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Puppies, Puppies, Puppies: Why Georgia Should “Adopt” a Progressive Puppy Lemon Law and Engage in Much-Needed Statutory Reform

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PUPPIES, PUPPIES, PUPPIES: WHY GEORGIA SHOULD “ADOPT” A PROGRESSIVE PUPPY LEMON LAW AND ENGAGE IN MUCH-NEEDED STATUTORY REFORM

*Jonathan T. Tortorici**

The Georgia Animal Protection Act—a set of animal protection laws that has remained unchanged for nearly two decades—was passed to promote animal welfare across the state. Although the Act was progressive at its inception, its failure to curb the atrocious conditions created by puppy mills has become increasingly apparent, resulting in serious consequences for both consumers and dogs. Georgia must amend its animal protection laws to shift the costs of puppy mills to where they belong: on pet sellers. Among other innovative solutions to this problem, many states have enacted “puppy lemon laws” that generally provide pet purchasers with the option to return, exchange, or be reimbursed for reasonable veterinary expenses for their “sick” puppy. But traditional puppy lemon laws may be put to better use as cost internalization tools rather than as mere consumer remedies.

This Note advocates for a puppy lemon law that provides the consumer with just one remedy: reimbursement for reasonable veterinary costs after purchasing a sick puppy from a pet seller. Traditional puppy lemon laws have many weaknesses, and the true utility of such laws may be in deterring pet sellers from supporting puppy mills in the first place. By enacting a progressive puppy lemon law that considers all of the interested parties, alongside the other recommendations in this Note, Georgia can secure its position as a state with model animal welfare laws and—most importantly—can save lives.

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I. INTRODUCTION

“Man’s best friend.” For centuries, this outmoded phrase has been used to refer to everyone’s favorite fluffy companion.¹ A recent study found that 67% of U.S. households own a pet; collectively, these households own nearly 63.4 million dogs.² But how humane is the production of these pets? While federal and state legislation typically provide for the bare minimum levels of care associated with large commercial breeders, the laws “explicitly exclude small-volume breeders,”³ something worth considering when scrolling through the various advertisements for pets found on websites like Craigslist. In 2008, following an investigative report on the *Oprah Winfrey Show* of the commercial pet industry, Americans became more aware of the atrocious conditions in “puppy mills.”⁴ Puppy mills are commercial breeding facilities that “mass produce pure-bred puppies in poor to horrifically bad conditions of housing and care.”⁵ Unfortunately, this practice—which prioritizes profits at the expense of animal welfare—is not a new concept.⁶ While the federal Animal Welfare Act of 1970 (the AWA) sought to address the issues raised by puppy mills, scholars have critiqued the AWA as not only ineffective, but ironically counterproductive to animal welfare.⁷ While states reserve the discretion to pass more effective

¹ See *Man’s Best Friend: The Old Drum Story*, MO. DIGIT. HERITAGE, <https://www.sos.mo.gov/archives/education/olddrum/StoryofBurdenvHornsby> (last visited Dec. 12, 2020) (detailing how one lawyer’s powerful eulogy to a jury about a hound dog named “Old Drum” contributed to one of the most widely known animal phrases today); see generally *Burden v. Hornsby*, 50 Mo. 238 (1872).

² *Pet Industry Market Size & Ownership Statistics*, AM. PET PRODUCTS ASS’N, https://www.americanpetproducts.org/press_industrytrends.asp (last visited Dec. 12, 2020).

³ Lisa Milot, *Backyard Breeding: Regulatory Nuisance, Crime Precursor*, 85 TENN. L. REV. 707, 713 (2018).

⁴ *Id.* at 709 (noting that “puppy mills entered the popular consciousness” after being broadcast on the show).

⁵ JORDAN CURNUTT, *ANIMALS AND THE LAW: A SOURCEBOOK* 117 (2001).

⁶ The existence of puppy mills can be traced to World War II when the U.S. Department of Agriculture, in response to the failure of many cash crops, subsidized farmers who sought to raise puppies for commercial purposes in an era without any laws regulating the field. *Id.* at 118.

⁷ See Justin Marceau, *How the Animal Welfare Act Harms Animals*, 69 HASTINGS L.J. 925, 927 (2018) (explaining that “[b]ecause of the vast exemptions to the law, many forms of institutionalized animal suffering have been exacerbated”).

regulations of the commercial pet industry, many states fail to do so because they rely on the AWA.⁸ Although the Georgia Legislature has enacted the Georgia Animal Protection Act⁹—and the Georgia Department of Agriculture has promulgated rules pertaining to animal protection¹⁰—the statutory language still leaves too much room for abuse in the commercial pet industry. Such mistreatment of dogs has been going on long enough; it is time for Georgia to match the efforts of other progressive states and help these animals that cannot advocate for themselves.

Part II of this Note begins with a discussion of the current state of the law in Georgia pertaining to the retail sale of dogs. Next, Part III identifies the overarching problem with much of the law in this area: a lack of cost internalization on breeders and pet sellers. Part IV subsequently addresses the various categorical approaches that other states have taken to address this issue. Finally, Part V explores proposals for how Georgia, specifically, should respond to this issue and amend its existing laws. Part VI briefly concludes.

II. THE CURRENT STATE OF THE LAW IN GEORGIA

After households across the United States experienced a significant increase in pet ownership during the 1920s, state legislatures and municipal governments actively passed numerous laws regulating the purchase and sale of dogs.¹¹ Today, American dog law has arguably been “primarily or wholly intended to promote human interests” while only “secondarily or incidentally enhancing the well-being of the animals.”¹²

A. THE FEDERAL ANIMAL WELFARE ACT

The AWA, as briefly mentioned above, applies to the sale of dogs in interstate commerce and—according to the accompanying

⁸ *Id.* at 948 (“[M]any states have failed to adopt effective animal welfare laws because of their reliance on the AWA.”).

⁹ O.C.G.A. §§ 4-11-1 to -18 (2013).

¹⁰ GA. COMP. R. & REGS. 40-13-13 (2019).

¹¹ CURNUTT, *supra* note 5, at 115.

¹² *Id.* (“Laws that are centrally motivated by concern for the welfare of dogs are much in the minority . . .”).

congressional statement of policy—is intended to provide for three goals: (1) “humane care and treatment” of animals used for research or exhibition purposes; (2) “humane treatment of animals during transportation in commerce; and” (3) protection for owners from “theft of their animals.”¹³ Under the AWA, the Secretary of Agriculture is responsible for promulgating the standards “to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.”¹⁴ To enforce these statutory minimums, the AWA requires dealers and exhibitors of animals to have a valid license authorizing them to engage in the sale of animals in interstate commerce,¹⁵ and the Secretary of Agriculture is responsible for investigating and inspecting the facilities.¹⁶ Critics cite numerous shortcomings of the AWA, ranging from lenient penalties¹⁷ to loopholes in the text.¹⁸ Although a deeper analysis of the AWA is beyond the scope of this Note, which focuses on the production and sale of dogs solely within the state of Georgia, the limitations of the federal regulations are analogous to the structural issues found within the Georgia-specific legislation discussed in the following sections.

¹³ 7 U.S.C. § 2131 (2018). Note the omission of an intention to regulate breeders.

¹⁴ *Id.* § 2143(a)(1). The statute continues, stating that the standards include minimum requirements for “handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, . . . separation by species,” and “exercise of dogs.” *Id.* § 2143(a)(2)(A)–(B). *But see* Carole Lynn Nowicki, Note, *The Animal Welfare Act: All Bark and No Bite*, 23 SETON HALL LEGIS. J. 443, 463–69 (1999) (highlighting that the mere existence of minimum requirements does not equate to sufficient standards of care for each of the respective categories).

¹⁵ *See* 7 U.S.C. §§ 2133–34 (2018).

¹⁶ *Id.* § 2146(a) (“The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, . . . or operator of an auction sale . . . has violated or is violating any provision of this chapter or any regulation or standard issued thereunder . . .”).

¹⁷ *See* Nowicki, *supra* note 14, at 465 (arguing that “[e]ven very serious violations only receive ‘pitifully insignificant’ sanctions” (quoting GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 185, 235 (1995))).

¹⁸ *See* Robyn Fae Katz, Comment, *The Importance of Enacting a Texas Commercial Breeder Law to Regulate Loopholes that the Federal Law Creates*, 11 TEX. TECH. ADMIN. L.J. 185, 188 (2009) (explaining how “any commercial breeder who sells dogs directly to the public avoids the regulation of the AWA, including licensing and humane handling requirements”).

B. THE GEORGIA ANIMAL PROTECTION ACT

The AWA and the Georgia Animal Protection Act (the GAPA) function concurrently with one another; indeed, the state legislation instructs the Georgia Commissioner of Agriculture to “cooperate” with the U.S. Secretary of Agriculture in “carrying out” the AWA.¹⁹ Analogous to the federal structure, the GAPA provides for a licensing mechanism where each person acting as a pet dealer or operating a kennel, stable, or animal shelter must have “a valid license issued by the Commissioner” or risk prosecution for a misdemeanor.²⁰ Licenses may be suspended or revoked for, among other things, failing “to possess the necessary qualifications” or “to provide proper facilities” for the animals.²¹ The GAPA also outlines several important processes related to the regulation of dogs, ranging from required microchip identification scanning²² to the appropriate euthanasia procedures for animal shelters.²³

More pertinent to the discussion of the sale of dogs is the section of the GAPA describing unlawful acts.²⁴ The statute provides several acts or omissions that violate the GAPA, such as failing to keep certain premises “in a good state of repair, in a clean and sanitary condition, adequately ventilated, or disinfected when needed;” to administer “humane care for any animal;” or “to take reasonable care to release for sale, trade, or adoption only those animals that appear to be free of disease, injuries, or abnormalities.”²⁵ Any person violating the provisions of the GAPA

¹⁹ O.C.G.A. § 4-11-12 (2013).

²⁰ *Id.* § 4-11-3. The GAPA also grants the Commissioner the power to inspect any pet dealer or animal shelter to check whether the facility is properly licensed. *Id.* § 4-11-9.

²¹ *Id.* § 4-11-7(8) to -7(9).

²² *Id.* § 4-11-5.2(b). Note that this solely requires animal shelters or other facilities caring for stray animals to “scan for the presence of an identifying microchip.” *Id.*

²³ *Id.* § 4-11-5.1(a) (prescribing an “exclusive method for euthanasia of dogs”).

²⁴ *See id.* § 4-11-10 (listing acts that “shall be unlawful for any person licensed under this article” to do).

²⁵ *Id.* § 4-11-10(2) to -10(4).

is guilty of a misdemeanor,²⁶ except as otherwise provided in the statutory law for animal cruelty²⁷ and dogfighting.²⁸

A final noteworthy aspect of the GAPA is that the article is “cumulative” and allows municipalities in Georgia to enact and enforce local ordinances, so long as they “are not in conflict” with the GAPA’s provisions.²⁹ As a result, several counties have additional regulations pertaining to the sale of dogs; these municipal regulations are concurrent with the GAPA, similar to the concurrent nature of the Federal AWA and each state’s discretion to impose more comprehensive laws.³⁰

C. THE GEORGIA DEPARTMENT OF AGRICULTURE’S ANIMAL PROTECTION RULES: CHAPTER 40-13-13

The Georgia Legislature has authorized the Commissioner of Agriculture to “promulgate and adopt rules and regulations necessary or appropriate to carry out” the GAPA,³¹ accordingly, the Commissioner enacted the Animal Protection Rules in Chapter 40-13-13 (the APR).³² The APR seeks to fill some of the gaps left in the GAPA by providing more detailed descriptions of the statutory requirements, but it reiterates much of the language contained in the GAPA. The APR begins by setting forth a more extensive list of definitions than are provided in the GAPA.³³ Among others, some of the significant definitions relating to the sale of dogs are those

²⁶ *Id.* § 4-11-16.

²⁷ See O.C.G.A. § 16-12-4(c) (2018) (making animal cruelty a misdemeanor or felony, depending on the circumstances).

²⁸ See *id.* § 16-12-37(b) (making involvement in dogfighting beyond merely spectating a felony).

²⁹ O.C.G.A. § 4-11-18 (2013).

³⁰ Recall the proposition that states may fail to pass effective legislation because they rely on the federal activity in the area, for example, the AWA. Marceau, *supra* note 7, at 948. This paradigm may also exist with respect to counties across Georgia that fail to pass effective legislation regarding the sale of dogs, relying instead on the GAPA.

³¹ O.C.G.A. § 4-11-14 (2013).

³² GA. COMP. R. & REGS. 40-13-13 (2020).

³³ Compare *id.* 40-13-13-.01 (defining thirty-four relevant terms), with O.C.G.A. § 4-11-2 (2013) (defining only nine terms).

supplied for “[a]dult” dogs,³⁴ “[h]umane care” for the animals,³⁵ pet “breeder[s]”³⁶ and “dealer[s],”³⁷ and “[p]roper animal health care.”³⁸

Next, the APR sets forth a much more detailed description for the licensing process explained in the GAPA,³⁹ outlining the various fees for animal shelters, kennels, and pet dealers, as well as the requirements for the application to obtain such a license.⁴⁰ The APR then provides a similar rule for the inspection of premises as codified in the GAPA,⁴¹ with the addition of language permitting the inspections to be “unannounced and performed at such frequenc[ies] as deemed necessary and appropriate by the Commissioner.”⁴²

The requirements and standards section is the most substantive portion of the APR, setting forth the general procedures that those who successfully acquire a license must follow.⁴³ Among the numerous provisions are requirements for humane care at all times,⁴⁴ adequate record-keeping policies,⁴⁵ protocols for selling

³⁴ GA. COMP. R. & REGS. 40-13-13.01(4) (2020) (defining “[a]dult” as a “domestic canine over [twelve] months of age”).

³⁵ *Id.* 40-13-13.01(14) (providing a non-exhaustive list identical to the definition supplied by the GAPA for “[h]umane care,” but additionally defining “[i]nhumane care” as “any act, omission, or neglect, which causes unjustifiable physical pain, suffering, or death to any living animal”); *see also* O.C.G.A. § 4-11-2(4) (2013) (defining “[h]umane care” identically).

³⁶ GA. COMP. R. & REGS. 40-13-13.01(24) (defining a “[p]et breeder” as “a pet dealer who sells, offers to sell, exchanges, or offers for adoption only pets they have produced,” including “those produced for hobby, show purposes, breed improvement, or stock replacement”).

³⁷ *Id.* 40-13-13.01(25) (defining a “[p]et dealer” as “a person who sells, offers to sell, exchanges, or offers for adoption pets they have produced, bought, or otherwise obtained”).

³⁸ *Id.* 40-13-13.01(29) (defining “[p]roper animal health care” to include “a program of disease control and prevention, veterinary care, and humane euthanasia” that sufficiently “prevent[s] unnecessary physical pain or suffering”).

³⁹ *See supra* text accompanying notes 20–21.

⁴⁰ *See* GA. COMP. R. & REGS. 40-13-13-.02 (2020) (outlining the licensing fee structure and licensee application requirements).

⁴¹ *See* O.C.G.A. § 4-11-9 (2013) (explaining the Commissioner’s power to inspect premises to enforce licensing requirements under the GAPA).

⁴² GA. COMP. R. & REGS. 40-13-13-.03 (2020).

⁴³ *Id.* 40-13-13-.04 (explaining premise requirements and performance standards for owners and operators).

⁴⁴ *Id.* 40-13-13-.04(1)(d) (“Humane care must be provided in all facilities anytime an animal is present.”).

⁴⁵ *Id.* 40-13-13-.04(1)(h) (providing that “[c]omplete and accurate records must be . . . maintained for a period of twelve months”).

injured or diseased animals,⁴⁶ space and crate requirements,⁴⁷ and structural strength measures.⁴⁸ Finally, the APR provides several exemptions from the requirements,⁴⁹ a detailed euthanasia procedure,⁵⁰ and violations very similar to those listed in the GAPA.⁵¹

D. HOUSE BILL 144

In the 2017–2018 Regular Session, House Bill 144 (the Georgia Petland Bill) was proposed to amend the GAPA⁵² but was never passed.⁵³ “Petland bills” have received their nickname from the Ohio-based franchiser of pet stores that has been an active supporter of bills, such as the Georgia Petland Bill, permitting the retail sale of puppies at pet stores.⁵⁴ Several other states have

⁴⁶ *Id.* 40-13-13-.04(1)(j) (stating that a pet with a “health-related malady” can only be sold or adopted if “the person receiving the animal is made aware of the condition in writing at the time of transfer”).

⁴⁷ *Id.* 40-13-13-.04(1)(m) (requiring that each enclosure enable the animal “to turn about freely . . . in a comfortable and normal position”).

⁴⁸ *Id.* 40-13-13-.04(1)(o) (stating that “housing for pets must be maintained in good repair” and prohibiting the stacking of crates).

⁴⁹ *Id.* 40-13-13-.07(2)(d)–(e) (exempting from the regulations persons who sell or offer for adoption less than one litter of puppies or thirty adult dogs in any twelve-month period).

⁵⁰ *See, e.g., id.* 40-13-13-.08(12) (requiring euthanasia records to be kept for a period of one year).

⁵¹ *Compare id.* 40-13-13-.09 (providing for any violation to be a misdemeanor), *with* O.C.G.A. § 4-11-16(a) (2013) (explaining that most GAPA violations result in a misdemeanor).

⁵² H.B. 144, 154th Gen. Assemb., Reg. Sess. (Ga. 2017), <http://www.legis.ga.gov/Legislation/20172018/163569.pdf>. Although the title for the proposed legislation is the “Georgia Retail Pet Store Purchase Protection Act,” this Note refers to it as the “Georgia Petland Bill.”

⁵³ *See 2017–2018 Regular Session - HB 144*, GA. GEN. ASSEMBLY, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/144> (last visited Dec. 12, 2020) (showing the legislative history for H.B. 144).

⁵⁴ *See, e.g., HB 144 – GA Retail Pet Store Purchase Protection Act, What’s at Stake?*, PETLAND KENNESAW (Feb. 3, 2017), <https://www.petlandkennesaw.com/hb-144-facts-house-bill-144/> (advocating for the Georgia Petland Bill); *Petland Applauds Enactment of SB331*, PETLAND (Dec. 19, 2016), <https://www.petland.com/news/2016-12-19.htm> [<http://web.archive.org/web/20170904095237/https://www.petland.com/news/2016-12-19.htm>] (approving passage of the Ohio Petland Bill).

passed Petland bills of their own, and such bills have been met with a fair amount of criticism by animal rights groups.⁵⁵

The Georgia Petland Bill sought to, among other things, add a new definition for “[r]etail pet store owner[s]”⁵⁶ and draft an entirely new portion of the GAPA by creating section 4-11-3.1.⁵⁷ The proposed section would have added a requirement for retail pet sellers to obtain dogs only from licensed pet dealers complying with federal or state regulations (depending on in-state or out-of-state status) or from breeders exempt from licensing.⁵⁸ Additionally, each dog would be required to receive particular vaccinations detailed in an enumerated list.⁵⁹ Another significant addition in the section was a proposed puppy lemon law.⁶⁰ Though a deeper discussion of puppy lemon laws is deferred until later in this Note,⁶¹ such laws provide consumer remedies for purchases of sick pets, typically allowing the purchaser to return the dog for a refund, exchange it, or keep it and receive a particular amount of reimbursement for veterinary costs.⁶² Next, the proposed section sought to require retail pet store owners to provide signed copies of a “Notice of Congenital or Hereditary Defect or Disorder” form, if applicable, as well as a written statement with information about the dog being

⁵⁵ See *Regulate Dog Sales and License Pet Stores: Hearing on S.B. 331 Before the S. Comm. on Fin.*, 131st Gen. Assemb., Reg. Sess. (Ohio 2016) (statement of Amy Jesse, Puppy Mills Policy Coordinator, Humane Society of the United States) (arguing that “the true intention of [the Ohio Petland Bill] is not to regulate the problematic and controversial pet stores in Ohio that sell puppy mill puppies, but rather to protect this industry by taking away localities’ rights to cut off the puppy mill-pet store supply chain”); see also Kaci Hohmann, *Review, 2016 State Legislative Review*, 23 ANIMAL L. 521, 534–36 (2017) (discussing the Ohio Petland Bill in greater depth).

⁵⁶ H.B. 144, 154th Gen. Assemb., Reg. Sess. § 2 (Ga. 2017).

⁵⁷ *Id.* § 3.

⁵⁸ *Id.*

⁵⁹ *Id.* (proposing to require that each dog receive vaccinations or treatment for the following: canine distemper; bordetella; parainfluenza; hepatitis; canine parvo; rabies, for dogs over three months of age; roundworms; hookworms; and coccidia).

⁶⁰ *Id.* (proposing that retail pet store owners be required to provide buyers a limited right to return or exchange their pets or be reimbursed for veterinary costs under certain circumstances).

⁶¹ See *infra* Section IV.B.

⁶² See Jami Barnett, *Pet Purchase Protection Laws*, CONSUMERAFFAIRS, https://www.consumeraffairs.com/pets/lemon_intro.html (last updated Sept. 28, 2020) (explaining the typical puppy lemon laws enacted on a state-by-state basis).

purchased.⁶³ Finally, the Georgia Petland Bill sought to amend section 4-11-18 of the GAPA to add a controversial “preemption clause” that would restrict counties in Georgia from enacting ordinances that prohibit the sale of animals from licensed retail pet store owners.⁶⁴ This particular amendment was met with much opposition from various animal welfare groups.⁶⁵ With an understanding of the existing law in Georgia and the proposed changes from the Georgia Petland Bill, the remainder of this Note discusses the theoretical issues prevalent in laws regulating the sale of dogs, how other states have addressed these issues, and how Georgia should proceed.

III. CONNECTING LAW TO ECONOMICS: COST INTERNALIZATION

An overarching problem exists with how the GAPA and the APR currently operate in Georgia: problematic breeders are over-producing and not providing proper care for their puppies,⁶⁶ and retail pet sellers that obtain these puppies are shifting the costs (e.g., health abnormalities in the puppies) to both consumers⁶⁷ and

⁶³ See H.B. 144, 154th Gen. Assemb., Reg. Sess. § 3 (Ga. 2017) (proposing to require disclosure of, among other things, the dog’s date of birth, the breeder’s contact and licensing information, the dog’s breed and other identifying marks, and the most recent veterinarian examination and record).

⁶⁴ *Id.* § 5 (“No . . . political subdivision of this state shall adopt or enforce any ordinance, rule, regulation, or resolution that directly or indirectly prohibits the sale, delivery, or transfer of a dog . . . from a retail pet store owner holding a valid license . . .”).

⁶⁵ See Karen Paul, *No HB 144 Petland Bill in Georgia*, CHANGE.ORG, <https://www.change.org/p/no-hb-144-petland-bill-in-georgia> (last visited Dec. 12, 2020) (petitioning against the Georgia Petland Bill because “[t]he main purpose of [H.B. 144 was] to take away control from local governments, and in doing so ensure that pet stores that sell puppy mill puppies can continue to do so without any interference from local governments”); Shut Down Petland in Kennesaw, Ga, FACEBOOK (Feb. 1, 2017), <https://www.facebook.com/shutdownpetlandkennesawga/posts/hb-144-the-petland-bill-has-come-to-ga-in-response-to-the-work-that-has-been-goi/1217086551702979/> (arguing that the Georgia Petland Bill was a “preemption bill to stop local legislation”).

⁶⁶ See, e.g., Anna Hopkins, *Over 700 Dogs Rescued from ‘Extreme Hoarding’ Conditions at Puppy Mill*, NEW YORK POST (Mar. 5, 2019, 3:31 PM), <https://nypost.com/2019/03/05/over-700-dogs-rescued-from-extreme-hoarding-conditions-at-puppy-mill/> (explaining the atrocious conditions of a puppy mill discovered south of Atlanta, Georgia).

⁶⁷ See *The Humane Society of the United States Investigates: Georgia Puppy Stores*, HUMANE SOC’Y U.S. (Nov. 2015), <https://www.humanesociety.org/sites/default/files/docs/georgia-pet-store.pdf> (concluding that

taxpayers⁶⁸ in the local communities. These harmful effects on taxpayers and consumers are negative externalities, a term that “refers to the effect of the producers’ production behavior (or consumers’ consuming behavior) on the welfare of a third party.”⁶⁹ Furthermore, these negative externalities are pushed onto the rescue organizations and shelters that care for lost or abandoned animals, which exacerbates the pet overpopulation crisis.⁷⁰ An analogy to the internalization of environmental costs, such as pollution, provides a possible solution to the negative externalities of problematic breeders; some environmental scholars argue “the burden of accounting for the costs of environmental harm must lie with the actors who generate the harm, not those who seek to clean up the mess.”⁷¹ While the question of how to internalize the costs of widespread issues such as air pollution is more complex due to the nature of pollution and its many sources,⁷² addressing the costs associated with the sale of dogs might be more straightforward. To curb the negative externalities that the retail pet industry places on consumers, taxpayers, shelters, and animals, many states have attempted to shift these costs to the breeders and sellers who, as for-profit industries, are arguably in a better position to deal with

“most dogs sold in pet stores come from puppy mills,” and that, after an undercover investigation, “[a]ll [existing] Petland stores in Georgia [were] supplied with puppies from Midwest puppy mills”).

⁶⁸ See Bill Garst, *Ginny Millner Fix Georgia Pets*, ATLANTA PET LIFE (Oct. 12, 2016), <https://atlantapetlife.com/ginny-millner/> (explaining how an excessive number of animals are surrendered to Georgia shelters and “euthanized annually at a cost to taxpayers of more than \$100 million”).

⁶⁹ Guan Long, Wang Lei, Cheng Sijie & Wang Bo, *Research on Internalization of Environmental Costs of Economics*, in 2 INTERNATIONAL CONFERENCE ON FUTURE COMPUTER SUPPORTED EDUCATION 460, 460 (Garry Lee ed., 2012).

⁷⁰ See *Pet Statistics*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> (last visited Dec. 12, 2020) (noting that “approximately 3.3 million . . . dogs” enter U.S. shelters each year, and of those, approximately 670,000 are euthanized due to overpopulation).

⁷¹ Matthew A. Susson, Note, *Environments, Externalities and Ethics: Compulsory Multinational and Transnational Corporate Bonding to Promote Accountability for Externalization of Environmental Harm*, 20 BUFF. ENV’T L.J. 65, 106 (2012).

⁷² See *Where Does Air Pollution Come From?*, NAT’L PARK SERV., <https://www.nps.gov/subjects/air/sources.htm> (last visited Dec. 12, 2020) (noting that air pollution comes from mobile, stationary, area, and natural sources).

such costs.⁷³ Georgia should follow suit. Although such changes may make the industry more competitive and result in an overall decrease of pet sellers or breeders, shifting costs would likely most affect the pet sellers who are problematic to begin with.

IV. CATEGORICAL APPROACHES TAKEN BY VARIOUS STATES

Several interest groups are concerned with the sale of pets; the pet store industry did, after all, bring \$19.5 billion in revenues just in 2018.⁷⁴ Before enacting any legislative change pertaining to the sale of dogs, each state must consider the interests of commercial pet sellers, rescue groups, consumers, and—of course—the animals themselves. States have predominately used three categorical approaches in this area: (1) prescribing minimum standards of healthcare;⁷⁵ (2) passing puppy lemon laws;⁷⁶ or (3) prohibiting or restricting the sale of animals at pet stores.⁷⁷

A. MINIMUM STANDARDS OF HEALTHCARE

One approach that states have taken to balance the needs of dogs and commercial sellers of puppies is to enact minimum standards of healthcare. These statutory provisions seek to shift the costs of providing healthcare from the consumers to the sellers and breeders, which improves animal welfare by ensuring that the animals actually receive such care. While the most significant results may come directly from statutory amendments, one should

⁷³ See CURNUTT, *supra* note 5, at 117 (discussing how puppy lemon laws may facilitate cost internalization).

⁷⁴ See Kelsey Oliver, *Pet Stores in the US* 1, 3 (IBISWorld Indus. Rep. 45391, Dec. 2018), <https://www.ibisworld.com/resources/documents/Pet-Stores-in-the-US-Industry-Report.pdf> (providing an economic analysis of the pet industry).

⁷⁵ See generally O.C.G.A. §§ 4-11-1 to -18 (2013).

⁷⁶ See CURNUTT, *supra* note 5, at 117 (explaining how puppy lemon laws have the dual purpose of safeguarding “consumer’s interest in acquiring fully functioning property” and “advanc[ing] the welfare of canines”).

⁷⁷ See, e.g., Matt Bershadker, *Landmark California Pet Store Ban Treats Animals as Pets, Not Products*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS (Oct. 17, 2017, 4:00 PM), <https://www.aspc.org/blog/under-landmark-law-california-would-treat-animals-pets-not-products> (discussing California’s status as “the first state to ban the sale of commercially bred puppies”).

note the underlying importance of the role played by various organizations in getting these laws on the books.

1. *Standards Prescribed by Law.* As noted above, the extent of Georgia's regulation of the retail sale of dogs is contained in the GAPA and the APR; additionally, bills—such as the Georgia Petland Bill—that have attempted to amend the statutory language have failed.⁷⁸ Georgia law currently requires inoculation of dogs against rabies,⁷⁹ but that is the extent of the State's vaccination requirements. Enacting effective legislation in the retail pet industry is not simple; the statutory language must sit well with sellers, buyers, and animal welfare advocates (who tend to have competing interests). Such laws across the states “vary widely in their length and detail,” where some contain “short, broadly worded statutes” and others “provide much more information.”⁸⁰ Consider Florida's animal protection law (the Florida Pet Law),⁸¹ which may provide some guidance for amending the GAPA as it currently stands.

The Florida Pet Law requires each dog being offered for sale within the state to receive medication and vaccinations for several diseases and parasites,⁸² and also that an “official certificate of veterinary inspection” be available “at all times” and given to the buyer upon purchase of a dog.⁸³ Florida additionally requires each pet dealer selling a dog to deliver a written notice—provided verbatim by the statute—upon purchase of the animal, informing

⁷⁸ See *supra* Sections II.B–II.D.

⁷⁹ See O.C.G.A. § 31-19-5 (2019) (requiring county boards “to adopt and promulgate rules and regulations requiring canines . . . to be inoculated against rabies”).

⁸⁰ CURNUTT, *supra* note 5, at 123.

⁸¹ See generally FLA. STAT. ANN. § 828.29 (West, Westlaw through 2020 2d Reg. Sess.).

⁸² *Id.* § 828.29(1)(b) (requiring that the following diseases and internal parasites be treated: canine distemper; leptospirosis; bordetella; parainfluenza; hepatitis; canine parvo; rabies, for dogs over three months of age; roundworms; and hookworms). Note, in this respect, the similarity between the Florida Pet Law and the proposed Georgia Petland Bill. See H.B. 144, 154th Gen. Assemb., Reg. Sess. § 3 (Ga. 2017) (proposing vaccinations or treatment for the following: canine distemper; bordetella; parainfluenza; hepatitis; canine parvo; rabies, for dogs over three months of age; roundworms; hookworms; and coccidia).

⁸³ FLA. STAT. ANN. § 828.29(3)(a) (West, Westlaw through 2020 2d Reg. Sess.). The following section requires an “official certificate of veterinary inspection” to include “the age, sex, breed, color, and health record of the dog,” as well as other information regarding the veterinary care administered. *Id.* § 828.29(3)(b).

the buyer of their rights as a consumer.⁸⁴ Finally, the Florida Pet Law also includes a puppy lemon law.⁸⁵

While the Georgia and Florida statutes contain many regulations of the commercial pet industry, what is also significant is what the statutes fail to consider: socialization and exercise requirements. Proper socialization and exercise are both deeply associated with the overall health of dogs and, especially, puppies.⁸⁶ It is not unheard of for state statutes to require socialization requirements; after all, Nebraska requires commercial breeders to “[p]rovide dogs with adequate socialization.”⁸⁷ The same principle applies to exercise as well; consider, for example, Virginia’s statute requiring dog dealers and pet shops to provide adequate exercise for any animals in their possession.⁸⁸ Overall, Georgia can add many additional minimum healthcare standards to the GAPA without going beyond what other states have begun to implement.

2. *Organizational and Industry Standards.* Also worthy of discussion are the industry standards governing the retail sale of pets. Much of the legislation in effect across the country has been influenced by organizations such as the American Kennel Club (the

⁸⁴ *Id.* § 828.29(12) (“It is the consumer’s right . . . to receive a certificate of veterinary inspection with each dog . . . purchased from a pet dealer. . . . The consumer has the right to retain, return, or exchange the animal and receive reimbursement for certain related veterinary services rendered to the animal, subject to the right of the dealer to have the animal examined by another veterinarian.”).

⁸⁵ *Id.* § 828.29(5) (providing pet buyers the right to return or exchange their animals under certain conditions). See *infra* Section IV.B.1 for a deeper discussion of Florida’s puppy lemon law.

⁸⁶ See Karen Becker, *The Critical Importance of Socializing Your Puppy*, HEALTHY PETS (Jan. 20, 2010), <https://healthypets.mercola.com/sites/healthypets/archive/2010/01/20/critical-importance-of-socializing-your-puppy.aspx> (noting that the failure to properly socialize a dog can lead to “permanently ingrained fear responses and generalized anxiety”); Franco Cavaleri, *The Importance of Exercise for Dogs*, ANIMAL WELLNESS (Apr. 29, 2014), <https://animalwellnessmagazine.com/importance-of-exercise-dog/> (explaining that “[r]egular physical exercise is crucial for maintaining health and preserving youth” in dogs).

⁸⁷ NEB. REV. STAT. ANN. § 54-640(6) (West, Westlaw through 2020 2d Reg. Sess.) (defining “adequate socialization” as “physical contact with other dogs and with human beings, other than being fed”).

⁸⁸ VA. CODE ANN. § 3.2-6511 (West, Westlaw through 2020 Reg. Sess.) (“Any dealer or pet shop that fails to adequately . . . exercise or care for animals in his or its possession or custody . . . is guilty of a Class 3 misdemeanor.”). Virginia defines “adequate exercise” as the “opportunity for the [dog] to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.” *Id.* § 3.2-6500.

AKC) and the Humane Society of the United States (the HSUS).⁸⁹ Of course, large pet stores that sell dogs (such as Petland) voice their positions on how the law governing their business should operate,⁹⁰ but other organizations nevertheless play an important role in supporting and opposing the bills that affect the industry. Consider the AKC, one of the largest breed clubs in America known for setting the breeding standards and registering “purebred dogs in an effort to advance their health and welfare.”⁹¹ The AKC—a nonprofit organization—operates “more than 600 . . . clubs in the United States,” has “more than 200 revenue-generating products sold through” over 7000 retailers, and, in 2011, had revenues exceeding “\$59 million, with \$23 million coming from registrations.”⁹² Acknowledging its strong influence on the industry, the AKC has also promulgated a list of their stances with respect to many issues affecting the commercial sale of puppies.⁹³ But despite the AKC’s mission statement purporting to “advance canine health and well-being,”⁹⁴ animal welfare advocates have argued that “the AKC

⁸⁹ See *Government Relations*, AM. KENNEL CLUB (Oct. 26, 2017), <https://www.akc.org/clubs-delegates/government-relations/> (noting the AKC’s efforts to “ensur[e] that laws governing dog . . . breeding are reasonable . . . and non-discriminatory”); HUMANE SOC’Y U.S., 2019 ANNUAL REPORT: ACHIEVEMENTS FOR ANIMALS 9 (2019), https://www.humanesociety.org/sites/default/files/docs/HSUS_2019_AnnualReport.pdf (stating that the HSUS has “helped pass several new state laws that strengthen protections for dogs in commercial breeding operations”).

⁹⁰ See *supra* text accompanying note 54.

⁹¹ Adam J. Fumarola, Note, *With Best Friends Like Us Who Needs Enemies? The Phenomenon of the Puppy Mill, the Failure of Legal Regimes to Manage it, and the Positive Prospects of Animal Rights*, 6 BUFF. ENV’T L.J. 253, 264 (1999). Despite AKC registration giving the appearance of proof of purity, Fumarola notes that “AKC papers are in fact no guarantee of health or temperament or even that the puppy is a good representative of its breed.” *Id.* at 264–65.

⁹² Gregory Castle, *NBC Report Exposes AKC*, BEST FRIENDS (May 1, 2013), <https://bestfriends.org/blogs/2013/05/01/nbc-report-exposes-akc>.

⁹³ See *Summary Position Statements*, AM. KENNEL CLUB, https://cqrcengage.com/akc/file/M82u5W9SkzF/Canine%20Legislation%20Summary%20Position%20Statement%20_2020.pdf (last updated Mar. 11, 2020) (indicating the AKC’s approval of the enforcement of the AWA, proper care and humane treatment of dogs, and protection for puppy purchasers).

⁹⁴ *Mission Statement*, AM. KENNEL CLUB, <https://www.akc.org/about/mission/> (last visited Dec. 12, 2020). Notwithstanding the HSUS’s criticism, the AKC does provide information on responsible breeding. See *AKC’s Guide to Responsible Dog Breeding*, AM. KENNEL CLUB, <https://www.akc.org/breeder-programs/breeder-education/akcs-guide-responsible-dog-breeding/> (last visited Dec. 12, 2020).

condones puppy mills because of the large amount of money that can be made through registering dogs” and that AKC registration acts as a “stamp of approval” indicating “the consumer’s willingness to overlook the prospective problems, and hidden atrocities, of puppy mill dogs.”⁹⁵ For example, the HSUS, a nonprofit organization fighting “all forms of animal cruelty,”⁹⁶ published an exposé arguing that the “AKC should stand up for dogs, not puppy mills.”⁹⁷ There, the HSUS alleged that in a five-year span, the AKC “opposed more than [eighty] different bills and ordinances designed to require large-scale puppy producers to adhere to stronger care standards or oversight, and has even supported bills that would weaken [the] puppy mill regulations” in effect at the time the report was written.⁹⁸

Similar to the AKC and the HSUS, many other breed registry groups⁹⁹ and animal welfare organizations¹⁰⁰ are active across the United States. When analyzing how states regulate the commercial sale of dogs, it is crucial to reflect on how such groups will react to any proposed legislation. Proposals that consider both the commercial industry and the animals themselves will have the best chance of actually becoming law and present the most realistic opportunity to help the animals who cannot help themselves.¹⁰¹

B. PUPPY “LEMON LAWS”

One of the most important interest groups concerned with the sale of puppies are the consumers themselves. As briefly mentioned

⁹⁵ Fumarola, *supra* note 91, at 264–65.

⁹⁶ *Our Mission*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/our-mission> (last visited Dec. 12, 2020).

⁹⁷ THE HUMANE SOC’Y OF THE U.S., THE AMERICAN KENNEL CLUB: NO LONGER “THE DOG’S CHAMPION?” 1 (2012), https://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1009&context=hsus_pmc_iae.

⁹⁸ *Id.*

⁹⁹ See Castle, *supra* note 92 (noting the existence of “at least [twenty-two] other” breed registry organizations, including the “Continental Kennel Club, United Kennel Club, World Kennel Club, [and the] American Canine Association”).

¹⁰⁰ See *Our Affiliates*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/affiliates> (last visited Dec. 12, 2020) (listing other groups that identify as animal welfare advocates, including The Fund for Animals and the Doris Day Animal League).

¹⁰¹ See *infra* Part V.

earlier, puppy lemon laws exist to provide the consumer a remedy where, upon receiving a “sick” puppy, the purchaser may return or exchange the puppy, or receive reasonable veterinary expenses incurred in an effort to treat the illness (usually with a reimbursement cap set at the purchase price of the dog).¹⁰² These laws rely on the concept of cost internalization: the negative externality of an unhealthy puppy is shifted from the consumer to the supplier.¹⁰³ Currently, over twenty states across America have some form of a puppy lemon law, but Georgia has yet to enact such legislation.¹⁰⁴ In Georgia, courts have continued to accept that dogs constitute “the personal property of [their] owner[s],”¹⁰⁵ and puppy lemon laws arguably reinforce this premise.¹⁰⁶ Though litigants have argued that the Federal AWA preempts state puppy lemon laws, courts have found that “the federal law does not evince an intent to preempt state regulation of animal welfare” because Congress clearly “anticipated that states would remain active in this area of traditional state interest”; thus, these laws remain on the books today.¹⁰⁷

1. *Florida’s Puppy Lemon Law.* As mentioned earlier, the Florida Pet Law exemplifies a typical puppy lemon law.¹⁰⁸ The statute

¹⁰² Barnett, *supra* note 62.

¹⁰³ See *supra* Part III.

¹⁰⁴ See Barnett, *supra* note 62 (indicating that Georgia is not one of the twenty-two listed states that currently have some type of puppy lemon law).

¹⁰⁵ *Barking Hound Vill., LLC v. Monyak*, 787 S.E.2d 191, 194 (Ga. 2016) (citing *Columbus R.R. Co. v. Woolfolk*, 58 S.E. 152 (Ga. 1907)). Some have argued that “animals should not simply be treated as another form of property”; for example, Professor David Favre proposes a system in which “animals would possess self-ownership for some purposes, with legal title remaining in human owners,” essentially “treat[ing] the relationship between an owner and animal similarly . . . to that of the custodial relationship between a human parent and child.” Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. COLO. L. REV. 181, 196–97 (2003). For a deeper inquiry into the proposed personhood status of animals, see David Favre, *Equitable Self-Ownership for Animals*, 50 DUKE L.J. 473, 502 (2000) (arguing that “it is possible to construct a new paradigm that gives animals the status of juristic persons without entirely severing the concept of property ownership”).

¹⁰⁶ See CURNUTT, *supra* note 5, at 117 (noting that puppy lemon laws are “[m]odeled after laws that allow a car buyer to receive a refund or replacement for a problem-plagued vehicle (a ‘lemon’)”).

¹⁰⁷ *Kerr v. Kimmell*, 740 F. Supp. 1525, 1530 (D. Kan. 1990) (citing 7 U.S.C. §§ 2143(a)(8), 2145(b)).

¹⁰⁸ See FLA. STAT. ANN. § 828.29(5) (West, Westlaw through 2020 2d Reg. Sess.).

provides that “within [fourteen] days following the sale by a pet dealer” in the case of an illness or disease, or “within [one] year following the sale” in the case of “a congenital or hereditary disorder,” or where the “breed, sex, or health of such [an] animal is found to have been misrepresented to the consumer,” the buyer is entitled to one of three options:

- (a) [t]he right to return the animal and receive a refund of the purchase price, including the sales tax, and reimbursement for reasonable veterinary costs directly related to the veterinarian’s examination and certification that the dog . . . is unfit for purchase . . . and directly related to necessary emergency services and treatment undertaken to relieve suffering;
- (b) [t]he right to return the animal and receive an exchange dog . . . of the consumer’s choice of equivalent value, and reimbursement for reasonable veterinary costs directly related to the veterinarian’s examination and certification that the dog . . . is unfit for purchase . . . ; or
- (c) [t]he right to retain the animal and receive reimbursement for reasonable veterinary costs for necessary services and treatment related to the attempt to cure or curing of the dog. . . .¹⁰⁹

The statute further provides that reimbursement for veterinary costs cannot “exceed the purchase price” of the dog and defines veterinary services as “reasonable” if they are “comparable to the cost of similar services rendered by other licensed veterinarians in proximity to the treating veterinarian and the services rendered are appropriate for the certification by the veterinarian.”¹¹⁰ As beneficial as Florida’s puppy lemon law may appear, the legislation has been criticized since its enactment.¹¹¹

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See Robin Fields & Lisa J. Huriash, ‘Pet Lemon Law’ Has Major Shortcomings, SUN-SENTINEL (Nov. 3, 1996), <https://www.sun-sentinel.com/news/fl-xpm-1996-11-03-9611020457-story.html#> (noting that, in Florida, retail pet sellers can still “have customers

2. *The Proposed Puppy Lemon Law in the Georgia Petland Bill.* Recall the discussion of H.B. 144 and its proposed changes to the law concerning the retail sale of pets as codified in Georgia today.¹¹² In the recommended amendments to the GAPPA, the revisions called for a proposed puppy lemon law that is quite similar to the Florida Pet Law.¹¹³ The Georgia Petland Bill sought to provide remedies for illnesses or diseases identified within ten days of the sale and within one year of the sale for identified congenital or hereditary disorders.¹¹⁴ The proposed puppy lemon law further established a price cap for reimbursement matching the purchase price of the dog and granted the consumer three options: (a) “return the animal and receive a refund”; (b) “exchange the animal . . . and receive reimbursement for reasonable veterinary costs”; or (c) “retain the animal and receive reimbursement for reasonable . . . veterinary costs.”¹¹⁵ While the Georgia Petland Bill’s puppy lemon law appeared reasonable on its face, it failed to become codified in the official statutes because it was packaged with more controversial amendments.¹¹⁶

C. REGULATIONS ON SELLING ANIMALS AT PET STORES

Another effort taken by jurisdictions across the United States to disincentivize pet stores from purchasing puppies from puppy mills involves the “enactment of local ordinances that ban or severely limit the retail sale of . . . dogs.”¹¹⁷ Recall how the GAPPA, as currently codified, permits municipalities across Georgia to enact and enforce local ordinances, so long as they do not conflict with any of the GAPPA’s other provisions.¹¹⁸ Pursuant to this section, an increasing number of counties in Georgia have passed ordinances

sign waivers that circumvent some of the law’s provisions” and may “make signing a waiver a condition of sale” for the unsuspecting consumer).

¹¹² See *supra* Section II.D.

¹¹³ See generally H.B. 144, 154th Gen. Assemb., Reg. Sess. § 3 (Ga. 2017).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See *supra* notes 64–65 and accompanying text.

¹¹⁷ Krysten Kenny, Comment, *A Local Approach to a National Problem: Local Ordinances as a Means of Curbing Puppy Mill Production and Pet Overpopulation*, 75 ALB. L. REV. 379, 379 (2011).

¹¹⁸ See *supra* notes 29–30 and accompanying text.

prohibiting pet stores from engaging in the commercial sale of puppies.¹¹⁹ Advocates of such legislation, like the HSUS and other animal welfare organizations, argue that pet stores “do not have to sell puppies to be successful,”¹²⁰ and that such ordinances “provide a means for communities to express their views of the puppy mill trade and [to] make sure that they are not participating and exacerbating the exploitation” of these animals.¹²¹

Keeping in mind that numerous municipalities across Georgia have already enacted ordinances regulating pet store sales, recall the Georgia Petland Bill’s proposed “preemption” clause that forbids counties from prohibiting the commercial sale of dogs.¹²² Animal welfare advocates have noted the importance of maintaining a “[h]ome rule” and have emphasized each “local governments’ right[] to determine the best approach” to the pertinent issues, like “pet overpopulation,” in their respective communities.¹²³ While local ordinances slightly vary in their approaches to limit the commercial sale of puppies,¹²⁴ the majority of municipalities that have legislated in the area use total bans, while a select few have experimented with a rescue-only alternative.¹²⁵

¹¹⁹ See *States with Retail Pet Sale Bans*, BEST FRIENDS, <https://resources.bestfriends.org/article/states-retail-pet-sale-bans> (last visited Dec. 13, 2020) (showing that the following Georgia municipalities have banned retail pet store sales: Canton, Holly Springs, Waleska, Woodstock, Senoia, Sandy Springs, Ball Ground, Centerville, Atlanta, and Cherokee County).

¹²⁰ See *Fact Sheet: Puppy Mills and Pet Stores*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/sites/default/files/docs/pet-stores-puppy-mills-factsheet.pdf> (last visited Dec. 13, 2020) (noting that “[m]ore than 2,300 pet stores nationwide have signed an HSUS pledge not to sell puppies, demonstrating that it is possible to have a successful pet-related business without supporting puppy mills” (footnote omitted)).

¹²¹ Kenny, *supra* note 117, at 405.

¹²² See *supra* notes 64–65 and accompanying text.

¹²³ E-mail from Lisa Milot, Assoc. Professor of Law & Practicum in Animal Welfare Skills Dir., Univ. of Ga. School of Law, to Rep. Regina Quick, Ga. Dist. 117 (Feb. 17, 2017) [hereinafter E-mail from Lisa Milot] (on file with author).

¹²⁴ For example, price regulation ordinances restrict the ability of pet stores to sell dogs by providing for a “described fee schedule,” rather than an outright ban. Kenny, *supra* note 117, at 395–96. Nevertheless, total bans on the commercial sale of puppies are arguably “easier for consumers and pet merchants to understand, easier to enforce, and present fewer constitutional challenges than price regulation ordinances.” *Id.* at 405. For these reasons, this Note will omit further discussion of price regulation ordinances; for a deeper analysis of this approach and why municipalities may prefer total bans, see *id.* at 395–406.

¹²⁵ See *States with Retail Pet Sale Bans*, BEST FRIENDS, <https://resources.bestfriends.org/>

1. *Total Bans on the Retail Sale of Dogs.* As for local ordinances regulating the commercial sale of puppies, a total ban is conceptually simple. Take, for example, the City of Atlanta's total ban of the commercial sale of puppies (the Atlanta Ordinance).¹²⁶ In the Atlanta Ordinance, pet shops are explicitly prohibited from commercially selling any dogs, though nothing "prevent[s] a pet shop from providing space and appropriate care for dogs . . . offered for adoption and owned by an animal care facility or an animal rescue organization."¹²⁷ The Atlanta Ordinance also provides that each dog sold in violation of the ordinance constitutes a separate offense which, at minimum, amounts to a \$500.00 fine per offense.¹²⁸ The ban on the sale of dogs came as "a preventative measure, as officials [were not] aware of any stores that were selling dogs" in Atlanta,¹²⁹ with the purpose of "promot[ing] the adoption of rescued animals and reduc[ing the] demand for inhumane puppy . . . mills."¹³⁰ The Atlanta Ordinance exemplifies how legislation on the federal, state, and local levels operates concurrently with one another in an effort to regulate the commercial sale of dogs.

2. *Rescue-Only Alternative.* The state of California recently took a progressive stance on the regulation of the commercial pet industry and "became the first state in the nation to bar pet stores from selling dogs . . . unless they come from animal shelters or rescue groups."¹³¹ Assembly Bill 485 (the California Bill) provided that, as of January 1, 2019, only the sale of rescue animals is permitted anywhere in the state of California, and violators are

article/states-retail-pet-sale-bans (last visited Dec. 13, 2020) (listing states and municipalities with restrictions on the retail sale of pets).

¹²⁶ ATLANTA, GA., Ordinance No. 2018-55 (18-O-1655) (Nov. 5, 2018), https://library.municode.com/ga/atlanta/ordinances/code_of_ordinances?nodeId=927292.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Becca J. G. Godwin, *Atlanta Bans Pet Stores from Selling Cats and Dogs*, ATLANTA J.-CONST. (Nov. 18, 2018), <https://www.ajc.com/news/local/atlanta-bans-pet-stores-from-selling-cats-and-dogs/njUhlfdSiciwml38DPilkN/>.

¹³⁰ Press Release, Atlanta City Council, Council Members Farokhi, Smith, Archibong Introduce Legislation Promoting the Adoption of Rescue Animals (Oct. 16, 2018), <http://citycouncil.atlantaga.gov/Home/Components/News/News/534/175?backlist=%2f>.

¹³¹ Christine Hauser, *California Forces Pet Stores to Sell Only Dogs and Cats from Shelters*, N.Y. TIMES (Jan. 2, 2019), <https://www.nytimes.com/2019/01/02/us/california-pet-store-rescue-law.html>.

subject to a civil penalty of \$500 per offense.¹³² In enacting such a law, some representatives of animal welfare organizations have opined that California’s changes will transition the regulation of the retail pet industry “from a municipal effort to a statewide effort.”¹³³ Indeed, Maryland has already followed suit, with Governor Larry Hogan signing a law, taking effect in 2020, “that bars pet store operators from selling dogs . . . but allows them to host adoptions.”¹³⁴ Given the variety of actions taken by other states to address the issues associated with the commercial pet industry, Georgia has several viable options to consider.

V. PROPOSALS FOR GEORGIA

In the context of the retail sale of dogs, Georgia is in a unique position: an opportunity exists to improve the law—and to enhance animal welfare—while accommodating the needs of other interest groups. In its 2018 ranking of each state’s animal protection laws across the country, the Animal Legal Defense Fund (the ALDF) ranked Georgia number thirty-seven (out of the fifty states) in the “Bottom Tier” grouping based on existing state statutes.¹³⁵ The ALDF’s report—despite being just one animal welfare organization’s opinion on Georgia’s animal protection laws—serves as a reminder that much work remains to be done to improve the state’s animal laws. Now is the time to address the open-ended nature of Georgia’s law pertaining to the commercial sale of dogs and to engage in much-needed statutory reform.

¹³² Assemb. B. 485, 2017–2018 Gen. Assemb., Reg. Sess. § 2 (Cal. 2017), https://leginfo.ca.gov/faces/billPdf.xhtml?bill_id=201720180AB485&version=20170AB48591CHP.

¹³³ Hauser, *supra* note 131 (quoting Kevin O’Neill, vice president for state affairs of the American Society for the Prevention of Cruelty to Animals).

¹³⁴ *Id.*

¹³⁵ ANIMAL LEGAL DEF. FUND, 2018 U.S. ANIMAL PROTECTION LAWS RANKINGS 9 (2019), <https://aldf.org/wp-content/uploads/2019/01/Animal-Protection-Laws-of-the-United-States-2018-full-report.pdf>. Notably, in the ALDF’s 2017 report, Georgia was ranked number thirty-two and designated as a “Middle Tier” state for animal protection laws. *See* ANIMAL LEGAL DEF. FUND, 2017 U.S. ANIMAL PROTECTION LAWS RANKINGS 9 (2018), https://aldf.org/wp-content/uploads/2018/06/Rankings-Report-2017_FINAL.pdf (demonstrating that Georgia’s animal welfare laws were viewed more favorably in the past).

A. AMENDING THE GEORGIA ANIMAL PROTECTION ACT

The passage of the GAPA in 2000 was a great starting point for Georgia's legislature to tackle problems of animal welfare in the state and, particularly, the issues raised by the commercial sale of dogs. However, given the recent commendable efforts of other states to combat the commercial retail pet industry's abuse of animals—notably, the existence of puppy mills—Georgia has no reason to refrain from implementing further changes of its own.¹³⁶ While the Georgia Petland Bill contained several proposals that may have been beneficial to implement, the bill, among other things, failed to consider the perspective of all interest groups¹³⁷—perhaps a significant cause of its failure. What follows are recommendations for Georgia lawmakers to consider in an effort to have pet sellers and breeders reasonably internalize the costs associated with the for-profit industry of the retail sale of dogs.

1. *Mandatory Vaccinations and Microchipping.* One provision of the Georgia Petland Bill that should be included in upcoming legislation involves mandatory vaccinations for commercially sold puppies.¹³⁸ The Georgia Petland Bill provided for each dog to receive “vaccines and anthelmintics against the following diseases and internal parasites:” canine distemper; bordetella; parainfluenza; hepatitis; canine parvo; rabies (for dogs older than three months of age); roundworms; hookworms; and coccidia.¹³⁹ These vaccinations address the reality that “[d]ogs in puppy mills often suffer from an array of painful and potentially life-shortening veterinary problems due to overcrowded, unsanitary conditions and the lack of proper oversight or veterinary care.”¹⁴⁰ Despite the HSUS's opinion that

¹³⁶ Cf. Hauser, *supra* note 131 (identifying the efforts of California and Maryland in combating abuse in the retail pet industry).

¹³⁷ See E-mail from Lisa Milot, *supra* note 123 (noting that the involvement of “all stakeholders is important to crafting legislation that actually protects pets and the pet industry”).

¹³⁸ See *supra* note 59.

¹³⁹ H.B. 144, 154th Gen. Assemb., Reg. Sess. § 3 (Ga. 2017).

¹⁴⁰ THE HUMANE SOC'Y OF THE U.S., VETERINARY PROBLEMS IN PUPPY MILL DOGS 1 (2012) <https://www.humanesociety.org/sites/default/files/docs/veterinary-problems-puppy-mills.pdf>. Such problems often result from the “use of stacked, wire cages” with insufficient space, “constant exposure to the feces and urine of other dogs,” and a lack of “clean food and water.” *Id.*

“[v]accination programs alone can’t prevent the array of veterinary problems prevalent in dogs at puppy mills,”¹⁴¹ they are nonetheless a start. In a report detailing the various complaints purchasers had after inadvertently buying puppy mill puppies, the HSUS found that some of the most common illnesses and defects included internal parasites, coccidia, parvovirus, and canine distemper¹⁴²—all of which would be protected against by enacting the vaccination requirements found in the Georgia Petland Bill.¹⁴³ Although requiring commercial pet sellers to vaccinate the animals they intend to sell may not curtail the abusive practices of puppy mills, it nevertheless will help preserve the health of puppies by treating these diseases before it is too late.¹⁴⁴ Further, Florida’s requirement that pet sellers vaccinate their animals before selling to a consumer indicates that such a rule would not impose unreasonable costs on the commercial pet industry.¹⁴⁵

In addition to mandatory vaccinations, Georgia should consider requiring pet sellers to microchip the dogs they intend to sell before they reach the consumer.¹⁴⁶ Given that the GAPA currently requires shelters to scan for the presence of a microchip upon finding a lost or abandoned animal,¹⁴⁷ a mandatory microchipping regime would have several benefits.¹⁴⁸ Although no state has a mandatory

¹⁴¹ *Id.* at 2.

¹⁴² HUMANE SOC’Y OF THE U.S., PUPPY BUYER COMPLAINTS: A TEN YEAR SUMMARY 2007–2017, at 4 (2018), <https://blog.humanesociety.org/wp-content/uploads/2018/05/HSUS-Puppy-Buyer-Complaints-Summary-Final-Web-Version-2018-1.pdf>.

¹⁴³ H.B. 144 § 3(d)(1).

¹⁴⁴ Georgia should go further and consider a mandatory healthcare regime for breeding stock as well. *See, e.g., AKC’s Guide to Responsible Dog Breeding*, AM. KENNEL CLUB, <https://www.akc.org/breeder-programs/breeder-education/akcs-guide-responsible-dog-breeding/> (last visited Dec. 13, 2020) (providing recommendations for ethical dog breeding practices).

¹⁴⁵ *See* FLA. STAT. ANN. § 828.29(1)(b) (West, Westlaw through 2020 2d Reg. Sess.) (differing slightly from the Georgia Petland Bill’s proposal by requiring a vaccine for leptospirosis but omitting a vaccine for coccidia).

¹⁴⁶ *See Microchipping of Animals FAQ*, AM. VETERINARY MED. ASS’N, <https://www.avma.org/microchipping-animals-faq> (last visited Dec. 13, 2020) (explaining that a microchip is an electronic chip injected under the skin that transmits an identification number when scanned).

¹⁴⁷ O.C.G.A. § 4-11-5.2(b) (2013); *see also supra* note 22 and accompanying text.

¹⁴⁸ *See* Ashley Watson, *Benefits of Microchips for Pets*, VETRISCIENCE LABORATORIES (Aug. 9, 2013), <https://www.vetriscience.com/blog/2013/08/benefits-of-microchips-for-pets/>

microchipping law, some municipalities have this requirement.¹⁴⁹ In fact, a mandatory microchipping law was implemented for all dogs in England, Scotland, and Wales, where failure to microchip a dog or puppy over eight weeks of age results in “a fine of up to £500 if caught.”¹⁵⁰ Because pet sellers and breeders tend to be in better positions to deal with the expense of administering mandatory vaccinations and microchips than animal shelters,¹⁵¹ they should be responsible for internalizing these costs.

2. *A Progressive Puppy Lemon Law Proposal.* Given that there are approximately ten thousand puppy mills across the country,¹⁵² it is no surprise that many states have enacted puppy lemon laws;¹⁵³ indeed, the Georgia Petland Bill proposed such a law as noted earlier.¹⁵⁴ But puppy lemon laws, as they exist across the United States today, raise several noteworthy problems. First, puppy lemon laws typically have time constraints that expire before symptoms of particular illnesses or diseases materialize.¹⁵⁵ This

(noting that microchips “help people find their lost pets,” while “prevent[ing] overcrowding and reduc[ing] stress levels” for animals at shelters).

¹⁴⁹ See *Mandatory Microchipping*, INT’L SOC’Y FOR ANIMAL RTS., <https://isaronline.org/programs/dog-and-cat-overpopulation/mandatory-microchipping/> (last visited Dec. 13, 2020) (noting the potential benefits of a mandatory microchipping regime and providing a model statute).

¹⁵⁰ *Microchipping Your Dog*, BLUE CROSS, <https://www.bluecross.org.uk/pet-advice/microchipping-your-dog> (last updated Oct. 9, 2019).

¹⁵¹ See, e.g., Lily Feinn, *Shelter Overflowing with Dogs Has No Space Left*, THE DODO (Aug. 9, 2019, 5:39 PM), <https://www.thedodo.com/close-to-home/atlanta-animal-shelters-overcrowded-need-help> (explaining that two shelters in Atlanta, Georgia, have “[m]ore homeless animals than ever before” with inadequate facilities and resources).

¹⁵² *Puppy Mills: Facts and Figures*, HUMANE SOC’Y U.S. (Jan. 2019), <https://www.humanesociety.org/sites/default/files/docs/Puppy%20Mills%20Facts%20and%20Figures%20January%202019.pdf>.

¹⁵³ Barnett, *supra* note 62.

¹⁵⁴ See *supra* Section IV.B.2.

¹⁵⁵ See, e.g., FLA. STAT. ANN. § 828.29(5) (West, Westlaw through 2020 2d Reg. Sess.) (permitting recovery for illnesses or diseases “within [fourteen] days following the sale,” and for congenital or hereditary disorders “within [one] year following the sale”); S.C. CODE ANN. § 47-13-160(B) (West, Westlaw through 2020 Legis. Sess.) (allowing recovery for noncongenital illnesses “within fourteen days following the sale,” and for congenital or hereditary disorders “within six months” following the sale). With these time constraints to seek a remedy in mind, consider how some congenital defects “may not be seen until [a] dog has reached adulthood, even though the defect has been present since birth.” Rebecca A. Packer, *Congenital and Inherited Disorders of the Nervous System in Dogs*, MERCK VETERINARY MANUAL, <https://www.merckvetmanual.com/dog-owners/brain,-spinal-cord,->

effectively leaves the purchaser whose dog shows symptoms of a serious disorder one day after the time constraint without a chance to use the puppy lemon law. Second, there are serious animal welfare concerns with the provisions permitting a purchaser to return or exchange a sick dog. For example, say that a buyer purchases a puppy that ends up having a liver shunt¹⁵⁶ and returns the puppy to the pet store or exchanges it for a different one. What should the pet store, a for-profit business, do with the sick puppy? Estimated costs for treating a liver shunt can range anywhere from \$2000 to \$3000,¹⁵⁷ while the cost of euthanizing a puppy tends to be between \$50 to \$300¹⁵⁸—for a for-profit entity, the math is not too difficult. Third, consumers typically are unaware of their rights when purchasing puppies,¹⁵⁹ and methods are in place that allow sellers to circumvent the puppy lemon law’s application (e.g., requiring a waiver as a “condition of [the] sale”).¹⁶⁰ Fourth, puppy lemon law recovery often is capped at a figure around the purchase price of the dog,¹⁶¹ an amount that may not cover the expenses

and-nerve-disorders-of-dogs/congenital-and-inherited-disorders-of-the-nervous-system-in-dogs (last updated Mar. 2018).

¹⁵⁶ A liver shunt occurs near the end of pregnancy when a puppy’s blood vessel fails to “close down” to allow the puppy’s liver to begin working properly post-pregnancy; such a problem results in poor muscle development and neurological issues but can be treated to allow the puppy to “have a normal life and a normal lifespan.” Phil Zeltzman, *Liver Shunt in Dogs*, PET HEALTH NETWORK (Jan. 22, 2015), <http://www.pethealthnetwork.com/dog-health/dog-diseases-conditions-a-z/liver-shunt-dogs>.

¹⁵⁷ Patty Khuly, *Portosystemic Shunt*, EMBRACE PET INS., <https://www.embracepetinsurance.com/health/portosystemic-shunt> (last visited Dec. 13, 2020).

¹⁵⁸ Bethany Ramos, *Here’s How Much it Really Costs to Put a Dog Down*, SHEKNOWS (July 18, 2017, 1:30 PM), <https://www.sheknows.com/living/articles/1084880/costs-to-put-a-dog-down/>.

¹⁵⁹ Cf. Notes and Comments, *Consumer Legislation and the Poor*, 76 YALE L.J. 745, 752 (1967) (noting that “[m]ost laymen lack more than a superficial knowledge of their rights and liabilities in a post-sale legal conflict”).

¹⁶⁰ Fields & Huriash, *supra* note 111.

¹⁶¹ See, e.g., FLA. STAT. ANN. § 828.29(5) (West, Westlaw through 2020 2d Reg. Sess.) (explaining that “[r]eimbursement for veterinary costs may not exceed the purchase price of the animal”); N.J. STAT. ANN. § 56:8-95(i) (West, Westlaw through L.2020, c.109 & J.R. No. 2) (allowing reimbursement “for veterinary fees up to and including two times the purchase price, including sales tax, of the sick or dead animal”); S.C. CODE ANN. § 47-13-160(B)(1) (West, Westlaw through 2020 Legis. Sess.) (permitting pet seller liability for up to “fifty percent of the purchase price, including sales tax, of the animal”).

associated with treating the illness or disease.¹⁶² For these reasons—and others that animal welfare advocates have identified¹⁶³—puppy lemon laws may not be the most effective remedy for consumers. But a progressive puppy lemon law may, on the other hand, significantly disincentivize pet store sellers from purchasing dogs from puppy mills while still providing a potential remedy to the consumer.

Georgia should enact a puppy lemon law that provides only for consumers to be reimbursed for reasonable veterinary expenses incurred as a result of an illness or disease; any remedy involving the return or exchange of a sick puppy should be omitted.¹⁶⁴ Only one other state—Arkansas—has enacted such a law.¹⁶⁵ The Arkansas Retail Pet Store Consumer Protection Act of 1991 (the Arkansas Act) provides as follows:

If, within ten . . . days following the sale of an animal subject to this chapter, a licensed veterinarian of the consumer's choosing certifies such animal to be unfit for purchase due to illness, a congenital malformation which adversely affects the health of the animal, or the presence of symptoms of a contagious or infectious disease, the retail pet store, in addition to any other warranty, shall afford the consumer the right to retain

¹⁶² See Roxanne Hawn, *The Price of Puppies for Sale*, BANKRATE (Dec. 23, 2009), <https://www.bankrate.com/finance/personal-finance/the-price-of-puppies-for-sale-1.aspx> (“Puppies sell in pet stores for \$800 on average, with high-demand breeds costing more.”).

¹⁶³ See Stephanie K. Savino, Comment, *Puppy Lemon Laws: Think Twice Before Buying that Doggy in the Window*, 114 PENN ST. L. REV. 643, 655 (2009) (noting, additionally, that “there is a lack of enforcement associated with puppy lemon laws” and that “consumers are unhappy with the prospect of returning their dogs”).

¹⁶⁴ Although puppy lemon laws limit recovery based on the purchase price of the dog, this Note suggests that a fixed price cap should be used to promote consistency and predictability. For example, a consumer utilizing the remedy would be able to recover no more than \$5000 in reasonable veterinary expenses. If the puppy lemon law provides the consumer the option to return or exchange the sick puppy, this figure should be capped at \$3000 to incentivize the owner to keep the animal and to seek reimbursement of veterinary expenses instead.

¹⁶⁵ See Charlotte Walden, *Table of Pet Purchaser Protection Acts*, ANIMAL LEGAL & HIST. CTR. (2019), <https://www.animallaw.info/topic/table-pet-purchaser-protection-acts> (providing a state-by-state comparison of the twenty-two states that have enacted some form of puppy lemon laws as of 2019). Nearly every other state listed provides the consumer the ability to return or exchange the sick puppy. *Id.*

the animal and to receive reimbursement from the retail pet store for veterinary services from a licensed veterinarian of the consumer’s choosing, for the purpose of curing or attempting to cure the animal.¹⁶⁶

Note, however, the limited time frame—a mere ten-day period—to have a veterinarian deem the dog to be unfit for purchase,¹⁶⁷ thus making the provision both a less effective remedy for consumers and a less effective way to force pet sellers to internalize costs. The Arkansas Act also stipulates that the reimbursement “shall not exceed the purchase price of the animal” and “shall not include the costs of initial veterinary examination . . . and diagnostic fees not directly related to the veterinarian’s certification that the animal is unfit for purchase.”¹⁶⁸

Given the serious flaws prevalent with the standard puppy lemon laws that the other twenty-one states have enacted, Arkansas has the right approach (excluding the minimal amount of time to utilize the law). Although puppy lemon laws are styled as a consumer remedy, the true value of such legislation may be its ability to disincentivize retail pet sellers from obtaining puppies from puppy mills. If one accepts the premise that for-profit pet sellers engage in a rational cost-benefit analysis concerned with profit maximization,¹⁶⁹ it follows that the risk of liability associated with obtaining puppy mill puppies (through reimbursement for veterinary bills) will raise the cost of obtaining risky puppies from puppy mills.

Georgia’s codification of a puppy lemon law providing solely for reimbursement of medical bills could potentially benefit both animal welfare organizations and the animals themselves, as it may influence the economic considerations of pet sellers and induce them to not purchase dogs from puppy mills. On the other end of the spectrum, the retail pet sellers’ interests are also considered by the

¹⁶⁶ ARK. CODE ANN. § 4-97-105(b)(1) (West, Westlaw through 2020 1st Extraordinary Sess. & 2020 Fiscal Sess. of 92d Ark. Gen. Assemb.).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* §§ 4-97-105(b)(2) to -105(b)(3).

¹⁶⁹ See Jennn Fusion, *What Do I Need to Start a Pet Store?*, CHRON, <https://smallbusiness.chron.com/need-start-pet-store-4563.html> (last visited Dec. 13, 2020) (discussing the costs of running a pet store and how to maximize profit).

two common features observed across puppy lemon laws: time constraints and reimbursement caps. Georgia should consider both a time constraint¹⁷⁰ and a reimbursement cap¹⁷¹ that makes the puppy lemon law an effective consumer remedy, while avoiding unlimited liability for commercial pet sellers. One could argue that removing the options of returning or exchanging a sick puppy does not serve the buyer's interests. However, without reiterating the general problems with puppy lemon laws as a consumer remedy overall, concluding that consumers are left with no adequate remedy would be incorrect. "State Uniform Commercial Codes have been applied to animal sales," including remedies for breach of implied warranty of merchantability and breach of implied warranty of fitness for particular purpose.¹⁷² As for companion animals, the "most obvious implied warranty a merchant provides is that the animal is healthy at the time of purchase."¹⁷³ In Georgia, "defective" pets appear to be within the range of coverage under the implied warranties of merchantability¹⁷⁴ and fitness for particular

¹⁷⁰ See, e.g., DEL. CODE ANN. tit. 6, § 4005(a)(1) (West, Westlaw through ch. 292 of 150th Gen. Assemb. (2019–2020)) (providing for a twenty-day period for an illness or disease, and a two-year period for a congenital or hereditary condition); NEB. REV. STAT. ANN. § 54-647(1) (West, Westlaw through 2020 2d Reg. Sess.) (providing for seven business days after delivery for a serious health problem, and a fifteen-month period after the animal's date of birth in the event of death or diagnosis of a congenital or hereditary condition); 4 R.I. GEN. LAWS ANN. § 4-25-5(a) (West, Westlaw through ch. 79 of 2020 2d. Reg. Sess.) (providing for the same time constraints as Delaware).

¹⁷¹ See, e.g., CAL. HEALTH & SAFETY CODE § 122160(a)(3) (West, Westlaw through ch. 372 of 2020 Reg. Sess.) (providing for, in the context of retaining a sick dog from a pet dealer, a reimbursement cap of "150 percent of the original purchase price of the dog, plus sales tax"); FLA. STAT. ANN. § 828.29(5)(c) (West, Westlaw through 2020 2d Reg. Sess.) (providing that reimbursement "may not exceed the purchase price of the animal"); N.J. STAT. ANN. § 56:8-95(i) (West, Westlaw through L.2020, c.109 & J.R. No. 2) (entitling the consumer "to be reimbursed an amount for veterinary fees up to and including two times the purchase price, including sales tax, of the sick or dead animal"); see also *supra* note 164.

¹⁷² Julie I. Fershtman, *Animal-Related Contract and Sales Disputes*, in LITIGATING ANIMAL LAW DISPUTES: A COMPLETE GUIDE FOR LAWYERS 199, 204–05 (Joan Schaffner & Julie Fershtman eds., 2009).

¹⁷³ Rebecca F. Wisch, *Sale of Companion Animals by Breeders and Retailers*, ANIMAL LEGAL & HIST. CTR. (2005), <https://www.animallaw.info/article/sale-companion-animals-breeders-and-retailers>.

¹⁷⁴ See O.C.G.A. § 11-2-314(1) (2002) (implying "a warranty that the goods shall be merchantable . . . if the seller is a merchant").

purpose.¹⁷⁵ Because a puppy lemon law providing for reimbursement to the consumer effectively serves all relevant interest groups, Georgia should join Arkansas and become the second state to adopt such a progressive approach, but with a more lenient time period for consumers to use the remedy.

3. *No “Preemption Clauses.”* Recall how the Georgia Petland Bill sought to amend section 4-11-18 of the GAPA to prevent localities from banning the commercial sale of puppies—also known as a “preemption clause.”¹⁷⁶ Consider the proposed language of the amendment:

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or enforce any ordinance, rule, regulation, or resolution that directly or indirectly prohibits the sale, delivery, or transfer of a dog or cat from a retail pet store owner holding a valid license issued by the department or imposes restrictions on such sale, delivery, or transfer in addition to the requirements of this article.¹⁷⁷

Such legislation would undermine local government’s autonomy to address critical issues relating to animal welfare.¹⁷⁸ After all, “local governments and animal controls have the best information about the sources of problems and the solutions for their communities.”¹⁷⁹ Local ordinances also have the ability to “influence public perception of the issue [of animal welfare] and play a role in a

¹⁷⁵ See *id.* § 11-2-315 (providing that such a warranty exists “[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods”).

¹⁷⁶ See *supra* notes 64–65 and accompanying text.

¹⁷⁷ H.B. 144, 154th Gen. Assemb., Reg. Sess. § 5(b) (Ga. 2017). Also recall the significant criticism that this particular proposal from the Georgia Petland Bill received. See *supra* note 65 and accompanying text.

¹⁷⁸ See E-mail from Lisa Milot, *supra* note 123 (detailing Athens-Clarke County’s “aggressive approach to combatting pet overpopulation,” where, if the GAPA was amended as proposed, the “euthanasia rates would increase dramatically” and compromise the efforts taken by the county).

¹⁷⁹ *Id.*

paradigm shift towards society's valuing humane breeding practices over profit made at the animal's expense."¹⁸⁰

4. *Additional Recommendations.* Further changes to the GAPA may also be beneficial for Georgia to consider. While the Georgia Petland Bill called for mandatory vaccinations, it did not require that a veterinarian actually see the dog.¹⁸¹ If Georgia wanted to further protect the consumers and the animals themselves, an "issuance of a health certificate by a licensed vet[erinarian] should be required," as well as "a fecal exam to detect the presence of internal parasites."¹⁸²

Moreover, "to be consistent with the goals previously articulated by the Georgia legislature, all animals [sold by a pet dealer] should be required to be spayed or neutered" before being offered for sale to a consumer.¹⁸³ Despite the potential for "health events related to juvenile spay [and] neuter surger[ies],"¹⁸⁴ Georgia faces an unfortunate reality in which overpopulation is a serious problem, and many otherwise healthy dogs are euthanized because shelters lack adequate resources.¹⁸⁵ Currently, the Georgia Dog and Cat Sterilization Act requires animal shelters, animal control agencies, humane societies, and animal refuges to spay or neuter any dog "within [thirty] days" after acquiring an adult animal or "within [thirty] days of the sexual maturity" of an immature animal;¹⁸⁶ if

¹⁸⁰ Kenny, *supra* note 117, at 405.

¹⁸¹ See E-mail from Lisa Milot, *supra* note 123 ("[O]nly those [puppies] three months of age or older (which thus require a rabies vaccination) are guaranteed a vet[erinarian] visit, and then only for the limited purpose of receiving a shot.").

¹⁸² *Id.*

¹⁸³ *Id.* Georgia should also consider a sole mandatory spay regime, as some studies suggest neutered male dogs are "more likely to show aggression and fear-related behavior." Stanley Coren, *Neutering Causes Behavior Problems in Male Dogs*, PSYCHOL. TODAY (May 9, 2018), <https://www.psychologytoday.com/us/blog/canine-corner/201805/neutering-causes-behavior-problems-in-male-dogs>.

¹⁸⁴ Mark Goldstein & Michael Petty, *Reexamining the Early Spay-Neuter Paradigm in Dogs*, DVM360 (Mar. 1, 2019), <https://www.dvm360.com/view/reexamining-early-spay-neuter-paradigm-dogs>.

¹⁸⁵ See Shannon Lilly, *Georgia Animal Euthanasia Rates Among Highest in Country*, WGXA (June 12, 2017), <https://wgxa.tv/news/local/georgia-animal-euthanasia-rates-among-highest-in-country> (explaining that southern states in America "have some of the highest kill rates in the country" but acknowledging that "euthanasia rates have gone down" in recent times).

¹⁸⁶ O.C.G.A. § 4-14-3(a) (2013).

the legislature has deemed shelters fit to front the costs of spaying and neutering animals, for-profit pet sellers should be able to manage these costs as well.¹⁸⁷

B. UTILIZING PUBLIC DATABASES TO INCREASE TRANSPARENCY AND SPREAD AWARENESS

The success of any effective legislation in combating the issues in the commercial sale of dogs “is highly dependent upon public awareness of puppy mills and the problems they pose.”¹⁸⁸ Indeed, it has been argued that “[a]s long as there exists a market and an opportunity for breeders to make a profit selling their animals, even the most innovative regulations will continue to be ineffective, and pets will continue to suffer.”¹⁸⁹ Today, progressive consumers are increasingly taking into account pet sellers’ strategies involving “transparency, sustainability, animal welfare, production and labor practices, charitable causes[,] and community action.”¹⁹⁰ Consumers would logically want access to information regarding these strategies, and such access could be obtained through public databases providing reported violations and inspection reports.

The United States Department of Agriculture (USDA) has promulgated inspection reports for thousands of licensed facilities that use animals, including commercial dog breeding operations, but in 2017, USDA abruptly removed all of this data from its website.¹⁹¹ The sudden removal sparked much outrage from animal

¹⁸⁷ See, e.g., Danielle Maddox Kinchen, Note, *It Takes a Village to Protect its Pets: How to Empower Local Community Organizations in the Fight for Companion Animal Rights*, 25 ANIMAL L. 269, 291–92 (2019) (discussing how New Hampshire and Maryland’s spay-and-neuter programs were successful in reducing both euthanasia and shelter arrival rates at an affordable cost).

¹⁸⁸ 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, 518 (2009).

¹⁸⁹ Mitch A. Montgomery, Note, *North Carolina’s Puppy Mill Problem: New Commercial Breeding Standards Won’t Solve the Problem, but They’re a Start*, 7 ELON L. REV. 449, 463 (2015).

¹⁹⁰ Lawrence Hotz, *Pet Owners Demand Supply-Chain Transparency*, TODAY’S VETERINARY BUS. (May 2019), <https://todaysveterinarybusiness.com/pet-owners-demand-supply-chain-transparency/>.

¹⁹¹ See Wayne Pacelle, *The HSUS Challenges USDA over Mass Removal of Animal Welfare Records*, HUMANE SOC’Y U.S.: A HUMANE WORLD, KITTY BLOCK’S BLOG (Feb. 6, 2017),

welfare advocates, with the HSUS claiming that the “action benefits no one, except facilities who have harmed animals and don’t want anyone to know.”¹⁹² While USDA inspections have received criticism in the past,¹⁹³ both animal welfare advocates and consumers value the underlying notions of transparency and awareness that are bolstered by making information publicly available. After months of inaccessibility to USDA’s animal welfare reports and an outcry from various interest groups, Congress took steps to order “the agency to clean up its act and make the database more user-friendly,” resulting in the information being accessible to the public once again.¹⁹⁴

Given the value that the public places on transparency and awareness, several proposals may be worth adopting. In addition to the proposed puppy lemon law, pet sellers qualifying under such an act could be required to keep data on how often the remedy is used and record general violations of other animal welfare policies.¹⁹⁵ This information could potentially be combined with the current information provided by the Georgia Department of Agriculture’s website, which allows consumers to see pet dealers’ contact and

<https://blog.humanesociety.org/2017/02/hsus-challenges-usda-mass-removal-animal-welfare-records.html> (noting the USDA’s removal of inspection reports on over 9000 facilities).

¹⁹² Meredith Wadman, *USDA Blacks Out Animal Welfare Information*, SCIENCE MAG. (Feb. 3, 2017, 6:00 PM), <https://www.sciencemag.org/news/2017/02/usda-blacks-out-animal-welfare-information>.

¹⁹³ See, e.g., GIL H. HARDEN, OFFICE OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., ANIMAL AND PLANT HEALTH INSPECTION SERVICE ANIMAL CARE PROGRAM: INSPECTIONS OF PROBLEMATIC DEALERS 1–2 (2010), <https://www.usda.gov/oig/webdocs/33002-4-SF.pdf> (auditing the enforcement protocols of USDA inspections and finding that the process was ineffective against problematic pet dealers).

¹⁹⁴ Meredith Wadman, *Update: After Congress Complains, USDA Restores Animal Welfare Reports*, SCIENCE MAG. (Apr. 9, 2018, 5:25 PM), <https://www.sciencemag.org/news/2018/03/congress-orders-usda-restore-transparency-completeness-animal-welfare-reports>.

¹⁹⁵ Consider Stacy Nowicki’s proposal for a national animal abuser registry, which would provide “comprehensive statistical data about animal abuse, track animal abusers, provide a way for researchers to identify patterns of animal cruelty, send a message to animal abusers that their behavior is not acceptable, and protect vulnerable populations from potential harm.” Stacy A. Nowicki, Comment, *On the Lamb: Toward a National Animal Abuser Registry*, 17 ANIMAL L. 197, 242 (2010); see also Kinchen, *supra* note 187, at 294 (advocating for a state-level animal abuser registry, and noting that Tennessee, which “established the first and only statewide registry,” can be “a valuable model for implementing statewide registries across the South”).

license information.¹⁹⁶ The website also allows complaints to be filed through a “Companion Animal/Equine Complaint Submission Form” and records to be provided upon an “Open Records Request,”¹⁹⁷ but this process requires the user to have the specific information sought in mind and calls for a tedious process with fees and waiting periods.¹⁹⁸ Rather, in an effort to promote transparency, the database should be promulgated publicly.

VI. CONCLUSION

Many are moved by the carefree bliss that dogs experience as they take in a nice breeze of air or find an impressive stick, whether from watching a viral video posted online or from walking past someone with their dog on a sidewalk. Today, dogs have transitioned from being viewed as personal property to integrated parts of the family—but this is not the case for the many animals that are subjected to atrocious conditions at puppy mills across the country. Indeed, with the increased demand for the perfect pet, a booming commercial industry emerged where dogs are considered in terms of commodities and dollars. While some retail pet sellers treat their animals humanely, this is not the case for those that decide to cut costs by supporting puppy mills. In doing so, the negative externalities associated with such behavior are placed on consumers, taxpayers, and animal shelters. For these reasons, federal and state legislation has been enacted to shift the costs resulting from these problematic practices back to those who are in the best position to confront the issue: for-profit commercial pet sellers and breeders. It is reasonable to assert that supporters of puppy mills should be responsible for internalizing some of the costs that the industry places on society; in fact, doing so has the potential

¹⁹⁶ See *Companion Animal/Equine Division*, GA. DEP’T AGRIC., <http://agr.georgia.gov/companion-animal-equine-division.aspx> (last visited Dec. 13, 2020) (allowing the user to search for pet dealers by name, licenses, or zip code).

¹⁹⁷ See *Companion Animal/Equine Complaint Submission Form*, GA. DEP’T AGRIC., <https://gdaforms.wufoo.com/forms/companion-animalequine-complaint-submission-form/> (last visited Dec. 13, 2020) (providing a form for submitting complaints of animal cruelty).

¹⁹⁸ See *Open Records Requests*, GA. DEP’T OF AGRIC., <http://agr.georgia.gov/open-records.aspx> (last visited Dec. 13, 2020) (requiring a “detailed description of the records requested”).

to disincentivize pet sellers from engaging with problematic breeders.

Georgia has taken steps to address the problems raised by the commercial pet industry, but there is much room for improvement. By progressively amending the Georgia Animal Protection Act, increasing the transparency of the commercial pet industry, and spreading awareness of the prevailing issues, Georgia can preserve the welfare of all interested groups and, most importantly, save lives.