SENATE BILL NO. 266
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on/for _____
on _____)
(Patron Prior to Substitute—Senator Stanley)

A BILL to amend and reenact §§ 3.2-6500 and 58.1-1708 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-6504.2, 3.2-6504.3, 3.2-6504.4, and 58.1-1707.1, relating to Companion Animal Surgical Sterilization Program and Fund established; report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-6500 and 58.1-1708 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.2-6504.2, 3.2-6504.3, 3.2-6504.4, and 58.1-1707.1 as follows:

§ 3.2-6500. Definitions.

As used in this chapter unless the context requires a different meaning:

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of four consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition,

size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; during hot weather, is properly shaded and does not readily conduct heat; during cold weather, has a windbreak at its entrance and provides a quantity of bedding material consisting of hay, cedar shavings, or the equivalent that is sufficient to protect the animal from cold and promote the retention of body heat; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter. The outdoor tethering of an animal shall not constitute the provision of adequate shelter (a) unless the animal is safe from predators and well suited and well equipped to tolerate its environment; (b) during the effective period for a hurricane warning or tropical storm warning issued for the area by the National Weather Service; or (c) (1) during a heat advisory issued by a local or state authority, (2) when the actual or effective outdoor temperature is 85 degrees Fahrenheit or higher or 32 degrees Fahrenheit or lower, or (3) during the effective period for a severe weather warning issued for the area by the National Weather Service, including a winter storm, tornado, or severe thunderstorm warning, unless an animal control officer, having inspected an animal's individual circumstances in clause (c) (1), (2), or (3), has determined the animal to be safe from predators and well suited and well equipped to tolerate its environment.

"Adequate space" means sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means that the tether to which the animal is attached permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness that is configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; is at least 15 feet in length or four times the length of the animal, as measured from the tip of its nose to the base of its tail, whichever is greater, except when the animal is being walked on a leash or is attached by a tether to

a lead line or when an animal control officer, having inspected an animal's individual circumstances, has determined that in such an individual case, a tether of at least 10 feet or three times the length of the animal, but shorter than 15 feet or four times the length of the animal, makes the animal more safe, more suited, and better equipped to tolerate its environment than a longer tether; does not, by its material, size, or weight or any other characteristic, cause injury or pain to the animal; does not weigh more than one-tenth of the animal's body weight; and does not have weights or other heavy objects attached to it. The walking of an animal on a leash by its owner shall not constitute the tethering of the animal for the purpose of this definition. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space. The provisions of this definition that relate to tethering shall not apply to agricultural animals.

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

"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.2-6522, animal means any species susceptible to rabies. For the purposes of § 3.2-6570, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § 3.2-6555.

"Boarding establishment" means a place or establishment other than a public or private animal shelter

where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee. "Boarding establishment" shall not include any private residential dwelling that shelters, feeds, and waters fewer than five companion animals not owned by the proprietor.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring, provided that a person who breeds an animal regulated under federal law as a research animal shall not be deemed to be a commercial dog breeder.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. No agricultural animal or game species, or animal actively involved in bona fide scientific or medical experimentation shall be considered a companion animal for the purposes of this chapter.

"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barters companion animals. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier or (ii) any person whose primary purpose is to find permanent adoptive homes for companion animals.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Dump" means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves

instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent that causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the U.S. Department of Agriculture.

"Facility" means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

"Farming activity" means, consistent with standard animal husbandry practices, the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding, exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals pursuant to such purposes.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Foster home" means a private residential dwelling and its surrounding grounds, or any facility other than a public or private animal shelter, at which site through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization care or rehabilitation is provided for companion animals.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Home-based rescue" means an animal welfare organization that takes custody of companion animals for the purpose of facilitating adoption and houses such companion animals in a foster home or a system of foster homes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.2-6558.

"Humane society" means any incorporated, nonprofit organization that is organized for the purposes of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

"Incorporated" means organized and maintained as a legal entity in the Commonwealth.

"Inspector" means a State Animal Welfare Inspector employed pursuant to § 3.2-5901.1 or his representative.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama or Vicugna; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"Low-income owner" means an animal owner who is a resident of Virginia and whose annual gross income is no more than 125 percent of the poverty standard provided by the U.S. Department of Health and Human Services.

"Medically unfit" means unsuitable for a surgical procedure due to any medical condition that may place a dog or cat at life-threatening risk if a surgical procedure is performed on such animal, as determined by a veterinarian.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 3.2-6574, and who adopts or receives a dog or cat from a releasing agency.

"Ordinance" means any law, rule, regulation, or ordinance adopted by the governing body of any locality.

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any locality, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who~~:~~ (i) has a right of property in an animal~~;~~, (ii) keeps or harbors an animal~~;~~, (iii) has an animal in his care~~;~~, or (iv) acts as a custodian of an animal.

"Pet shop" means a retail establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

"Properly cleaned" means that carcasses, debris, food waste, and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" when referring to a facility means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the facility; and to promote the well-being of the animals.

"Properly lighted" when referring to a private residential dwelling and its surrounding grounds means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to promote the well-being of the animals.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals or a facility operated for the same purpose under a contract with any locality.

"Releasing agency" means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are

carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species and has ingested such food, without nursing, for a period of at least five days.

§ 3.2-6504.2. Companion Animal Surgical Sterilization Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Companion Animal Surgical Sterilization Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. The pet food surcharges collected under § 58.1-1707.1 (i) shall be paid into the state treasury and credited to the Fund and (ii) shall be the sole source of incoming moneys to the Fund.

Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of paying the costs of surgical sterilizations of eligible animals and of presurgical examinations and vaccinations of companion animals eligible for surgical sterilization under the Companion Animal Surgical Sterilization Program established in § 3.2-6504.3 and the administration of such Program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

§ 3.2-6504.3. Companion Animal Surgical Sterilization Program; report.

A. The Department shall establish and administer the Companion Animal Surgical Sterilization Program (the Program), to begin July 1, 2027, and shall adopt necessary regulations in support of the Program. The Department shall work cooperatively with other agencies of the Commonwealth, including the Department of Social Services and the Department of Health, to facilitate the development of screening procedures for determining the eligibility of low-income owners to participate in the Program. The Department shall screen companion animal owners for eligibility for the Program, or contract for screening, to promote the ease and convenience of applying for services under the Program. The Department shall promote the Program to inform the public about companion animal overpopulation issues and surgical sterilization. The Department shall prepare and submit to the Governor and the General Assembly no later than April 30 of each year a report that describes and evaluates the Program's performance and impact over the previous year and cumulatively since its inception.

B. Beginning July 1, 2027, an animal shall be eligible for surgical sterilization at no or reduced cost to its owner or caretaker if it is (i) a companion animal that is in the possession of a releasing agency or a nonprofit organization, is not owned by an individual, and has not been transferred from a jurisdiction outside Virginia into the Commonwealth or (ii) the companion animal of a low-income owner.

C. No moneys shall be expended in the establishment and administration of the Program except those moneys in the Companion Animal Surgical Sterilization Fund established in § 3.2-6504.2.

D. For the purposes of this section, "companion animal" means a domestic cat or a domestic dog.

§ 3.2-6504.4. Participation by veterinarians in the Companion Animal Surgical Sterilization Program.

A. For the purposes of this section:

"Companion animal" means a domestic cat or a domestic dog.

"Program" means the Companion Animal Surgical Sterilization Program established in § 3.2-6504.3.

B. Surgical sterilization services provided under the Program shall be performed only by veterinarians licensed in the Commonwealth.

C. Any veterinarian, releasing agency, or nonprofit organization that provides surgical sterilizations of companion animals is eligible to apply to the Department to participate in the Program pursuant to § 3.2-6504.3. Each applicant shall submit an application that includes a schedule listing the fees charged for companion animal sterilization in the applicant's normal course of business. In addition to providing a schedule of fees, each releasing agency or nonprofit organization shall provide documentation of its direct and indirect costs of performing surgical sterilization.

D. No participating surgical sterilization provider shall be required to (i) perform a medical procedure on an animal that the provider determines is medically unfit or (ii) provide services to both dogs and cats. No participating private veterinarian shall be required to screen applicants for eligibility.

E. Beginning July 1, 2027, and on a monthly basis thereafter, the Department shall pay from the Companion Animal Surgical Sterilization Fund created in § 3.2-6504.2 each participating surgical sterilization provider for those surgical sterilizations, presurgical examinations, and vaccinations that the Department has authorized for reimbursement as follows:

1. A private veterinary surgical sterilization provider shall be entitled to reimbursement under its normal fee schedule, provided that no such fee exceeds an amount that the Department determines is usual, customary, and reasonable. The usual, customary, and reasonable fee limit shall be calculated at the seventieth percentile rate, based upon the Department's review of prevailing fees for similar services charged by similar private veterinary practices in the Commonwealth. The Department may establish rates of compensation for presurgical examinations and for administration of vaccinations in such a manner and at a level that the Department determines is fair and reasonable and shall evaluate and adjust rates of compensation as warranted at two-year intervals.

2. The Department shall establish separate rates of compensation for the reasonable costs of surgical sterilization provided by releasing agencies and nonprofit organizations that are participating surgical sterilization providers. Compensation provided under this section shall not exceed the fee limit established for private veterinary practices. The Department shall evaluate and adjust rates of compensation as warranted at two-year intervals.

F. To receive reimbursement for surgical sterilizations and other approved services, the participating surgical sterilization provider shall submit documentation of authorized services performed as required by the Department. The Department shall not reimburse a provider for any services not authorized for payment.

G. A participating surgical sterilization provider may charge a low-income owner of a dog or cat a copayment that shall not exceed $20 per dog and $10 per cat. Owners of companion animals are responsible for payment of any additional fees due to the participating surgical sterilization provider that are mutually agreed upon, administered by that provider, and not covered under the Program.

§ 58.1-1707.1. Pet food surcharge.

There is hereby levied and imposed upon every person in the Commonwealth engaged in business as a manufacturer or wholesaler of pet food products an annual Companion Animal Surgical Sterilization Fund surcharge of $50 for each ton of pet food distributed in the Commonwealth, to be paid into the state treasury and credited to the Companion Animal Surgical Sterilization Fund as specified in § 3.2-6504.2.

§ 58.1-1708. Products.

Manufacturers, wholesalers, distributors, or retailers of the following products shall be subject to the tax imposed in § 58.1-1707:

1. Food for human ~~or pet~~ consumption;

2. Groceries;

3. Cigarettes and tobacco products;

4. Soft drinks and carbonated waters;

5. Beer and other malt beverages;

6. Wine;

7. Newspapers and magazines;

8. Paper products and household paper;

9. Glass containers;

10. Metal containers;

11. Plastic or fiber containers made of synthetic material;

12. Cleaning agents and toiletries;

13. Nondrug drugstore sundry products;

14. Distilled spirits; and

15. Motor vehicle parts.