



# The Recent Evolution of Texas Animal Law

BY SUSAN HIGHTOWER

**J**ust five years ago, laws aimed at combating animal cruelty in Texas were considered so weak that the Animal Legal Defense Fund (ALDF) ranked Texas among a handful of the best states in which to be an animal abuser.<sup>1</sup> Dramatic change has since helped ease that ignoble distinction. During the past three legislative sessions, Texas lawmakers have passed bills intended to tackle some of the worst forms of cruelty inflicted against animals, particularly companion animals. But new legislation affecting the animals of Texas is not limited to laws against animal abuse.

Here's a brief rundown of significant bills affecting animals passed during the most recent few legislative sessions — and some that have failed.

### Felony Animal Cruelty

The legislation that got Texas off of ALDF's "worst states" list was House Bill 2328, passed in 2007. Effective Sept. 1, 2007, Penal Code Ch. 42.092 expanded the state's cruelty laws to cover stray dogs and feral cats and to encompass reckless acts (in addition to those that are intentional and knowing). Acts now classified as state jail felonies include killing, poisoning, or causing serious bodily injury to an animal without the owner's consent.<sup>2</sup> Also a felony is torturing an animal or killing or causing serious bodily injury to an animal in a cruel manner, defined as "a manner that causes or permits unjustified or unwarranted pain or suffering."<sup>3</sup> Acts classified as Class A misdemeanors include abandoning or failing unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody or injuring an animal without the owner's consent.<sup>4</sup>

Animals categorized as "livestock" (including horses, cattle, sheep, pigs, and goats) are not protected by the full reach of the statute. However, an individual commits the offense of cruelty to these animals if the person intentionally or knowingly tortures them; abandons or fails unreasonably to provide necessary food, water, or care for an animal in his or her custody; or commits various other cruel acts.<sup>5</sup>

### Puppy Mills

In recent years, the American public has become increasingly aware of the issue of high-volume dog and cat breeding operations, commonly known as "puppy mills." Many states now have laws regulating such operations; some also have enacted so-called "puppy lemon laws," intended to offer redress to purchasers of puppies and kittens with illnesses or congenital defects.<sup>6</sup>

First introduced in 2009, Texas legislation to regulate high-volume dog and cat breeders passed on the second try in the 2011 legislative session. Occupations Code Chapter 802 provides for licensing and inspection of dog and cat breeders who (1) maintain 11 or more female animals used for breeding and (2) sell 20 or more animals per year.

An advisory committee will make recommendations to the Texas Commission of Licensing and Regulation regarding licensing fees and standards.<sup>7</sup> The commission is directed to establish "minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety, and well-being of each animal in the breeder's possession."<sup>8</sup> Some of the minimum requirements include:

- Kennels (primary enclosures) big enough for an animal "to comfortably stand, sit, turn around, and lie down in a natural position," with adequate drainage and flooring in which paws won't get caught;
- Dog kennels not stacked more than three high;
- Basic grooming, one vet exam per year, and necessary care

- provided "to maintain the animal in a state of good health";
- An "adequate period consistent with breed standards" between breeding cycles; and
- No one other than a veterinarian can euthanize an adult animal or perform a surgical birth.<sup>9</sup>

### Dog Fighting and Cockfighting

Rising public distaste for the blood sports of dog fighting and cockfighting — which continue unabated despite being illegal in all 50 states — has led to increased penalties and new tools for law enforcement seeking to stem these practices.

Penal Code Section 42.10 relating to dog fighting was amended in both 2007 and 2009. H.B. 916, passed in the 2007 session, increased the penalty for dog fighting from a Class A misdemeanor to a state jail felony and raised the punishment for attending a dog fighting exhibition from a Class C misdemeanor to a Class A misdemeanor. Offenses under the code include:

- participating in the earnings of or operating a facility used for dog fighting;
- using or permitting another to use any property for dog fighting;
- owning or possessing dog-fighting equipment;
- owning or training a dog with the intent to use it to fight; and
- attending a dog fight as a spectator.<sup>10</sup>

In 2011, Penal Code Section 42.105 was added to provide similar provisions for cockfighting and classified both cockfighting and participating in the earnings of a cockfight as state jail felonies.

### Including Companion Animals in Evacuation Plans

One of the painful lessons driven home during the devastation of Hurricane Katrina was that natural disasters impact human and non-human animals alike. Many people have such love and loyalty for their four-legged family members that they will refuse to evacuate during disasters if they are not allowed to bring their pets with them, with potentially lethal consequences.

H.B. 88, passed in 2007, mandates that companion and service animals be included in evacuation plans in the event of natural disasters; specifically, Government Code Section 418.043(11) requires the Texas Division of Emergency Management to "assist political subdivisions in developing plans for the humane evacuation, transport, and temporary sheltering of service animals and household pets in a disaster." (A similar federal law, the Pets Evacuation and Transportation Standards Act, was passed in 2006.<sup>11</sup>)

The new Texas law was put to a major test in September and October 2008, when thousands of Texas coastal residents fled Hurricanes Gustav and Ike accompanied by a veritable ark of household pets ranging from cats and dogs to birds, fish, lizards, turtles, and at least one iguana, which was housed com-



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fortably at Crockett High School in Austin. Evacuees were allowed to bring their companion animals on public transport and the critters were provided with emergency housing, typically in separate areas of the same schools or public buildings established as shelters for their owners.<sup>12</sup>

### Companion Animals in Domestic Violence Protective Orders

Texas joined another national trend with the passage of Senate Bill 279 in 2011. The new law amends Family Code Section 85.021 to allow a judge to prohibit a person from removing a pet, companion animal, or assistance animal from the possession of a party covered by a protective order.<sup>13</sup> Moreover, the judge can prohibit a person from harming, threatening, or interfering with the care, custody, or control of a pet or assistance animal belonging to a person protected by a protective order.<sup>14</sup> A specific law was necessary to give judges this power because pets — which all too often fall victim to domestic violence or are threatened with harm by abusers to maintain control over their victims — are considered personal property.

### Dangerous Dog Appeals

Finally, one bill proposed by the State Bar Animal Law Section and included in the State Bar legislative package in 2011

was left hanging at the end of the 82nd regular legislative session, leaving a jurisdictional loophole to be closed another day. H.B. 2679 would have amended the Health and Safety Code to allow for the appeal of a dangerous dog determination to a county court or county court at law in the county in which the justice or municipal court making the determination is located, establishing that a county court or a county court at law has jurisdiction to hear such an appeal.

Texas Health and Safety Code Section 822.0421 authorizes an appeal from a dangerous dog determination. But in 2008, the 2nd Court of Appeals held that although the Legislature created a statutory right of appeal, it had given no court jurisdiction to hear it. The court found that, “[w]hen municipal courts became capable of exercising limited civil jurisdiction, the statutes authorizing appeals from a municipal court’s decision were not correspondingly amended to address appeals generated via this exercise of limited civil jurisdiction.” *In Re Loban*, 243 S.W.3d 827 (Tex. App. — Fort Worth 2008, pet. denied).

### Conclusion

With its primary focus on companion animals, this brief article has omitted consideration of significant legislation in recent years pertaining to other animals. This particularly includes hunting — such as new Parks & Wildlife Code, Section 43.1075, permitting hunting of feral hogs and coyotes by helicopter — and laws governing deer, which historically have been considered wild animals that cannot be privately owned under Texas law, but are currently subject to use in captivity in great numbers.

### Notes

1. “Best States to Abuse an Animal?” *The Animals’ Advocate*, Vol. 25, No. 2, Summer 2006.
2. Penal Code Ch. 42.092(b).
3. *Id.* at 42.092(a)(3) and (b)(1).
4. *Id.* at Ch. 42.092(b).
5. Penal Code Ch. 42.09.
6. *See, e.g.*, “Table of State Laws Concerning Breeders, Kennels, and Pet Dealers,” Animal Legal & Historical Society, Michigan State University College of Law (available at <http://www.animallaw.info/articles/ovuspupmymilltable.htm>); The Humane Society of the United States, “State Puppy Mill Laws” (available at [http://www.humanesociety.org/assets/pdfs/legislation/state\\_puppy\\_mill\\_laws.pdf](http://www.humanesociety.org/assets/pdfs/legislation/state_puppy_mill_laws.pdf)) and “Puppy Lemon Laws” (available at [http://www.humanesociety.org/assets/pdfs/pets/puppy\\_mills/puppy\\_mill\\_lemon\\_law\\_chart\\_1.pdf](http://www.humanesociety.org/assets/pdfs/pets/puppy_mills/puppy_mill_lemon_law_chart_1.pdf)).
7. Occupations Code Section 802.065.
8. Occupations Code Section 802.201.
9. *Id.* at Section 802.201(b).
10. Penal Code Section 42.10(a).
11. Pub. Law 109-308.
12. *See, e.g.*, “Cities board hundreds of pets after Gustav, Ike,” The Associated Press (available at [http://www.msnbc.msn.com/id/26774776/ns/weather-hurricane\\_ike/t/cities-board-hundreds-pets-after-gustav-ike/](http://www.msnbc.msn.com/id/26774776/ns/weather-hurricane_ike/t/cities-board-hundreds-pets-after-gustav-ike/)).
13. Family Code Section 85.021.
14. *Id.*



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