

ANIMAL LAW—GREED V. HUMANITY: THE NEED FOR ARKANSAS TO
REGULATE COMMERCIAL BREEDERS AND BAN THE RETAIL SALE OF CATS
AND DOGS IN PET STORES AND OVER THE INTERNET.

I. INTRODUCTION

Imagine living in a small cage barely your size but with a few extra people in there with you. Your skin is pressed against the wire fencing, and your feet do not touch the ground. You sit and sleep in your own urine and feces. You are continuously impregnated until you become unable to reproduce, at which time you are killed and your children are orphaned. Bug infestations make your body itch all over creating excruciating pain, and there is nothing you can do about it. You will likely starve to death or contract a deadly disease from your neighbor because of your poor immune system. You do not know your cage mate, except for the smell of his or her urine and feces and the feel of his or her claws on your skin when fighting for scraps of food. This is a deplorable living situation that no sentient being should have to endure. Our four-legged companions, however, are subjected to this situation every day.¹

Approximately seventy-seven million dogs and ninety-three million cats are owned as pets in the United States.² Of these pets, six to eight million are sent to or picked up by local animal shelters each year.³ Approximately three to four million of those in the shelters will be euthanized.⁴ This number is unacceptable—if more pets were adopted from shelters, it would prevent unnecessary euthanization. Unfortunately, many people choose to purchase a pet from a store instead.⁵ Little do they know, most animals in

1. *Puppy Mills*, THE HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/issues/puppy_mills/ (last visited Oct. 1, 2010).

2. *U.S. Pet Ownership Statistics*, THE HUMANE SOC'Y OF THE U.S. (Aug. 12, 2011), http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html.

3. *Common Questions About Animal Shelters*, THE HUMANE SOC'Y OF THE U.S. (Dec. 9, 2011), http://www.humanesociety.org/animal_community/resources/qa/common_questions_on_shelters.html.

4. *Id.*

5. *Companion Animal Overpopulation*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/issues/Companion-Animals/overpopulation.aspx> (last visited Jan. 23, 2010).

pet stores come from pet mills.⁶ They tend to purchase on impulse without realizing the sources of the animals or the expenses and obligations that come with a pet, and the animals end up abandoned, mistreated, or euthanized.⁷

Arkansas has one of the highest incidences of puppy mills in the country.⁸ Currently, there are no laws in place regulating pet mills and commercial breeders in Arkansas.⁹ There is, however, an increasing trend in other cities to ban retail pet sales in an effort to resolve this problem.¹⁰ Cities in Arkansas need to join this trend and enact ordinances banning the sale of cats and dogs in pet stores, as well as banning Internet sales by for-profit commercial breeders. Furthermore, Arkansas urgently needs to create legislation regulating commercial breeders.

This note first discusses pet mills and commercial breeders and where people may find their next pet.¹¹ It then addresses the federal regulations imposed on commercial breeders under the Animal Welfare Act (AWA or The Act).¹² Next, the note discusses current Arkansas law on the issue in comparison with the law in other states.¹³ Finally, this note outlines the legislative changes that need to be made to existing laws that affect the sale and welfare of cats and dogs, and opposition to the possible criticism of the laws.¹⁴

II. BACKGROUND

This section first provides a general discussion of breeders and pet mills. It then examines the reality of the pet mill business. Finally, it explains where a person can safely obtain a new cat or dog without supporting pet mills.

6. *Puppy Mills, Pet Shops, and the AKC Basic Facts*, FRIENDS OF ANIMALS, <http://www.friendsofanimals.org/programs/spay-neuter/puppy-mills-pet-shops-the-akc-basic-facts.html> (last visited Oct. 1, 2010).

7. Carolyn Jones, *S.F. Considers Banning Sale of Pets Except Fish*, SAN FRANCISCO CHRON. (July 8, 2010, 4:00AM), http://articles.sfgate.com/2010-07-08/news/21941947_1_animal-control-pet-store-hamsters.

8. *Puppymills Breed Misery*, PRISONERS OF GREED, <http://www.prisonersofgreed.org/Commercial-kennel-facts.html> (last updated June 2012).

9. Rebecca F. Wisch, *Table of State Commercial Pet Breeders Laws*, ANIMAL LEGAL & HIST. CENTER, <http://animallaw.info/articles/State%20Tables/tbuscommercialbreeders.htm> (last visited Oct. 1, 2010).

10. Rebecca Dube, *No Pups for Sale? Cities Ban Pet Shops*, NBCNEWS.COM (May 27, 2010, 8:27AM), <http://www.msnbc.msn.com/id/37359894>.

11. *See infra* Part II.

12. *See infra* Part III.A.

13. *See infra* Part III.B.

14. *See infra* Part IV.

A. Breeders

A breeder is an individual who keeps animals for propagation.¹⁵ There are two types of companion animal breeders in the United States: a reputable or responsible breeder, and a commercial or irresponsible breeder. Reputable breeders breed cats or dogs in order to improve the quality of the breed while still maintaining quality standards of care for their animals.¹⁶ Reputable breeders invest significant time into the care of their animals, seeking to perfect the breed's traits.¹⁷ Because of the amount of time and money invested into their animals, the breeder wants to meet the adoptive family in person to make sure that the animal goes to a loving home that provides the same amount of attention and care.¹⁸ The reputable breeders focus their efforts on one or a few select breeds and through historical research, ongoing study, mentoring relationships, club memberships, and experience with these breeds, have become experts in the breeds' health, heritable defects, temperament, and behavior.¹⁹ Responsible breeders are well-suited to educate and screen potential buyers and to provide follow-up support after purchase or adoption.²⁰ Responsible breeders take lifetime responsibility for the animals they breed.²¹

Conversely, there are the irresponsible or commercial breeders that operate puppy mills.²² The operation of puppy mills is driven by consumer demand and high profits.²³ The definition of a commercial breeder varies by state.²⁴ In general, however, commercial breeders have a commercial interest in puppies and kittens—selling them is how they make a living or supplement their income.²⁵ These breeders usually do not let anyone onto their

15. MERRIAM-WEBSTER DICTIONARY 87 (11th ed. 2004).

16. *Getting Started as a Responsible Breeder*, AM. KENNEL CLUB, http://www.akc.org/breeders/resp_breeding/Articles/breeder.cfm (last visited Nov. 12, 2010).

17. *Id.*

18. *Id.*

19. *Position Statement on Criteria for Responsible Breeding*, ASPCA, <http://www.aspc.org/about-us/policy-positions/criteria-for-responsible-breeding.html> (last visited Nov. 16, 2010).

20. *Id.*

21. *Id.*

22. Robyn F. Katz, *Overview of Commercial Breeder Laws*, ANIMAL LEGAL & HIST. CENTER, <http://www.animallaw.info/articles/ovuscommercialbreeders.htm> (last visited Oct. 8, 2010).

23. *Puppy Mill FAQ?*, ASPCA, <http://www.aspc.org/fight-animal-cruelty/puppy-mills/puppy-mill-faq> (last visited Jan. 22, 2011).

24. *Id.*

25. *Puppy Mill Information*, ONE DAY ONE VOICE, http://www.awarenessday.org/national/pm_info.html (last visited Nov. 16, 2010).

premises to view the animals.²⁶ Instead, they ship the animal or go through a “broker,” who supplies dealers with dogs, cats, and other regulated animals collected from various sources to sell them.²⁷ Commercial breeders must cut corners to make a profit, meaning the animals are treated inhumanely and females are bred as often as possible, which leads to the problem of pet mills.²⁸

B. Pet Mills

A pet mill, more commonly known as a “puppy mill,” is a large-scale commercial dog and cat-breeding operation where animals are kept in horrendous living conditions for the sole reason of turning a profit.²⁹ As one court stated, “a ‘puppy mill’ is a dog breeding operation in which the health of the dogs is disregarded in order to maintain a low overhead and to maximize profits.”³⁰ The term “puppy mill” covers both puppies and kittens.³¹ Although kitten mills are not as common as puppy mills, they do exist, often at the same facilities as the dogs.³² Feline diseases spread faster and are often more fatal than canine diseases, which is why kitten mills are less prevalent.³³ Many problems arise because of the deplorable conditions the animals are exposed to in these mills and the number of animals produced, including environmental, health, and overpopulation problems.³⁴

1. *Environmental Impact of Pet Mills*

In addition to the inhumane treatment of animals that takes place in puppy mills, puppy mills also pose environmental issues.³⁵ Because the animals live in tight quarters and lack free range of motion, clean housing, proper veterinary care, and sufficient food, the risk of disease transmission and pollution greatly increases.³⁶ Commercially bred dogs often have dis-

26. *Animal Welfare: Types of AWA Licensees and Registrants*, U.S. DEP’T OF AGRIC., http://www.aphis.usda.gov/animal_welfare/inspections_type.shtml (last modified Mar. 24, 2010).

27. *Id.*

28. ONE DAY ONE VOICE, *supra* note 25.

29. See *Puppy Mill FAQ*, ASPCA, <http://www.asPCA.org/fight-animal-cruelty/puppy-mills/puppy-mill-faq.html> (last visited Oct. 8, 2010).

30. *Avenson v. Zegart*, 577 F. Supp. 958, 960 (D. Minn. 1984).

31. ASPCA, *supra* note 29.

32. *Id.*

33. *Id.*

34. *Id.*

35. Melissa Towsey, Comment, *Something Stinks: The Need for Environmental Regulation of Puppy Mills*, 21 VILL. ENVTL. L.J. 159, 177–180 (2010).

36. *Id.* at 178.

eases, such as the parasite *Cryptosporidium* that can contaminate the soil and infect humans through direct contact with the skin.³⁷

Young animals in puppy mills are more vulnerable to contracting infections and diseases, “due to poor nutrition, inadequate medical care, and the stress of being shipped long distances at a young age.”³⁸ These animals are often infected with various types of intestinal parasites, including ascarids and hookworms.³⁹ “[The Centers for Disease Control and Prevention (CDC)] reports that the popularity of dogs as pets and the failure of pet owners to properly clean up pet waste have led to widespread contamination of soil in the United States by hookworms.”⁴⁰ Hookworms are harmful to humans because they can damage the intestines and other organs.⁴¹ Roundworms are also harmful to humans as the larvae can cause damage to tissue and nerves, and in some cases can cause permanent eye damage or blindness.⁴² These diseases are spread to humans through infected feces.⁴³ The CDC is cautioning two and three dog households about the potential for infection, and the risks are greatly increased at puppy mills due to the amount of contamination in the soil.⁴⁴ The negative environmental impact of puppy mills compromises the general health, safety, and welfare of the community.

2. *Overpopulation of Cats and Dogs Created By Pet Mills*

Puppy mills indiscriminately produce millions of puppies each year.⁴⁵ Approximately six to eight million homeless pets enter United States’ shelters each year.⁴⁶ If there are shelter animals that still need homes, pet overpopulation could be reduced if more of them were adopted from a shelter rather than purchasing a pet from a source that obtains its pets from puppy

37. *Id.* at 177. *Cryptosporidium* is a parasite found in the feces of infected dogs that is resistant to standard disinfecting techniques, and can also cause the disease cryptosporidiosis in humans. Symptoms include diarrhea and abdominal cramps. *Id.*

38. *Our Stand on Issues*, HAWAIIAN HUMANE SOCIETY, <http://hawaiianhumane.org/Stand-On-Issues.html> (last visited Apr. 1, 2012).

39. *Animals (Zoonotic)*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/parasites/animals.html> (last updated Nov. 2, 2010).

40. Towsey, *supra* note 35, at 178.

41. *What Every Pet Owner Should Know About Roundworms & Hookworms*, CENTERS FOR DISEASE CONTROL AND PREVENTION, http://www.cdc.gov/healthypets/Merial_CDCCBroch_rsgWEB.pdf (last visited Nov. 27, 2010) (describing how roundworms and hookworms originating from pets affect humans).

42. *Id.*

43. *Id.*

44. Towsey, *supra* note 35, at 178.

45. THE HUMANE SOCIETY OF THE U.S., *supra* note 1.

46. PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, *supra* note 5.

mills or commercial breeders.⁴⁷ By purchasing a pet from a pet store, commercial breeder, or unverified internet sources, pet owners perpetrate the vicious cycle of over-breeding.

C. Registering with American Kennel Club and Cat Fanciers' Association

Some breeders may claim to be “good” breeders because they have a license from the United States Department of Agriculture (USDA) or because their puppies are registered with the American Kennel Club (AKC).⁴⁸ The AKC registry allows registration of puppies when both of the puppy’s parents have AKC records.⁴⁹ Many people believe that if their new dog has AKC papers, it comes from a reputable breeder; however, this may not always be the case.⁵⁰ While the AKC regulates recordkeeping and identification, it does not maintain standards with regard to the origin, quality, health, or treatment of the animals.⁵¹ The only requirement necessary to be registered with the AKC is that a puppy mill dog have purebred parents.⁵²

Pedigreed kittens are registered with the Cat Fanciers’ Association (CFA), the world’s largest cat registry.⁵³ Registering with the CFA requires a more in-depth process than that of the AKC.⁵⁴ In addition to the normal registration requirements, such as information about the parents and breed, birthdates of all previous litters, and the name and contact information of the owners, CFA prohibits a single breeder from registering more than seventy-five kittens in one year.⁵⁵ However, there are loopholes for commercial breeders, such as a couple who operate a puppy mill together registering as separate breeders. As previously stated, the registration process does not require a report of good quality health either, which many purchasers are misinformed about when they buy an “AKC” or “CFA” registered pet. Be-

47. ASPCA, *supra* note 29.

48. *Id.*

49. *Id.*

50. *Id.*

51. *About Registration*, AM. KENNEL CLUB, <http://www.akc.org/reg/about.cfm> (last visited Apr. 1, 2012).

52. *Id.*

53. *CFA History*, THE CAT FANCIERS’ ASS’N, <http://www.cfainc.org/AboutCFA/CFAInfo/OurHistory.aspx> (last visited Feb. 26, 2011). Pedigreed refers to when an ancestral line of a purebred animal has been recorded.

54. *See Rules for Registration*, CAT FANCIERS’ ASS’N, <http://www.cfa.org/org/registration-rules.pdf> (last modified Dec. 2012) (explaining the numerous rules a breeder must follow in order to register a kitten or litter).

55. Email from Merilee R. Davis, Employee of Cat Fanciers’ Association, to Lauren Ferris, Student, William H. Bowen School of Law (Nov. 17, 2010, 07:58 CST) (on file with author).

cause of the loopholes in the AKC and CFA registration processes, potential buyers need to exercise caution when purchasing their pet.⁵⁶

D. Where to Get a Pet

Aside from freshwater fish, cats and dogs constitute the majority of pets owned by Americans.⁵⁷ Potential buyers may browse pet stores, classified ads in the newspaper, and Internet websites. Additionally, they may ask family and friends or visit rescue shelters to find the perfect pet.⁵⁸ Before purchasing a pet, buyers need to consider the time and expense required to care for a pet. According to the 2011–2012 American Pet Products Association National Pet Owners Survey, basic annual expenses for dog and cat owners total \$2,759.⁵⁹ Many people purchase a pet on an impulse; they cannot resist a little ball of fur jumping around, wagging its tail, or rubbing against them. However, potential owners fail to consider the long-term expense and responsibility associated with owning a pet.⁶⁰

Many impulse purchases of pets occur at pet stores.⁶¹ A majority of the time, the puppies and kittens sold in a pet store simply move from the cage in which they were born to the cage at the pet store where they are sold.⁶² Although many pet store owners claim that they get their animals from a reputable breeder or that the animals are AKC or CFA registered, the animals may actually come from puppy mills.⁶³ One situation that illustrates this fact is the Humane Society of the United States' (HSUS) investigation into Petland, "the nation's largest chain of pet stores that sells puppy mill

56. ASPCA, *supra* note 29.

57. See *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASS'N, http://www.americanpetproducts.org/press_industrytrends.asp (last visited Mar. 31, 2011).

58. Stephen Coate & Brian Knight, *Pet Overpopulation: An Economic Analysis* 4 (2009), http://www.brown.edu/Departments/Economics/Papers/2009/2009-7_paper.pdf.

59. AM. PET PRODUCTS ASS'N, *supra* note 57. \$1,542 was spent on dogs, and \$1,217 was spent on cats. The categories surveyed included surgical vet visits, food, kennel boarding, routine vet, groomer, vitamins, food treats, and toys. The survey did not ask for the annual total spent on the dogs or cats, and the expenses surveyed were not all inclusive. *Id.*

60. *Why Are There So Many Homeless Pets?*, SPOT, http://www.spotsociety.org/index.php?option=com_content&view=article&id=20:why-so-many-homeless&catid=58&Itemid=149 (last visited Nov. 27, 2010).

61. *Impulse Purchases Are for Shoes, Not Pets*, FREE DOG TRAINING INFO, <http://freedogtraininginfo.com/141/impulse-purchases-are-for-shoes-not-pets/> (last visited Jan. 23, 2010).

62. *Pet Shops*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/issues/Companion-Animals/Pet-Shops.aspx> (last visited Nov. 27, 2010).

63. See *Pet Store Doublespeak*, THE HUMANE SOC'Y OF THE U.S. (June 7, 2010), http://www.humanesociety.org/issues/puppy_mills/facts/pet_store_doublespeak.html (informing the public about what retail pet stores may say in response to inquiries about the source of their animals, and the truth behind those claims).

dogs.”⁶⁴ In 2009, the HSUS conducted a six-month search of public animal transport records in numerous states that revealed that more than 95% of Petland stores received “shipments of more than 15,000 puppies from massive commercial puppy brokers.”⁶⁵

In addition to pet stores and classified ads in newspapers, many potential buyers use the Internet to obtain a new puppy or a kitten.⁶⁶ The Internet is a vast, unregulated marketplace that allows anyone to put up a website or classified ad. According to a recent survey conducted by The American Society for the Prevention of Cruelty to Animals (ASPCA), 89% of all “breeders” that sell their pets over the Internet are not licensed by the USDA.⁶⁷ Moreover, “according to the Internet Crime Complaint Center, hundreds of complaints are filed every year from victims who were scammed when buying a dog online.”⁶⁸

There are many types of scams that these “breeders” use to con people who wish to purchase pets.⁶⁹ One common scam is the “free to a good home,” which uses a sad story about needing to find this animal a loving home and the consumer has to pay shipping costs only, often a few hundred dollars, but ends up sending money and not receiving any animal.⁷⁰ An often more popular scam is when someone states that their puppy is AKC registered and fails to describe what this entails.⁷¹ Many people believe that being AKC registered means the puppy came from a reputable breeder and is in good health. However, it only means that the puppy’s parents both had AKC papers, and there is nothing to restrict puppy mills from obtaining AKC registered dogs.⁷² The prevalence of scams serves as an additional incentive for consumers to carefully investigate the seller and the animal before making a purchase.

64. *New Nationwide Investigation of Petland Reveals Continued Support of Puppy Mills*, THE HUMANE SOC’Y OF THE U.S. (June 29, 2009), http://www.humanesociety.org/news/press_releases/2009/06/new_petland_investigation_062909.html.

65. *Id.*

66. *Why You Should Never Buy a Puppy Online*, ASPCA, <http://www.aspc.org/fight-animal-cruelty/puppy-mills/puppy-scams-cons.html> (last visited Oct. 17, 2010).

67. *Beware When Buying Your Puppy Online*, SEATTLEPI, <http://blog.seattlepi.com/caninechat/2011/07/20/beware-when-buying-your-puppy-online/> (last visited Mar. 25, 2013).

68. ASPCA, *supra* note 66.

69. *See id.*

70. *Id.*

71. *Puppy Scams: Online Puppy Sale Red Flags*, YAHOO! VOICES (July 6, 2010), <http://voices.yahoo.com/puppy-scams-online-puppy-sale-red-flags-6339764.html>.

72. *Id.*

People can also adopt a puppy or a kitten from a local animal shelter or rescue group.⁷³ Approximately six to eight million animals enter shelters each year.⁷⁴ Many shelter animals are euthanized because of a lack of space.⁷⁵ Shelter dogs and cats come in various sizes, colors, and personalities.⁷⁶ In addition to mixed breeds, about 25% of shelter dogs are purebred.⁷⁷

There are several advantages to adopting a cat or dog from an animal shelter.⁷⁸ First, the adoption fees are significantly lower than the cost of purchasing a pet from a pet store or a breeder.⁷⁹ Additionally, the animals may be vaccinated, de-wormed, and spayed or neutered, eliminating some of the expenses associated with having a pet.⁸⁰ Aside from these advantages, an individual saves an innocent life by adopting from a shelter or rescue group and gains a companion for life. Although adopting a pet from an animal shelter or reputable breeder may help to slow the puppy mill cycle, education and legislation would further tackle the core of the puppy mill problem.

III. ANALYSIS OF CURRENT FEDERAL AND STATE ANIMAL WELFARE LAWS

A. Federal Regulation for Animal Breeders—Animal Welfare Act

Enacted in 1966,⁸¹ the Animal Welfare Act (AWA) is the current federal regulation with respect to companion animal breeders.⁸² The AWA imposes a minimum standard on breeders, brokers, and dealers, regulating the treatment of animals in research, exhibition, and transport.⁸³ It is enforced by the USDA's Animal and Plant Health Inspection Service (APHIS), which has the Animal Care program (AC) that oversees the AWA.⁸⁴

73. *Adopting from an Animal Shelter or Rescue Group*, THE HUMANE SOC'Y OF THE U.S. (Dec. 9, 2011), http://www.humanesociety.org/issues/adopt/tips/adopting_from_shelter_rescue.html.

74. THE HUMANE SOC'Y OF THE U.S., *supra* note 3.

75. *Animal Shelters*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/issues/Companion-Animals/Animal-Shelters.aspx> (last visited Nov. 27, 2010).

76. THE HUMANE SOC'Y OF THE U.S., *supra* note 73.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Pub. L. No. 89-544, 80 Stat. 350 (1966) (codified at 7 U.S.C. § 2154 (2006)).

82. *Id.* §§ 2131–2159.

83. *Id.* § 2143.

84. *Id.* The Animal Care Program “provides leadership for determining standards of humane care and treatment towards animals” as well as conducting inspections. *About Animal Care*, USDA, http://www.aphis.usda.gov/animal_welfare/about_ac.shtml (last modified Apr. 22, 2010).

Certain animals covered by the AWA must be licensed with and inspected by the USDA.⁸⁵ AC officials conduct at least one unannounced inspection per year of the registered facilities and the licensed dealers to ensure compliance with the AWA.⁸⁶ In addition to the mandatory inspection, AC officials may conduct other discretionary inspections.⁸⁷ Inspectors must re-inspect facilities where areas of noncompliance are found that have, or may have, a serious impact on the well-being of the animals until the problems are corrected.⁸⁸ Numerous facilities, however, slip through inspections due to inadequacies in the AWA.

Although there have been numerous amendments to the AWA since its creation,⁸⁹ Congress has yet to address several of its deficiencies. One flaw is that there are not enough inspectors to properly enforce the AWA's provisions.⁹⁰ "The [USDA] employs [ninety-nine] inspectors, who are dispersed throughout the country, to conduct inspections of all licensed and registered facilities covered under AWA."⁹¹ The most recent audit report from the Office of the Inspector General indicates that the inspectors conducted 15,722 inspections.⁹² An example illustrating the lack of enforcement by the USDA occurred in July 2010 when a puppy mill was discovered and not reported to authorities or the District Attorney's office.⁹³ A couple who ran a puppy mill, Barbara and David Yoder, discovered that their dogs had a repeat infectious disease.⁹⁴ During an inspection of their property a few weeks earlier, the Yoders were told that a veterinarian would come and inspect the dogs, and that they might have to be euthanized.⁹⁵ Because the couple did not want to wait on the veterinarian, they created a gas chamber and eu-

85. 7 U.S.C. § 2133 (2006) (referring to 7 U.S.C. § 2143 (2006) for the standards that facilities must comply with in order to become licensed).

86. *Id.* § 2146(a).

87. *Id.*

88. *Id.*

89. *The Animal Welfare Act: A Legislative and Regulatory History*, USDA, http://www.aphis.usda.gov/animal_welfare/downloads/awa_leg_history.pdf (last visited Nov. 17, 2010).

90. Katherine C. Tushaus, Note, *Don't Buy the Doggy in the Window: Ending the Cycle That Perpetuates Commercial Breeding with Regulation of the Retail Pet Industry*, 14 *DRAKE J. AGRIC. L.* 501, 508 (2009).

91. OFFICE OF THE INSPECTOR GEN., ANIMAL CARE PROGRAM — INSPECTIONS OF PROBLEMATIC DEALERS 4 (2010), available at <http://www.usda.gov/oig/webdocs/33002-4-SF.pdf> (examining APHIS Animal Care program inspection and enforcement activities relating to problematic dealers).

92. *Id.*

93. ANDREA D'AMBROSIO, INSPECTION REPORT ON BARBARA AND DAVID YODER 1 (2010), available at <http://acisearch.aphis.usda.gov/LPASearch/faces/LPASearch.jspx> (Search for certificate number "21-A-0122" and the link to download both reports will appear).

94. *Id.*

95. *Id.*

thanized the dogs themselves.⁹⁶ According to its report, the USDA revoked their kennel license and told them that they should have waited for the veterinarian.⁹⁷ The cruelty went unreported, and the owners received a slap on the wrist for their actions.⁹⁸

Another problem with the AWA is that although it covers wholesaler operations, it does not cover companion-animal breeders who sell cats and dogs directly to the public for profit.⁹⁹ The AWA requires that wholesale operations be licensed and inspected by the USDA.¹⁰⁰ Yet, commercial breeders who sell as many puppies and kittens as the wholesalers “are not required to adhere to the [AWA] or to any federal humane care standards.”¹⁰¹ Because the section of the AWA that explicitly covers retail pet stores pre-dates the Internet and has not been amended to fill the loophole,¹⁰² the breeders who sell animals over the internet or through classified ads may escape the regulations of the AWA.¹⁰³

People who wish to become dealers must obtain a valid license under the AWA to operate their facility.¹⁰⁴ A Class A licensed breeder is “a person...whose business involving animals consists of animals that are only bred or raised for the purpose of enhancing the breeding colony.”¹⁰⁵ A Class B licensed breeder is “a person...whose business includes the purchase and/or resale of any animal.”¹⁰⁶ These individuals negotiate or arrange for the purchase, sale, or transport of animals in commerce.¹⁰⁷ In 2009 alone, there were 4,929 dealers in the United States.¹⁰⁸ A dealer does not include a person who sells a cat or dog directly to the public or who grosses less than \$500 from the sale of each animal during a calendar year, thereby allowing

96. *Id.* The Yoders put five or six dogs in a wooden crate and stuck a pipe inside that fed them carbon monoxide until they died. They repeated the process until seventy-eight adult dogs and fifteen puppies were dead. *Id.*

97. *Id.*

98. Alex Dunbar, *Breeder Fined \$505 for Killing 74 Dogs*, CNYCENTRAL.COM (Sept. 28, 2010, 12:09 AM), <http://www.cnycentral.com/news/story.aspx?id=517825#.UVCa5Dcnvw8>. David Yoder pleaded guilty to seventy-four counts of inhumane destruction of dogs and was fined only a total of \$505. *Id.*

99. 7 U.S.C. § 2132(f)(i) (Supp. 2011). A wholesale operation is one that sells animals to stores that will then resell them.

100. *Id.* § 2133.

101. *Puppy Mills: Frequently Asked Questions*, THE HUMANE SOC’Y OF THE U.S. (Aug. 30, 2012), http://www.humanesociety.org/issues/puppy_mills/qa/puppy_mill_FAQs.html.

102. 7 U.S.C. § 2154; *see also* OFFICE OF THE INSPECTOR GEN., *supra* note 91.

103. SEATTLEPI, *supra* note 67.

104. 7 U.S.C. § 2133.

105. DAVID FAVRE, *ANIMAL LAW, WELFARE, INTERESTS, AND RIGHTS* 386 (1st ed. 2008).

106. *Id.*

107. *Id.*

108. U.S. DEP’T OF AGRIC., *supra* note 26. In 2009, there were 3,898 Class A dealers and 1,031 Class B dealers. *Id.*

puppy mill breeders to avoid being classified under either category requiring them to obtain a valid license.¹⁰⁹ Because it appears that the federal government does not consider animal welfare a top priority, states should step up and eliminate the inadequacies.

B. Puppy Mills in Arkansas

According to HSUS, Arkansas is one of the top seven puppy mill states in the country.¹¹⁰ Arkansas, however, has yet to take steps to remedy the problem. Currently, there are no laws in Arkansas that regulate companion animal breeders or the sale of cats and dogs to the public from irresponsible breeders and puppy mills.¹¹¹

1. *Animal Cruelty*

While Arkansas does not have any laws regulating commercial breeders, and the sale of cats and dogs directly to the public, it does have an Animal Cruelty Statute (ACS).¹¹² The ACS provides: “(a) A person commits the offense of aggravated cruelty to a dog, cat, or horse if he or she knowingly tortures any dog, cat, or horse.”¹¹³ Furthermore, torture is defined as “(A) [t]he knowing commission of physical injury to a dog, cat, or horse by the infliction of inhumane treatment or gross physical abuse, causing the dog, cat, or horse intensive or prolonged pain, serious physical injury, or thereby causing death; and (B) [m]utilating, maiming, burning, poisoning, drowning, or starving a dog, cat, or horse.”¹¹⁴

Under this statute, commercial breeders and their pet mills should be prosecuted for the numerous animals they torture. Arkansas is far behind other states where laws relating to animal welfare are concerned as it became the forty-sixth state to make animal cruelty a felony offense,¹¹⁵ which should be more of an incentive to hasten the pace of regulating commercial breeders.

109. 7 U.S.C. § 2132(f) (Supp. 2011).

110. *States Cracking Down on Puppy Mills*, NBCNEWS.COM (June 4, 2007, 12:04:13 PM), <http://www.msnbc.msn.com/id/19016050/>.

111. Wisch, *supra* note 9.

112. ARK. CODE ANN. §§ 5-62-102–116 (Supp. 2009).

113. *Id.* § 5-62-104(a) (Supp. 2009).

114. *Id.* § 5-62-102(21)(A)–(B) (Supp. 2009).

115. *Arkansas Felony Animal Cruelty, Cockfighting Laws*, THE HUMANE SOC’Y OF THE U.S. (Feb. 11, 2009), http://www.humanesociety.org/news/news/2009/02/arkansas_felony_cruelty_law_021109.html.

Although it may seem logical to punish commercial breeders under state anti-cruelty laws, such laws are difficult to enforce.¹¹⁶ Under the ACS, a person may lawfully interfere to prevent the imminent or ongoing perpetration of any offense of cruelty to animals or aggravated cruelty to a dog, cat, or horse in his or her presence.¹¹⁷ On its face, this seems to contradict what the Animal Enterprise Terrorism Act (AETA) says on the issue. Enacted in 2006,¹¹⁸ the AETA is a federal law that prohibits any person from using force, violence, or threats “for the purpose of damaging or interfering with the operations of an animal enterprise.”¹¹⁹ An animal enterprise is defined as “a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing[.]”¹²⁰ This includes breeders and pet stores.¹²¹ Under this definition, a puppy mill would be classified as an animal enterprise because the breeders mass produce puppies and kittens solely for profit. As previously discussed, a person may interfere with a potential harmful situation involving animals without penalty under the ACS.¹²² Under the AETA, however, if any person were to interfere in such a situation resulting in the breeder losing profits or his or her animals, then that person might be arrested or be fined if the AETA’s threshold requirements were met.¹²³

Most importantly, the interference must involve “travel[] in interstate or foreign commerce, [including] the mail or any facility of interstate or foreign commerce . . .” for the federal law to apply.¹²⁴ The AETA also excludes from the definition of economic damage “any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise . . .”¹²⁵ Finally, the AETA’s rules of construction exempt from federal preemption state or local laws providing civil remedies.¹²⁶

Even so, fear of being charged as or possibly labeled a “terrorist” under the AETA may deter those who would otherwise exercise their rights under

116. THE HUMANE SOCIETY OF THE U.S., *supra* note 101.

117. ARK. CODE ANN. § 5-62-111 (Supp. 2011).

118. Pub. L. No. 109-374, § 2(a), 120 Stat. 2652 (2006). The effective date is November 27, 2006.

119. 18 U.S.C. § 43(a)(1) (2006).

120. *Id.* § 43(d)(1)(A).

121. *Id.* § 43(d)(1)(B).

122. ARK. CODE ANN. § 5-62-111 (Supp. 2011).

123. 18 U.S.C. § 43(b) (2006).

124. *Id.* § 43(a).

125. *Id.* § 43(d)(3)(B).

126. *Id.* § 43(e)(3).

state laws to help stop animal cruelty.¹²⁷ State anti-cruelty laws are essential tools in combating such cruelty, but such laws may require amendments to adequately reach the problem of puppy mills.

Under the ACS, law enforcement officials need a search warrant to enter an individual's premises, making the law difficult to enforce without one.¹²⁸ Usually, operators of puppy mills do not invite consumers to their property, and local authorities cannot intervene unless they receive a complaint from a credible person who has personally witnessed cruel treatment toward the animals.¹²⁹ Despite these difficulties, there continues to be reported situations of raided puppy mills throughout Arkansas.¹³⁰ In October 2009, two women from Johnson County were charged with eight counts of aggravated animal cruelty after discovery of their large-scale dog breeding operation.¹³¹ The animals discovered on their property had skin and eye infections, and lived covered with matted fur, dirt, and feces in wire cages.¹³² Each woman received five years of probation, paid \$1,500 in fines, and agreed to receive psychological counseling.¹³³

The HSUS and the Logan County sheriff's office raided another puppy mill in March 2009 located in Paris, Arkansas.¹³⁴ Over 350 animals were seized in the raid, making it one of the largest reported puppy mill raids.¹³⁵

127. See generally Dane E. Johnson, Comment, *Cages, Clinics, and Consequences: The Chilling Problems of Controlling Special-Interest Extremism*, 86 OR. L. REV. 249, 260 (2007).

128. ARK. CODE ANN. § 5-62-112 (Supp. 2011).

129. THE HUMANE SOC'Y OF THE U.S., *supra* note 101.

130. *The HSUS Rescues More Than 100 Animals from Arkansas Puppy Mill*, THE HUMANE SOC'Y OF THE U.S. (Oct. 6, 2009), http://www.humanesociety.org/news/press_releases/2009/10/arkansas_puppy_mill_rescue_100609.html (describing the situation where more than 100 animals were rescued from a puppy mill in Lamar, Johnson County, Arkansas). Many of the dogs were emaciated and suffering from skin and eye infections as well as other medical ailments. Kenneth Heard, *Dozens of Dogs Seized; Saline County Breeder Faces 85 Cruelty Counts*, ARK. DEMOCRAT-GAZETTE (Little Rock) July 16, 2008, available at LEXIS, News and Business, Major Newspapers.

131. Dave Hughes, *Cruelty Charges Filed Against 2; Animals Seized*, ARK. DEMOCRAT-GAZETTE (Little Rock), Oct. 31, 2009, available at LEXIS, News and Business, Major Newspapers (the operation "discovered ninety-six dogs, five cats, and two guinea pigs living in squalid conditions").

132. *Id.*

133. *The HSUS Praises Arkansas Authorities for Strong Punishment of Puppy Mill Owners*, THE HUMANE SOC'Y OF THE U.S. (May 26, 2010), http://www.humanesociety.org/news/press_releases/2010/05/arkansas_puppy_mill_charges_052610.html.

134. *Animals Rescued from Arkansas Puppy Mill on the Road to New Lives*, THE HUMANE SOC'Y OF THE U.S. (Mar. 24, 2009), http://www.humanesociety.org/news/press_releases/2009/03/animals_rescued_from_ar_puppy_mill_032409.html.

135. *Id.*

The ammonia was so heavy from the odor of urine, that not only were the dogs' eyes burned, but it made it difficult for the inspectors to breathe.¹³⁶ Because the couple turned over the animals to HSUS, they were not charged.¹³⁷

In the HSUS' "Humane State Ranking" report of 2011, Arkansas ranked thirty-eight out of fifty-one states, including the District of Columbia, based on a wide-range of animal protection laws.¹³⁸ Arkansas scored only twenty out of sixty-six possible points.¹³⁹ It lost points for having no laws in place to protect animals in puppy mills, as well as other weak animal protection laws.¹⁴⁰

2. *The "Puppy Lemon Law"*

In addition to the ACS, Arkansas has the Arkansas Retail Pet Store Consumer Protection Act of 1991, also known as the "Puppy Lemon Law," which places the burden on retail sellers to provide quality pets.¹⁴¹ This statute applies only to retail pet stores.¹⁴² In general, the law states that a consumer who purchases a cat or dog from a retail pet store can return the animal within ten days if a veterinarian finds it to be unfit due to illness, infections, or other defects that affect the health of the animal.¹⁴³ The store must reimburse the consumer the price of the pet, as well as any medical costs or services required to make the pet well.¹⁴⁴ As such, this law helps dissuade pet store owners from obtaining puppy mill pets because of the health risks involved.

Although the Puppy Lemon Law protects cats and dogs in the pet store market, it does not protect them in other pet markets.¹⁴⁵ For example, this law does not apply to purchases made over the Internet or through newspaper classified ads. If a breeder sells a cat or a dog over the Internet or through a newspaper ad, the breeder can disappear, preventing consumers

136. *Id.*

137. *Couple Accused of Running Puppy Mill Speaks Out*, 4029.TV.COM (Apr. 3, 2009), <http://www.4029tv.com/news/19080910/detail.html>.

138. *State Rankings*, THE HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/about/state/humane_state_ranking_2011.html (last visited Apr. 2, 2012); *see also Humane State Ranking 2010*, THE HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/assets/pdfs/legislation/humane_state_ranking_al_mo_2010.pdf (last visited Jan. 22, 2011) (detailing various animal laws that either are or are not enacted in states Alabama through Missouri).

139. *Id.*

140. *Id.*

141. ARK. CODE ANN. § 4-97-101 (Repl. 2001).

142. *Id.* § 4-97-102 (Repl. 2001).

143. *Id.* § 4-97-105 (Repl. 2001).

144. *Id.* § 4-97-105 (Repl. 2001).

145. *Id.* § 4-97-102 (Repl. 2001).

from returning their sick pet to the breeder or from receiving reimbursement for medical costs. Consequently, the consumers are left with veterinary bills they should not have to pay and with an unhealthy pet that they may no longer be able to care for.

IV. SOLUTIONS

If federal authorities fail to take action to improve the AWA and other animal anti-cruelty laws, state and local governments need to end the cruel and inhumane treatment of animals in puppy mills. Thirty-three states now have commercial breeding laws,¹⁴⁶ and many cities have enacted ordinances banning or regulating the sale of cats and dogs in pet stores.¹⁴⁷ Arkansas should follow the lead of these other states and enact more stringent laws to reach the core of the puppy mill problem.

A. Puppy Mill Laws in Other States

Missouri has long been known as the “Puppy Mill Capital” of the United States.¹⁴⁸ On November 2, 2010, Missouri passed a bill entitled the “Puppy Mill Cruelty Prevention Act” (PMCPA),¹⁴⁹ which may have a significant impact on puppy mills within the state and perhaps in Arkansas as its neighboring state, because breeders can easily move their business there if no regulations are in place. The PMCPA prohibits the cruel and inhumane treatment of dogs in puppy mills by requiring large-scale dog breeding operations to provide each dog under the breeders’ care with basic necessities such as food, water, adequate shelter from the elements, necessary veterinary care, adequate space to turn around and stretch limbs, and regular exercise.¹⁵⁰ Additionally, no person may have more than fifty dogs for breeding purposes to sell as pets.¹⁵¹ One flaw in the statute is its failure to explicitly apply the same regulations to the breeding of kittens. As previously discussed, kitten mills do exist and are often located on the premises of puppy mills.¹⁵² Nonetheless, the passage of the PMCPA is a step in the right direction that the Arkansas legislature should look to for guidance in creating its own laws.

146. Wisch, *supra* note 9.

147. Dube, *supra* note 10.

148. *Passage of Prop B Makes Historic Victory for Dogs in Missouri*, THE HUMANE SOC’Y OF THE U.S. (Nov. 3, 2010), http://www.humanesociety.org/news/press_releases/2010/11/prop_b_historic_victory_110310.html.

149. MO. ANN. STAT. § 273.345(1) (West 2011).

150. *Id.* § 273.345(3)(1)–(5).

151. *Id.* § 273.345(4).

152. *Puppy Mill FAQ*, *supra* note 29.

Oklahoma is also well-known for factory farming, including puppy mills.¹⁵³ Oklahoma governor Brad Henry recently signed the Commercial Pet Breeders Act (CPBA) into law to combat puppy mills.¹⁵⁴ The CPBA regulates facilities with eleven or more female cats or dogs kept for commercial breeding purposes, requiring such facilities to obtain a breeder's license, a sales tax permit, and to agree to an annual inspection.¹⁵⁵ Its eight-member board sets standards of humane care, develops licensing rules, and sets penalties for failure to meet these standards and rules.¹⁵⁶ Arkansas could create an Animal Welfare Board, or similar entity, to have authority over pet stores, animal control, kennels, humane organizations, and shelters, as well as provide companion animal emergency management.

If Arkansas fails to enact more stringent anti-cruelty legislation, it may become a safe haven for the largely unregulated puppy mill industry.¹⁵⁷ Wayne Pacelle, the HSUS president, believes that "state lawmakers may need to consider further legislation if a proposed law in neighboring Missouri takes effect, which could drive irresponsible dog breeders into Arkansas," where no puppy mill regulations exist.¹⁵⁸ Because the proposed law referenced by Mr. Pacelle passed,¹⁵⁹ in addition to similar bills passing in other neighboring states, the potential that Arkansas may become the next "puppy mill capital" should provide additional incentive to create legislation addressing commercial breeders.¹⁶⁰

153. *The HSUS Praises Oklahoma Governor for Signing Bill to Combat Puppy Mills*, THE HUMANE SOC'Y OF THE U.S. (May 7, 2010), http://www.humanesociety.org/news/press_releases/2010/05/oklahoma_puppy_mill_bill_050710.html.

154. OKLA. STAT. ANN. tit. 59, §§ 5001–5029 (West 2011) (repealed 2012).

155. *Id.* §§ 5002, 5012, 5015.

156. *Id.* §§ 5004–5005.

157. Robyn F. Katz, *Detailed Discussion of Commercial Breeders and Puppy Mills*, ANIMAL LEGAL & HIST. CTR., <http://www.animallaw.info/articles/dduscommercialbreeders.htm> (last visited Oct. 8, 2010); *Say NO To Puppy Mills: Oklahoma Commercial Pet Breeder's Act (SB 1712)*, CENT. OKLA. HUMANE SOC'Y (Feb. 1, 2010), <http://www.okhumane.org/news/say-no-to-puppy-mills-oklahoma-commercial-pet-breeders-act-sb-1712> (describing how unscrupulous commercial breeders come to Oklahoma to operate puppy mills to avoid laws and policing that would shut them down in other states).

158. Evie Blad, *Animal Backer Lauds Cruelty Law: United States' Humane Society Chief Foresees Puppy-Mill Shift to State*, ARK. DEMOCRAT-GAZETTE (Little Rock), (Sept. 17, 2010), available at LEXIS, Newspapers & Business, Major Newspapers.

159. THE HUMANE SOC'Y OF THE U.S., *supra* note 148.

160. Brandon Bosworth, *Will Texas Become America's Next Puppy Mill Capital?* BOSWORTH ONLINE (Nov. 24, 2010), bosworthonline.wordpress.com/2010/11/24/will-texas-become-america-s-next-puppy-mill-capital/ (Animal advocates fear Texas will become the new "puppy mill capital" of America, because its neighboring states enacted puppy mill laws and Texas had not). Texas passed a law regulating commercial breeders, which now leaves

Pennsylvania, once dubbed the “Puppy Mill Capital of the East,” illustrates how one simple change in the law can greatly benefit animal welfare.¹⁶¹ In October 2008, Pennsylvania enacted a law requiring large-scale breeders to double cage sizes, eliminate wire flooring, and provide animals with unfettered access to the outdoors.¹⁶² The new law also bans cage stacking, requires bi-annual vet checks, and mandates new ventilation and cleanliness standards.¹⁶³ As a result of this new legislation, the number of puppy mill facilities has dropped from 303 to 111 in eighteen months.¹⁶⁴ In addition to the enactment of animal welfare legislation by the state, ordinances passed by local governments also produce positive results.

B. Cities Take Action

If the state legislature fails to enact laws regarding commercial breeders and puppy mills, municipalities and the public must take action to protect the welfare of companion animals. Under the Arkansas Constitution, cities can create ordinances that prevent cruelty to animals.¹⁶⁵ Counties, on the other hand, can only address animal control issues, which include puppy mills because of the number of animals produced.¹⁶⁶ An ordinance should ban pet stores and regulate websites from selling cats and dogs that are not humanely bred or reared or are not shelter animals to help end the cycle of puppy mills.

Numerous cities around the United States and in Canada have enacted ordinances prohibiting the retail sale of cats and dogs.¹⁶⁷ In 2006, Alber-

speculation and concern that Arkansas may be in the same position that Texas was once. *See Generally* V.T.C.A., Occupations Code §§ 802.001–802.251.

161. *New Pa. Law Putting Puppy Mills Out of Business*, CBSNEWS (June 11, 2010, 4:35 PM), <http://www.cbsnews.com/stories/2010/06/11/national/main6572767.shtml>.

162. 3 PA. STAT. ANN. § 459-207 (West 2008).

163. *Id.*

164. CBSNEWS, *supra* note 161.

165. ARK. CODE ANN. § 14-54-103(7) (Supp. 2011).

166. Karen L. Koch, *Animal Cruelty Laws in Arkansas in the Wake of Act 33 (S.B. 77): An Overview of the New State Animal Cruelty Legislation and Its Possible Effect on City Animal Cruelty Ordinances*, 2009 ARK. L. NOTES 121, 128 (2009), available at <http://lawnotes.law.uark.edu/wp-content/uploads/Koch-Animal-Cruelty-Laws-in-Arkansas-in-the-Wake-of-Act-33-S.B.-77-Arkansas-Law-Notes-2009.pdf>.

167. Dube, *supra* note 10 (explaining that West Hollywood, CA, Albuquerque, NM, South Lake Tahoe, CA have prohibited sales of cats and dogs in pet stores, and other cities in Florida, New Mexico, Missouri, Texas, and elsewhere are considering similar bans); *Canada's First Ban on Puppies in Pet Stores*, HUMANE SOC'Y INT'L (Oct. 14, 2010), http://www.hsi.org/world/canada/news/news/2010/10/canada_puppy_ban_101410.html); *Austin City Council Prohibits Retail Sales of Dogs and Cats*, HUMANE SOC'Y OF THE U.S. (Dec. 16, 2010), http://www.humanesociety.org/news/press_releases/2010/12/austin_retail_pet_store_ban_121610.html (The HSUS commending Austin, Texas for recognizing the link between commer-

que, New Mexico, banned the retail sale of cats and dogs in pet stores.¹⁶⁸ Since the ban went into effect, animal adoptions from city shelters have increased 23%, while euthanasia rates have decreased by 35%.¹⁶⁹ In October 2010, El Paso, Texas, enacted an ordinance¹⁷⁰ that can serve as a model for cities in Arkansas. It does not explicitly ban all sales of cats and dogs, but helps promote awareness of puppy mills and slowly eliminate their existence.¹⁷¹ The ordinance regulates the type of cat and dog sales by pet stores and other owners.¹⁷² Puppies and kittens younger than eight weeks old cannot be sold under any circumstances.¹⁷³ In addition, pet stores and most other owners can sell pets at a profit only when the animals are older than one year.¹⁷⁴ The city council also pledged \$250,000 to spend on educating the public and enforcing the laws.¹⁷⁵ Some critics, however, may argue that such ordinances are not feasible.

C. Potential Arguments Against Anti-Cruelty Legislation

Opposition to proposed anti-cruelty legislation is certain.¹⁷⁶ One potential problem with the enactment of legislation attempting to ban or regulate the sale of cats and dogs is the lack of funding to enforce such laws, including the inability to hire enough personnel to do so.¹⁷⁷ However, opponents fail to realize that millions of tax dollars pay for the shelter, care, and euthanization of homeless pets.¹⁷⁸ If fewer cats and dogs are put into shel-

cial pet sales and inhumane puppy mills and for being the city to most recently enact an ordinance banning the retail sale of cats and dogs).

168. ALBUQUERQUE, N.M., CODE OF ORDINANCES § 9-2-3-7(H)(9) (2006).

169. Dube, *supra* note 10.

170. EL PASO, TEX., CODE OF ORDINANCES ch.7, §§ 17.14.010–17.14.090 (2010) (effective Jan. 1, 2011).

171. Marty Schladen, *City Council Passes Pet Ordinance, Pledges \$250K to Educate, Enforce*, EL PASO TIMES, (Oct. 6, 2010, 12:00 AM), http://www.elpasotimes.com/living/ci_16263017.

172. *Id.*

173. EL PASO, TEX., CODE OF ORDINANCES ch.7, § 7.14.030.

174. EL PASO, TEX., CODE OF ORDINANCES ch.7, § 7.04.020.

175. Schladen, *supra* note 171; *see also* Email from Michael Hill, Director of Public Health, City of El Paso, to Lauren Ferris, Student, William H. Bowen School of Law (Jan. 24, 2011, 13:14 CST) (on file with author). The \$250,000 was a one-time budget transfer approved by the city council. It will be up to the city manager and the council to determine whether funds would be provided in future fiscal years.

176. Tushaus, *supra* note 90.

177. Robyn F. Katz, *The Importance of Enacting a Texas Commercial Breeder Law to Regulate Loopholes that the Federal Law Creates*, 11 TEX. TECH. ADMIN. L. J. 185, 195 (2009).

178. *Spaying/Neutering*, AM. HUMANE ASS'N, <http://www.americanhumane.org/animals/adoption-pet-care/caring-for-your-pet/spaying-neutering.html> (last visited Feb. 27, 2011).

ters, then more money could go towards enforcement. New Arkansas legislation should also require breeders to obtain sales tax permits, which can help generate revenue to offset costs.

One way to help with enforcement is to allow local law enforcement authorities to intervene and file complaints. In addition, the federal government should modify the AETA to clarify that allowing animal activists to investigate and to report potential violations of pet mill and cruelty laws does not implicate the AETA. Because most animal activists will probably not seek compensation for investigating pet mill violations, funding for investigations should not be a significant issue.¹⁷⁹

Another potential obstacle is that regulation of Internet sales is difficult to enforce; it is an obstacle, however, that can be overcome. The USDA has an Internet Surveillance Project, which includes the “Agriculture Internet Monitoring System” (AIMS) that provides “government regulators with a tool that combines advanced search technologies and a convenient, web based application that allows them to easily manage websites suspected of selling invasive [plant] species.”¹⁸⁰ A similar system to AIMS can be created either under federal or state law to combat the internet sales of cats and dogs from irresponsible breeders or puppy mills. For those individuals who try to evade the law, the government could hire or even find volunteer “puppy mill cyber detectives” to help enforce Internet-focused anti-cruelty laws. Essentially, these cyber detectives would be akin to those who investigate and locate other violators of the law through the Internet, such as child predators.¹⁸¹ Although buying a cat or dog through the Internet is strongly dis-

179. The most prominent animal activists’ organizations do not attempt to solicit money for animal welfare issues they seek to resolve. *See generally About Us*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/section.php?id=3> (last visited March 19, 2011); ANIMAL ADVOC. ALLIANCE, <http://animaladvocatesalliance.org/about-us/> (last visited March 19, 2011) (illustrating these groups are non-profit animal activist organizations); *Annual Reports and Financial Statements*, THE HUMANE SOC’Y OF THE U.S. (Oct. 20, 2010), http://www.humanesociety.org/about/overview/annual_reports_financial_statements.html; *All About PETA*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, <http://www.peta.org/about/learn-about-peta/default.aspx> (last visited March 19, 2011).

180. *Aims: Agriculture Internet Monitoring System*, CTR. FOR INTEGRATED PEST MGMT., http://www.cipm.info/cipmbrochures/APHIS/AIMS_Brochure.pdf (last visited March 19, 2011).

181. *See generally* PERVERTED JUSTICE, <http://www.perverted-justice.com/index.php> (last visited March 19, 2011) (illustrating that these types of detectives are effective). Since June 2004, there have been 550 convictions of sex predators due to the efforts of the Perverted Justice cyber detectives. Perverted Justice is most known for its collaboration with a Dateline show called “To Catch a Predator”. *Id.*

couraged,¹⁸² some legitimate rescue groups or individuals advertise animals available for adoption over the Internet.¹⁸³

People opposed to ordinances may want a purebred animal and believe that a pet store is the only way to get one. Even if someone seeks a specific breed, an animal shelter is a great option where one out of every four shelter dogs is purebred.¹⁸⁴ In addition to finding many purebred animals in an animal shelter, individuals can adopt from breed specific rescue groups.

D. CONCLUSION

Companion animals have always been a part of American families. For some commercial breeders, however, companion animals are simply a cash crop. The torture and inhumane conditions that puppies and kittens have to endure at the hands of irresponsible breeders needs to be stopped. As one of the major puppy mill states, Arkansas lags behind other states with respect to animal welfare laws. Because its neighboring states have recently enacted stringent anti-cruelty laws, Arkansas may become the next capital for migrating commercial breeders and puppy mills. Arkansas needs to enact legislation and ordinances that directly address the problem. The legislation needs to ban the retail sale of pets in pet stores and through non-legitimate Internet websites, as well as enact commercial breeding laws. This legislation should increase adoptions, decrease euthanizations, and reduce animal cruelty rates,

In addition, Arkansas must do more to educate the public about puppy mills and to encourage the reporting of any suspected animal abuse or illegal breeding. Consumers can be more powerful than the legislature as they decide of where to purchase a pet. Consumers should conduct research about where the puppy or kitten comes from and should not buy a pet from a seller who fails to provide such information. With the combination of educated consumers and state or local legislation, puppy mills could one day cease to exist.

* *Lauren Ferris*

182. *Consumer Scam: Internet Pet Sales*, THE HUMANE SOCIETY OF THE U.S. (Mar. 9, 2010), http://www.humanesociety.org/animals/resources/facts/internet_pet_scams.html.

183. SEATTLEPI, *supra* note 67. Tips for purchasing or adopting a pet online through a legitimate website or breeder versus non-legitimate include: checking references, dealing directly with a breeder, not a broker, never sending money order payments, making a visit to the location of the animal, picking up the puppy or kitten at the kennel and not at a random location or having the pet shipped, and being cautious about a statement that sick animals cannot be returned.

184. THE HUMANE SOCIETY OF THE U.S., *supra* note 182.