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Animal Law

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ARTICLES

ANIMAL LAW

K. Michelle Welch *

I. INTRODUCTION

This article surveys developments in animal law in Virginia from July 2007 through July 2009. Virginia's animal welfare code continues to evolve and offer innovative animal protection in the Commonwealth. This survey will not be a complete synopsis of every change in the Virginia Code, but it will include developments that are truly historic and give rise to a new era for animal law.

II. 2008 LAWS

A. *Bond Provisions in Forfeiture Code*

Virginia's forfeiture provision allows for the custody of an animal to be transferred from an owner to animal control when abandonment, neglect, or cruelty can be shown, or where there is an immediate threat to the life, health, or safety of the animal.¹ In 2008, the Virginia legislature changed the law to include a bond provision.² A bond is now required if the animal is held for more

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1. VA. CODE ANN. § 3.2-6569 (Repl. Vol. 2008).

2. Act of Mar. 10, 2008, ch. 510, 2008 Va. Acts 758, 759 (codified as amended at VA. CODE ANN. § 3.2-6569 (Repl. Vol. 2008)). Chapter 510 amended former section 3.1-796.115 but, pursuant to section 30-152, has been given effect in section 3.2-6569(D). VA. CODE ANN. § 3.2-6569 ed. note (Repl. Vol. 2008).

than thirty days.³ The bond includes the cost of boarding the animal for this holding period.⁴ The statute protects animals from being confined for long periods of time while their owner is awaiting trial. Personal observation indicates that some animals have been confined for up to six months at a shelter, which further victimizes the animal. In addition, shelters often bore the expense of the confinement and were unable to transfer the animal to better situations. The bond provision appears effective, and the law seems to be improving the welfare of the animals.

B. Adequate Water

“Adequate water” is defined in the Virginia Code as:

provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.⁵

Previously, “adequate water” included a time limit, requiring that water must be provided every twelve hours in order to be “adequate.”⁶ This twelve-hour requirement permitted defendants to successfully argue that they had provided adequate water so long as they gave animals only one serving of water within twelve hours. In 2008, the General Assembly amended the Virginia Code to eliminate the twelve-hour requirement.⁷ Under the current law, water must not only be available at all times, but must also be suitable for the temperature and the weather.⁸ Thus, the water cannot be frozen, and it must be potable at all times, free of feces

3. VA. CODE ANN. § 3.2-6569(D) (Repl. Vol. 2008).

4. *Id.*

5. *Id.* § 3.2-6500 (Repl. Vol. 2008).

6. *See id.* § 3.1-796.66 (Cum. Supp. 2007).

7. Act of Mar. 2, 2008, ch. 127, 2008 Va. Acts 185 (codified as amended at VA. CODE ANN. § 3.2-6500 (Repl. Vol. 2008)).

8. VA. CODE ANN. § 3.2-6500 (Repl. Vol. 2008).

and dirt.⁹ So on a hot day, cool, clean water should be present at all times.¹⁰

C. *Animal Fighting*

In 2007, the Michael Vick case caused mainstream circles to realize what dogfighting actually means to dogs. The brutality that Bad News Kennels inflicted by electrocuting, drowning, and beating its dogs captured the American consciousness and galvanized Virginians to do better.¹¹ At that time, Virginia had fairly strict dogfighting laws, but other forms of animal fighting were not banned in Virginia.¹² Cockfighting was legal in Virginia.¹³ Gambling on cockfighting was illegal but was only a Class 3 misdemeanor, entailing a fine of no more than \$500 and no active jail time.¹⁴

Many Virginia animal welfare groups were brought together by the Humane Society of the United States ("HSUS"), and draft legislation was created.¹⁵ In 2008, the Virginia Attorney General, Robert F. McDonnell, put the legislation into his legislative package.¹⁶ It appears this was the first time that an animal bill was

9. *See id.*

10. *See id.*

11. *See* Frank Green, *Vick's Now on Defense: Star NFL Quarterback, Three Co-Defendants Arraigned Today in Federal Dogfighting Case*, RICH. TIMES-DISPATCH, July 26, 2007, at A1 (discussing the hype surrounding the Michael Vick dogfighting proceedings); Jim Nolan, *Animals to Get New Legal Protection: Kaine Signs Bills That Raise Penalty for Animal Fighting and Operating Puppy Mills*, RICH. TIMES-DISPATCH, June 15, 2008, at B2.

12. Nolan, *supra* note 11.

13. Tyler Whitley, *Senate Advances Tougher Cockfighting Laws*, RICH. TIMES-DISPATCH, Feb. 2, 2007, at A10.

14. VA. CODE ANN. § 18.2-403.2 (Repl. Vol. 2004). A Class 3 misdemeanor is a fine not exceeding \$500. *Id.* § 18.2-11 (Repl. Vol. 2009).

15. Ariana Huemer, *Virginia Legislature Takes on Animal Fighting*, Humane Society of the United States, Feb. 15, 2008, http://www.hsus.org/acf/news/virginia_cockfighting_bill_021208.html.

16. Press Release, Commonwealth of Virginia, Office of Attorney General, Attorney General McDonnell, The Humane Society of the United States Call for Tougher Animal Fighting Laws: Group Urges Passage of McDonnell's Animal Fighting Legislation (Jan. 15, 2008), available at http://www.oag.state.va.us/PRESS_RELEASES/NewsArchive/011508_Animal_Fighting_Laws.html.

included in an Attorney General's legislative package.¹⁷ Dogfighting was already a Class 6 felony¹⁸ but the law went the extra mile.

The law against animal fighting is set out in Virginia Code section 3.2-6571.¹⁹ Subsection A was designed to outlaw anything short of organized animal fighting.²⁰ Section 3.2-6571(A)(1) speaks to something less organized than what is known as organized animal fighting.²¹ Essentially, two people throwing two roosters into a pen to watch them fight falls under this section. If a person does anything to enhance an animal's ability to fight, then section 3.2-6571(B) applies to enhance the penalty.²² In other words, any violation of subsection A is a Class 1 misdemeanor.²³ But if the violation is done in combination with subsection B, it becomes a Class 6 felony.²⁴ For example, cockfighting falls under subsection A as a Class 1 misdemeanor, but if the person enhances the animal's ability to fight by attaching razors called "gaffes" to the cock's legs, then it constitutes a Class 6 felony under subsection B.²⁵ Thus, attendance at a dogfight is now considered a Class 6 felony since it implicates sections 3.2-6571(A)(2) and (B)(1).²⁶ In

17. See Press Release, Commonwealth of Virginia, Office of Attorney General, McDonnell Legislation Takes Effect Today: Includes Measures on Immigration, Counterfeit Goods, Animal Fighting, Mental Health Reform (July 1, 2008), available at http://www.vaag.com/PRESS_RELEASES/NewsArchive/070108_McDonnell_Legislation_Takes_Affect.html.

18. VA. CODE ANN. § 3.1-796.124(D) (Cum. Supp. 2007). A Class 6 felony is imprisonment for one to five years, "or, in the discretion of the jury or the court, confinement in jail for not more than up to 12 months or a fine of not more than \$2,500, either or both." *Id.* § 18.2-10 (Repl. Vol. 2009).

19. VA. CODE ANN. § 3.2-6571 (Repl. Vol. 2008).

20. Virginia Code section 3.2-6571(A)(1) provides that "no person shall knowingly promote, prepare for, engage in, or be employed in, the fighting of animals for amusement, sport or gain." *Id.* § 3.2-6571(A)(1) (Repl. Vol. 2008).

21. See *id.*

22. *Id.* § 3.2-6571(B) (Repl. Vol. 2008).

23. *Id.* § 3.2-6571(A) (Repl. Vol. 2008). Virginia Code section 18.2-11 provides that the punishment for a Class 1 misdemeanor is either confinement in jail for up to twelve months or a fine up to \$2,500, or both. *Id.* § 18.2-11(a) (Repl. Vol. 2009).

24. *Id.* § 3.2-6571(B) (Repl. Vol. 2008).

25. Virginia Code section 3.2-6571(B)(2) provides that

[a]ny person who violates any provision of subsection A in combination with one or more of the following is guilty of a Class 6 felony: . . . when any device or substance intended to enhance an animal's ability to fight or to inflict injury upon another animal is used, or possessed with intent to use it for such purposes.

Id. § 3.2-6571(B)(2) (Repl. Vol. 2008).

26. Virginia Code section 3.2-6571(B)(1) provides that any person who attends an exhibition of the fighting of animals is guilty of a Class 6 felony "when a dog is one of the animals." *Id.* § 3.2-6571(B)(1) (Repl. Vol. 2008).

fact, section 3.2-6571(B)(1) makes hog-dogging, an animal fight that involves putting a hog in a ring with pit bull dogs, a Class 6 felony.²⁷ This appears to be among the few laws in the nation that outlaws this practice.²⁸

Cockfighting rises to the level of a felony when it is organized. If there is a cockfight without any paraphernalia, then the cockfight constitutes a Class 1 misdemeanor.²⁹ There are two to three provisions in section 3.2-6571(B) that enhance the penalty for cockfighting. The first involves gambling on the fight.³⁰ The second involves the charging of admission for attendance at the fight.³¹ The third is the most common charge under which prosecutors indict: paraphernalia.³²

These three prohibitions depict the realities of organized animal fighting. Organized animal fighting involves people who are gambling on the fight and the organizers often charge admission to the fight.³³ Finally, paraphernalia is almost always in an animal fighter's possession. Paraphernalia includes, but is not limited to, treadmills, rape stands, cat mills, jennies,³⁴ veterinary drugs, steroids, portable and permanent pits, dogfighting journals, animal fighting training videos, videos depicting animal fights, trophies, grand champion certificates, and records showing the breeding lines of the animals and their wins.³⁵

Such paraphernalia appears covered by section 3.2-6571(B), which also prohibits the transportation of the animals.³⁶ In addition to the indicia of animal fighting, dogs are usually found with

27. See *id.*; Ron Barnett, "Hog Dogging" Has Some Fighting Mad, USA TODAY, Apr. 5, 2006, at 3A.

28. See Humane Soc'y of the United States, *Hog-Dog Fighting*, <http://www.humane.society.org/acf/fighting/hogdog> (last visited Oct. 11, 2009).

29. See VA. CODE ANN. § 3.2-6571(A) (Repl. Vol. 2008).

30. *Id.* § 3.2-6571(B)(3) (Repl. Vol. 2008).

31. *Id.* § 3.2-6571(B)(4) (Repl. Vol. 2008).

32. See *id.* § 3.2-6571(B)(2) (Repl. Vol. 2008).

33. See Robin Starr, *It's Chilling, but the Vick Case is Not an Isolated Incident*, RICH. TIMES-DISPATCH, Sept. 23, 2007, at E1.

34. A "jenny" or "cat mill" is a pole or spoke in which a dog is harnessed. A small animal is attached to the spoke to entice the dog. See ASPCA, *Dog Fighting: Glossary*, <http://www.asPCA.org/fight-animal-cruelty/dog-fighting/dog-fighting-glossary.html> (last visited Oct. 11, 2009).

35. See Tom Campbell & Kiran Krishnamurthy, *Dogfighting Case Detailed: Officials Allege Years of Matches at Surry Home Owned by Vick*, RICH. TIMES-DISPATCH, July 7, 2007, at A1 (detailing dogfighting paraphernalia removal from Michael Vick's home).

36. VA. CODE ANN. § 3.2-6571(B)(5) (Repl. Vol. 2008).

scars on their forepaws, neck, and head from fighting.³⁷ Cocks usually do not live to bear scars because of the mortal injuries sustained as a result of the sharp gaffes or razors that are attached to their legs.³⁸ Thus, organized cockfighting falls under subsections B(3)–(5), which elevate cockfighting to a Class 6 felony.³⁹

Moreover, if a person allows an organized animal fight on his property, he can be charged with a Class 6 felony.⁴⁰ Aiding or abetting an organized animal fight is prohibited by subsection 3.2-6571(A)(4) as a Class 6 felony.⁴¹ Additionally, subsection 3.2-6571(B)(1) provides that aiding or abetting a dogfight is a Class 6 felony just because a dog is involved.⁴²

Permitting a minor to attend or participate in an organized or unorganized animal fight is also a Class 6 felony.⁴³ Participation includes allowing a minor to help train the dogs or cocks for fighting or allowing them to do anything in the subsection, such as gambling, taking up admission, or transporting the animals.⁴⁴

Finally, as mentioned earlier, the most significant provision of the animal fighting law is the bond provision. Until 2008, pit bulls seized from dogfighting operations were literally left in shelters for as long as one or two years while dogfighting cases made their way through the criminal justice system.⁴⁵ Because pit bulls are very social animals, they deteriorate rapidly in a shelter envi-

37. See Carrie Johnson, *Steps Urged to Combat Dog Fighting*, RICH. TIMES-DISPATCH, Feb. 24, 2008, at B7 (noting the scars common to dogfighting).

38. See Humane Soc'y Int'l, *Animal Fighting*, available at http://www.hsus.org/hsi/confronting_cruelty/animal_fighting/ (last visited Oct. 11, 2009).

39. VA. CODE ANN. §§ 3.2-6571(B)(3)–(5) (Repl. Vol. 2008).

40. *Id.* § 3.2-6571(A)(3) (providing that no person shall knowingly “authorize or allow any person to undertake any act described in this section on any premises under his charge or control . . .”). But subsections (B)(3)–(5) enhance the penalty from a Class 1 misdemeanor to a Class 6 felony. *Id.* §§ 3.2-6571(B)(3)–(5) (Repl. Vol. 2008).

41. *Id.* § 3.2-6571(A)(4) (Repl. Vol. 2008).

42. *Id.* § 3.2-6571(B)(1) (Repl. Vol. 2008).

43. Virginia Code section 3.2-6571(B)(6) provides that

“[a]ny person who violates any provision of subsection A in combination with one or more of the following is guilty of a Class 6 felony: . . . when he permits or causes a minor to (i) attend an exhibition of the fighting of any animals or (ii) undertake or be involved in any act described in this subsection.”

Id. § 3.2-6571(B)(6) (Repl. Vol. 2008).

44. *Id.*

45. See Jessica Marcy, *A Breed That's Hounded*, ROANOKE TIMES, Apr. 1, 2008, at B1.

ronment.⁴⁶ Virginia Code section 3.2-6571(C) addresses the crucial question of the disposition of the animals in these cases.⁴⁷ This section allows for the confiscation of the animal when an animal control officer determines that the animal has been, is, or is intended to be used in animal fighting.⁴⁸ Additionally, this Code section gives the animal control officer the right to seize animal-fighting paraphernalia.⁴⁹

Furthermore, section 3.2-6571(C)(2) provides for the seizure of the animals, and the bond that must be put forward to claim the animals. First, upon seizure of animals, the animal control officer must petition the court for a hearing to determine “whether the animal has been, is, or is intended to be used in animal fighting.”⁵⁰ The hearing must be held within ten business days of the initial confiscation of the animals.⁵¹ “If the court finds that the animal has not been used, is not used and is not intended to be used in animal fighting, it shall order the animal released to its owner.”⁵² This serves as a protection against an illegal seizure of animals.

However, section 3.2-6571(C)(2) also protects animals. “If the court finds probable cause to believe that the animal has been, is, or is intended to be used in animal fighting, the court shall order the animal forfeited to the locality. . . .”⁵³ If the owner wants to contest this determination, he must post a bond in surety sufficient to cover the costs of caring for the animal for a period of nine months.⁵⁴ If the animal is held for more than nine months, the owner has to post another bond for each additional nine-month period the animal is held until there is a final determination.⁵⁵ This law was intended to protect animals from a second victimization caused by keeping them in a shelter for years before

46. *See id.*

47. VA. CODE ANN. § 3.2-6571(C) (Repl. Vol. 2008).

48. *Id.*

49. “[A]ny animal control officer . . . shall confiscate any animal that he determines has been, is, or is intended to be used in animal fighting and any equipment used in training such animal or used in animal fighting.” *Id.* (emphasis added).

50. *Id.* § 3.2-6571(C)(2) (Repl. Vol. 2008).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

judicial disposition. Thus, this law can be considered a success from the animal's perspective.

Finally, one more provision addresses disposition. Virginia Code section 3.2-6571(C)(3) provides that if the final determination is one of guilt, the animal is forfeited to the locality, and the bond is also forfeited.⁵⁶ If the final determination is one of not guilty and the owner has posted the nine-month bond, the animals and any bond are returned to the owner.⁵⁷ Animals are property in Virginia;⁵⁸ however, animals are living and breathing property, so bond provisions are absolutely necessary to manage this unique type of property. Unlike other asset-forfeiture provisions that deal with money or drugs, bond provisions pertaining to animals had to be crafted in a way that takes animal welfare into account.

If a person is convicted of animal fighting, he can be prohibited from possessing or owning companion animals.⁵⁹ For obvious reasons, persons convicted of animal fighting should not be able to own or possess animals. Moreover, a person convicted of animal fighting shall pay "reasonable costs incurred in housing, caring for, or euthanizing any confiscated animal."⁶⁰ Our new animal fighting law seems to be working, and more people are being charged and convicted under the amended Code. The bond provision shows great promise in alleviating the plight of the animals in these cases.

D. *Puppy Mill Law*

In 2007, Virginia got a black eye of sorts due to the undercover investigations of puppy mills conducted by the HSUS. The investigations revealed dogs living in horrible conditions and suffering from deprivations of care.⁶¹ Large-scale puppy mill operations profited on the backs of breeding animals.⁶² Some animals could

56. *Id.* § 3.2-6571(C)(3) (Repl. Vol. 2008).

57. *Id.*

58. *See id.* § 3.2-6585 (Repl. Vol. 2008) (deeming dogs and cats personal property).

59. *Id.* § 3.2-6571(D) (Repl. Vol. 2008); *see also id.* § 3.2-6570 (Repl. Vol. 2008).

60. *Id.* § 3.2-6571(E) (Repl. Vol. 2008).

61. Humane Soc'y of the United States, *Virginia: The Next Puppy Mill State?* Nov. 1, 2007, http://www.hsus.org/pets/pets_related_news_and_events/virginia_the_next_puppy_mill.html.

62. *Id.*

not turn around on wire-bottomed cages while others were caked in feces and living in dark cages.⁶³ They lived out their lives in these cages turning out litters of puppies over and over again.⁶⁴ This sparked outrage and bore the new commercial breeder law. This law is historic in that it sets limits on the number of animals breeders can have on their property.⁶⁵ Gone are the days of breeders operating with more than one thousand dogs.

Puppy mills are subject to regulations enforced by the United States Department of Agriculture (“USDA”), which does not, however, have enforcement resources in every locality in Virginia.⁶⁶ Thus, enforcement of cruelty laws in Virginia falls to law enforcement officers of the Commonwealth, including animal control officers. In fact, Virginia has a good animal cruelty law, with graduated felonies.⁶⁷

The first, very obvious change to Virginia law was the adoption of assessment penalties on breeders not licensed by the USDA. Under current law, if a commercial dog breeder sells animals to pet shops in Virginia, he must maintain a valid and current USDA dealer’s permit.⁶⁸ If a dealer does not maintain that permit, the dealer is guilty of a Class 1 misdemeanor.⁶⁹ Similarly, pet shops cannot turn a blind eye and buy dogs from unlicensed breeders. If a pet shop buys from a person who is not a dealer licensed by the USDA, the pet shop is subject to the same penalty.⁷⁰

Secondly, there is now a legal definition of “commercial dog breeder” under the Virginia Code.⁷¹ It refers to “any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as com-

63. *See id.*

64. Press Release, Humane Soc’y of the United States, Virginia Lawmaker Cracks Down on Puppy Mills (Jan. 11, 2008), http://www.hsus.org/press_and_publications/press_releases/virginia_puppy_mill_bill_introduced_011108.html.

65. *See* VA. CODE ANN. § 3.2-6507.2(1) (Repl. Vol. 2008).

66. U.S. Dep’t of Agric., Fact Sheet: Animal Care 6 (June 2005), http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awinspect.pdf (noting that there are only about seventy Animal and Plant Health Inspection Service Animal Care inspectors for the entire country).

67. VA. CODE ANN. § 3.2-6567 (Repl. Vol. 2008); *see also id.* § 3.2-6564(A) (Repl. Vol. 2008).

68. *Id.* § 3.2-6511.1(B) (Repl. Vol. 2008).

69. *Id.* § 3.2-6511.1(C) (Repl. Vol. 2008).

70. *Id.* § 3.2-6511.1(A) (Repl. Vol. 2008).

71. *Id.* § 3.2-6500 (Repl. Vol. 2008).

panion animals” as a “commercial dog breeder” in Virginia.⁷² The proponents of the law originally wanted twenty dogs as the limit,⁷³ but, as with much legislation, the bill might have been defeated without the amendment. Even so, the puppy mill law was a huge step for Virginia. It will help end the puppy mill operations that HSUS discovered in the Commonwealth, as those operations now clearly fit under the definition of “commercial dog breeder.”

Moreover, a business license is now required for commercial dog breeders.⁷⁴ The Code sets forth requirements for commercial dog breeders. A breeder may not maintain “more than 50 dogs over the age of one year at any time for breeding purposes.”⁷⁵ Localities are permitted to adopt ordinances allowing more dogs and including additional requirements.⁷⁶ Again, proponents wanted a lower number of dogs,⁷⁷ but, until this legislation, there were no checks at all on the number of animals. It is perhaps unsurprising that Virginia had more than 800 puppy mill operations.⁷⁸ Thus, this legislation is at least a step in the right direction.

However, the devil is always in the details. The additional requirements imposed upon commercial dog breeders show the real work of the proponents of this legislation. Commercial dog breeders now have some humane requirements that they must meet. Among them is the requirement that breeders can only breed female dogs “(i) after annual certification by a licensed veterinarian that the dog is in suitable health for breeding; (ii) after the dog has reached the age of 18 months; and (iii) if the dog has not yet reached the age of 8 years.”⁷⁹

In the puppy mill world, breeders literally breed dogs to death. One female dog brought into a local shelter was reportedly euthanized because she was bred so many times that her female organs were deteriorating. This certification of good health is a

72. *Id.*

73. See H.B. 538, Va. Gen. Assembly (Reg. Sess. 2008).

74. VA. CODE ANN. § 3.2-6507.1 (Repl. Vol. 2008).

75. *Id.* § 3.2-6507.2(1) (Repl. Vol. 2008).

76. *Id.*

77. See H.B. 538, Va. Gen. Assembly (Reg. Sess. 2008).

78. SEBASTIAN MONTES, “Puppy Mill” Bust Bring Possible Pets to Rockville: Dogs Will Be Ready for Adoption in Days, GAZETTE.NET, Nov. 14, 2007, http://www.gazette.net/stories/111407/gaitnew43036_32366.shtml.

79. VA. CODE ANN. § 3.2-6507.2(2) (Repl. Vol. 2008).

huge step forward. Also, the age limits on young dogs and older dogs will limit the abuses by these breeding operations, which commonly breed very young animals and very old animals.

The law creates more stringent requirements and attacks abusive practices regarding the disposal of living and deceased dogs.⁸⁰ Dog waste must be disposed of in accordance with state and federal laws.⁸¹ Virginia law does not allow dogs to lie or be kept in feces-encrusted cages and enclosures.⁸² This was another astute addition to the law. There are many requirements that deal with accurate record-keeping and the disposition of animals, along with medical care and vaccinations.⁸³ These requirements will help stop abuses since puppy mills often have no written or electronic records of their dogs, and they warehouse dogs without regard to animal cruelty laws. The new requirements are designed to make breeders accountable for the welfare of their dogs. Again, the devil is in the details, and the details will ultimately capture the bad breeders.

Finally, the law-enforcement provisions of this new law are truly effective and trailblazing. A right-of-entry provision allows the State Veterinarian or his agents, animal control officers, or any public health or safety official to investigate a commercial dog breeder operation.⁸⁴ They have this right of entry either upon receiving a complaint or on their own initiative.⁸⁵ Thus, they can effectively investigate at will. Plus, the investigating agent can inspect the breeder's records, the companion animals owned by the breeder, and any place where animals are bred and maintained.⁸⁶ The animal control officer, in carrying out the inspection, may enter any premises where animals are bred or maintained during

80. See *id.* § 3.2-6507.2(3)-(4) (Repl. Vol. 2008).

81. *Id.* § 3.2-6507.2(5) (Repl. Vol. 2008).

82. See *id.* § 3.2-6500 (Repl. Vol. 2008) ("Adequate shelter' means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner."); *id.* §§ 3.2-6503(A)(3)-(4), 3.2-6570(A) (Repl. Vol. 2008).

83. *Id.* §§ 3.2-6507.2(6)(a)-(g) (Repl. Vol. 2008).

84. *Id.* § 3.2-6507.3(A) (Repl. Vol. 2008).

85. *Id.*

86. *Id.*

daytime hours.⁸⁷ For the first time, an animal control officer may perform a thorough investigation. It is an inspection scheme that allows the breeding operations to be exposed for what they really are: cruelty factories. The animal control officers are no longer hamstrung by breeders hiding behind the USDA permitting process. This law is truly progressive, not just for the Commonwealth, but also for the nation. It brings puppy mill operations into the light of day for the world to see. For so many years, consumers have complained of these operations. They would inadvertently purchase sick animals from commercial dog breeders and were often frustrated by the abuse. But the darker side is that these animals were living a nightmare.

The final blow to these abusive operations is the new provision that says if a person “has been convicted of a violation of any law concerning abuse, neglect, or cruelty to animals that sells, offers for sale, or trades any companion animal,” then that person will be prosecuted for a Class 1 misdemeanor.⁸⁸ Therefore, convicted abusers cannot operate as commercial breeders.

III. 2009 LAWS

A. *Dangerous Dog Provisions*

This year the “dangerous dog” law was amended to include restitution for damages resulting from dangerous or vicious dogs. The amendment became effective on July 1, 2009.⁸⁹ Under this law, after finding a dog to be dangerous or vicious, a court may order the owner to pay restitution of actual damages for a person or companion animal injured or killed by the dangerous dog.⁹⁰ This law can extend to a harbinger or custodian of the dog as well.⁹¹ This law is unusual because it does not speak to restitution but to a more civil standard: actual damages.⁹²

87. *Id.*

88. *Id.* § 3.2-6570.1 (Repl. Vol. 2008).

89. LIS Bill Tracking, HB 2364, <http://leg1.state.va.us/cgi-bin/legp504.exe?091+sum+HB2364> (last visited Oct. 11, 2009).

90. VA. CODE ANN. § 3.2-6540(B) (Supp. 2009).

91. *Id.*

92. *See id.*

B. *Bittering Agent for Antifreeze*

Many manufacturers voluntarily add a bittering agent to antifreeze in order to make it less attractive to animals.⁹³ After this year's General Assembly Session, all manufacturers will be required to do so in Virginia.⁹⁴ The effective date is January 1, 2011, to allow the manufacturers more time to comply.⁹⁵ There is a civil penalty of up to \$100 for noncompliance.⁹⁶ There are some exceptions to the law which include: (1) motor vehicles with antifreeze; (2) wholesale containers; and (3) recycled or reformulated antifreeze.⁹⁷ This law shows a mainstreaming of animal law in Virginia where the welfare of pets impacts industry.

C. *Animal Control Officers Added to Obstruction of Justice*

The General Assembly included animal control officers on the list of individuals subject to enhanced punishment for an obstruc-

93. See Morgan Saunders, *Bitter Taste Saves Pets*, PROGRESS-INDEX.COM (Petersburg, Va.), July 6, 2009, http://www.progress-index.com/news/bitter_taste_saves_pets.

94. VA. CODE ANN. § 59.1-155.1 (Cum. Supp. 2009). This provision states:

(A) Any engine coolant or antifreeze manufactured after January 1, 2011, and sold within the Commonwealth that contains more than 10 percent ethylene glycol shall include not less than 30 parts per million and not more than 50 parts per million denatonium benzoate as a bittering agent in order to render the coolant or antifreeze unpalatable.

(B) A manufacturer, processor, distributor, recycler or seller of an engine coolant or antifreeze that is required to contain an aversive agent under subsection A shall not be liable to any person for any personal injury, death, property damage, damage to the environment (including natural resources), or economic loss that results from the inclusion of denatonium benzoate in any engine coolant or antifreeze, provided that the inclusion of denatonium benzoate is present in concentrations mandated by subsection A. The limitation on liability does not apply to a particular liability to the extent that the cause of such liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze.

(C) The provisions of this section shall not apply to (i) the sale of a motor vehicle that contains engine coolant or antifreeze, (ii) a wholesale container of engine coolant or antifreeze designed to contain 55 gallons or more of engine coolant or antifreeze, or (iii) engine coolant or antifreeze reformulated through on site recycling.

(D) Any person violating any provision of this section shall be assessed a civil penalty of up to \$100 per violation. Each day of violation shall constitute a separate offense.

(E) This section shall not apply to engine coolant or antifreeze that is purchased pursuant to military specifications.

95. See *id.*

96. *Id.* § 59.1-155.1(D) (Cum. Supp. 2009).

97. *Id.* § 59.1-155.1(C) (Cum. Supp. 2009).

tion of justice charge.⁹⁸ Animal control officers have a unique place in the world of law enforcement. Some are considered law enforcement officers because their department is under a law enforcement entity such as a police or sheriff's department.⁹⁹ Other animal control officer departments are under general services or the health department in their city or county administrative framework.¹⁰⁰ Adding animal control officers to Virginia Code section 18.2-460 helps to heighten their status as law enforcement personnel. This is important because many animal control officers are performing a law-enforcement function by charging persons with animal crimes. In addition, many have had weapons drawn on them.¹⁰¹ Until now, a person could not be charged with a crime for obstructing an animal control officer; this law now makes that practice a Class 1 misdemeanor.¹⁰²

Moreover, a person cannot threaten, impede, or intimidate an animal control officer in the performance of his duties.¹⁰³ This provision prevents owner interference with animal control officers taking an animal in need of veterinary care. Lastly, a person cannot give materially false statements to an animal control officer.¹⁰⁴

D. *Vaccination Upon Intake into a Shelter*

One final law that is extremely important to local animal shelters in Virginia and to animal welfare came forward this session. This law is important because it contemplates an emergency situation.¹⁰⁵ This law allows the Board of Pharmacy to register an animal shelter or pound to purchase, possess, and administer cer-

98. Act of Mar. 27, 2009, ch. 242, 2009 Va. Acts ___ (codified as amended at VA. CODE ANN. § 18.2-460 (Repl. Vol. 2009)).

99. See, e.g., Police Dep't, City of Fredericksburg, Va., <http://www.fredericksburgva.gov/Departments/police/index.aspx?id=304> (last visited Oct. 11, 2009); Sheriff's Office, Giles County, Va., <http://gilescounty.org/sheriff.html> (last visited Oct. 11, 2009).

100. See, e.g., Gen. Servs. Dep't, County of Louisa, Va., <http://www.louisacounty.com/LCdepts/generalservices.htm> (last visited Oct. 11, 2009).

101. See, e.g., Peter Fimrite, *Beware of Owners—Not Pets*, SAN FRANCISCO CHRONICLE, Jan. 3, 1994, at A11; Pamela Pritt, *Pet Owners Must Be Responsible Animal Control Officer Says*, POCAHONTAS TIMES (W.Va.), June 3, 2009, available at <http://www.pocahontas-times.com/index.php?id=781> (on file with author).

102. VA. CODE ANN. § 18.2-460(A) (Repl. Vol. 2009).

103. *Id.* § 18.2-460(B) (Repl. Vol. 2009).

104. *Id.* § 18.2-460(D) (Repl. Vol. 2009).

105. See Act of Mar. 23, 2009, ch. 169, 2009 Va. Acts ___ (codified at VA. CODE ANN. § 54.1-3423(E) (Repl. Vol. 2009)).

tain Schedule II–VI controlled substances subject to approval by the State Veterinarian.¹⁰⁶ Shelters can have these drugs “for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals.”¹⁰⁷ These facilities can purchase, possess, and “administer certain Schedule VI controlled substances for the purpose of preventing, controlling, and treating certain communicable diseases that failure to control would result in transmission to the animal population in the shelter or pound.”¹⁰⁸ In a shelter environment, communicable diseases can spread like wildfire; parvo virus, for example, can devastate young animals.¹⁰⁹ Thus, this amendment was necessary in order to vaccinate animals upon intake into a shelter. In addition, these drugs shall be administered within an animal shelter or pound “pursuant to written protocols established or approved by the supervising veterinarian of the shelter or pound”¹¹⁰ These drugs can only be administered by persons who have been trained in accordance with instructions established or approved by the supervising veterinarian.¹¹¹ Finally, “the shelter or pound shall maintain a copy of the approved list of drugs, written protocols for administering, and training records of those persons administering drugs on the premises of the shelter or pound.”¹¹² This law was needed so that the day-to-day administration of vaccines could happen without a veterinarian having to perform the administration in every case.

IV. CONCLUSION

Animal law is an emerging field, and recently the University of Richmond added an animal law class to its curriculum. Virginia has been on the forefront of progressive animal welfare laws, but thanks to the last two sessions, Virginia has taken the lead in the nation in having some of the strongest animal laws on the books. Our laws are now serving as a model for other states and the nation as a whole.

106. VA. CODE ANN. § 54.1-3423(E) (Repl. Vol. 2009).

107. *Id.*

108. *Id.*

109. See AM. VETERINARIAN MED. ASS'N, WHAT YOU SHOULD KNOW ABOUT CANINE PARVOVIRUS (2008), available at http://www.mava.org/animal_health/brochures/canines_parvo/parvo_brochure.pdf.

110. VA. CODE ANN. § 54.1-3423(E) (Cum. Supp. 2009).

111. *See id.*

112. *Id.*
