joined hands with state and local agencies to ensure adoption and enforcement of appropriate regulatory standards. Our association has long been recognized as the voice for a responsible pet trade, and routinely advocates for new statutory standards that are in the best interests of companion animals and the pet-owning public. We also continually seek to advance the voluntary implementation of superior standards in the care, handling and transport of companion animals.

Likewise, PIJAC is strongly supportive of pet warranties and has participated in the process of crafting warranty statutes in various states. Responsible pet stores generally already provide warranties on the animals they sell, and enactment of warranty laws are only one of a number of legal requirements that make pet stores the most heavily regulated provider of pets.

**PET INDUSTRY JOINT
ADVISORY COUNCIL**
1140 19th Street, N.W., Suite 300
Washington, DC 20036
Tel: 202-452-1525
Fax: 202-452-1516

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Natural Balance Pet Foods, Pacoima, CA

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Classic Products LLC, Elwood, IN

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Sandra Moore
Segrest Farms, Gibsonton, FL

Andy Izquierdo
PetSmart, Inc., Phoenix, AZ

Michael Peterson
The Pet Group, Calabasas, CA

Ernie Vine, DVM
Central Veterinary Assoc., Valley Stream, NY

Marlie Whichard
PETCO Animal Supplies Inc., San Diego, CA

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PRESIDENT and CEO
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In discussing SB 2161 we should first emphasize that a legitimate pet store will never knowingly sell a sick puppy or kitten. But dogs and cats, like all living beings, will sometimes become ill. And symptoms of illness may not become apparent until after the animal leaves the store. That occurs in a small minority of pet store puppies. Where it does occur, a statutory warranty is intended to provide fair compensation to the purchaser for a condition that existed at time of sale. We would point out to the committee that this bill provides not only for a full refund should a seller wish to return the animal, but also gives pet owners the option to keep the puppy and receive a reimbursement of veterinary expenses. This is a unique (indeed, unprecedented) feature of pet warranty statutes. No statutory warranty, requiring multiples of the purchase price, is imposed for the non-negligent provision of any other product or service anywhere in the United States.

That notwithstanding, PIJAC supports the provision allowing recovery of veterinary fees related to curing the illness of up to the original purchase price. Indeed, as introduced, this measure largely embodied what we view as reasonable consumer protection standards for pet buyers. Unfortunately, amendments to the bill have put certain provisions of HB 2161 into a self-defeating posture. Not only would the bill now invite claims that licensed veterinarians cannot properly substantiate, the levels of reimbursement provided in this legislation are so unreasonable and onerous that they will unnecessarily drive up the costs of puppies for **all** pet owners, and likely drive responsible pet stores out of business.

The amended provision allowing pet buyers to seek a veterinarian certification of preexisting illness 21 business days after taking a puppy home (which equates to perhaps as much as a month, depending on what constitutes a "business day") is contrary to standard language in other pet warranty laws because it defeats the underlying purpose of these bills. The 12 to 15 day warranty period for illness that is standard in such bills exists because that is the maximum incubation period for any condition covered under the warranty. Beyond that period, it would be inherently impossible for any veterinarian to determine that the illness existed at the time of sale, although such a determination is required by this bill.

Were this bill to become law, one of two outcomes would necessarily follow:

Either buyers would be unable to take advantage of the warranty beyond the 14 day incubation period because veterinarians could not legitimately certify that an illness pre-existed sale; OR

That requirement of the law would effectively be disregarded, and buyers would be permitted to recover veterinarian fees for diseases that dogs contract long after they were brought home.

In the former case, the statutory warranty would be defeated. Pet buyers would understandably become frustrated since they would be induced to believe that the longer warranty period is available when in reality, for all practical purposes, such a warranty period cannot exist for preexisting conditions covered under the warranty. In the latter case pet stores would be unfairly forced to compensate buyers for veterinary care of conditions that were unrelated to the health of the animal when sold, and that the seller had nothing to do with and could have done nothing to prevent.

In either case, such a provision necessarily invites disputes instead of creating an effective mechanism for fairly compensating pet buyers as the pet warranty is intended to be.

PIJAC also opposes allowing recovery of veterinary fees up to three times the original cost of the pet, as permitted by amended provisions of HB 2161. Such a requirement is patently unfair, would inevitably drive up the cost of puppies for all consumers, and would undoubtedly put pet stores out of business. Indeed, warranties for other products and services routinely preclude consequential damages. Pets are, of course, unlike other products and services. They are living beings, and are not simply interchangeable. It is precisely because they are living beings that the same quality control applied to assembly-line products cannot be employed in the rearing of pets. What does not change, though, are the basic economic realities of retailing to the public. A retailer cannot be liable for damages for which he or she is not responsible that are equal to several times the cost of the puppy they sell. Such a legal mandate would just lead to businesses shuttering their doors for good; and unfairly so.

We would also point out that shelters and humane societies are exempt from the warranty requirement of this bill. Pet buyers, however, who routinely pay "adoption" fees to these entities for their pet dogs, are left in precisely the same position if they get a sick dog from a shelter as from a pet store. These entities, which not only sell (or "adopt out for a fee") dogs to the public but also frequently sell pet products as well, are at a competitive advantage over pet stores. We would suggest that consumers should benefit from the same statutory warranty for dogs they buy from shelters and humane societies as they do for pet store dogs.

PIJAC respectfully requests that these committees withhold action on this measure pending an opportunity to address provisions that render the bill punitive and unworkable. We would be pleased to work with the sponsor and the committees to address defects in the bill.

Thank you greatly for your consideration of our concerns!

Respectfully Submitted,

Pet Industry Joint Advisory Council
By: Michael P. Maddox, Esq.

Testimony for HB2161 on 2/15/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 13, 2012 11:13 PM

To: CPCtestimony

Cc: jibaraki01@gmail.com

Attachments: HB2161.docx (16 KB)

Testimony for CPC/JUD 2/15/2012 2:00:00 PM HB2161

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Janice Ibaraki

Organization: Individual

E-mail: jibaraki01@gmail.com

Submitted on: 2/13/2012

Comments:

I strongly oppose HB2161. I am a member of the local Shetland Sheepdog club and our national American Shetland Sheepdog Association and have been involved in showing and occasionally have had litters of Shetland Sheepdogs over the past 37 years. I currently do not breed or show my dogs; however I feel that HB2161 will severely impair the ability of reputable breeders to produce quality dogs that uphold the standard of the breed as approved by the American Kennel Club. In the past, I have imported dogs from the mainland and only bred to produce quality dogs with the aim to show them at AKC sanctioned shows. I can say that in the years I have been in dogs that I have spent considerable amounts of money on my dogs and have definitely not made a profit.

As a dog fancier, I am passionate about the care and placement of my puppies with families, who are first interviewed and then and only then placed into their homes. My contact with these puppy people goes far beyond the initial placement of a puppy. As my dogs are part of my family, these people then become part of my family and any advice or assistance needed by them continues for the life of the dog placed with them and in some instances, it becomes a forever friendship beyond the life of the dog placed with them. I believe this is common of all reputable breeders.

I have specific concerns about this bill:

1. What is the definition of "available"? Is a show-quality puppy being kept by the breeder considered "available"?
2. What is the definition of "replacement dog of equal or comparable value"? Is a show-quality puppy considered "comparable" to a pet-quality puppy (that was sold because it would not or could not be shown in an AKC show) and who makes that determination?
3. If it does go to court and I believe it will; is a judge qualified to determine the "comparable value" for an AKC registered breed? Will the State pay for an AKC judge qualified for that specific breed to make this determination?
4. What is the definition of "severely affects the health of the dog"?
5. Will the State reimburse the veterinarians for likely liability issues for having to determine if a defect is solely hereditary or if there are environmental causes (while in the care of the "purchaser").

I believe that there are major flaws in this bill and as such, HB2161 should be killed. Our show-quality prospects are precious to a breeder and this bill introduces questionable legislation that puts puppies we expended much time, money and effort to rear into jeopardy. I understand the initiative to this bill is the atrocious treatment of dogs found in Waimanalo but this bill will harm a greater majority of people who love their animals and go to their utmost to care for them. Please kill HB2161 and any modification of this bill as there should instead be legislation to criminally prosecute and punish the people who run sub-standard operations rather than controlling/punishing reputable breeders.

Thank you for your consideration, Janice Ibaraki

I am a dog owner and I vote.