

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2008

section 1536 and the transfer pursuant to Public Law 2007, chapter 240, Part MM.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective April 24, 2008.

CHAPTER 701

H.P. 1667 - L.D. 2307

An Act To Restore Positions in the Office of Program Evaluation and Government Accountability

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation provides funds to restore positions that were eliminated in Public Law 2007, chapter 539, which takes effect June 30, 2008; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. PL 2007, c. 539, Pt. LLLL, §1 is repealed and the following enacted in its place:

Sec. LLLL-1. Governmental oversight; recommendations. The Director of the Office of Program Evaluation and Government Accountability shall:

1. Work with relevant offices and agencies, including the Office of Fiscal and Program Review, the Office of Policy and Legal Analysis, the State Controller and the State Auditor, to facilitate the sharing of resources and coordination of program review across State Government in order to maintain and strengthen program evaluation function; and

2. Recommend to the Government Oversight Committee performance standards to maximize the effectiveness of the Office of Program Evaluation and Government Accountability in carrying out its mission to improve the effectiveness, efficiency and economic use of resources of State Government.

Sec. 2. PL 2007, c. 539, Pt. LLLL, §2 is amended to read:

Sec. LLLL-2. Legislative account; lapsed balances; Office of Program Evaluation and Government Accountability - General Fund. Notwithstanding any other provision of law, \$16,517 of unencumbered balance forward in the Personal Services line category and ~~\$300,964~~ \$495,964 in the unencumbered balance forward in the All Other line category in the Office of Program Evaluation and Government Accountability General Fund account in the Legislature lapses to the General Fund in fiscal year 2008-09.

Sec. 3. PL 2007, c. 539, Pt. LLLL, §3 is repealed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect June 30, 2008.

Effective June 30, 2008.

CHAPTER 702

H.P. 1545 - L.D. 2171

An Act To Amend the Animal Welfare Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §621, as amended by PL 2005, c. 620, §21, is further amended by inserting after the first paragraph a new paragraph to read:

The State Controller is authorized to advance up to \$500,000 from the Board of Pesticides Control account to the Animal Welfare Fund during any state fiscal year if requested in writing by the commissioner. The funds must be used to meet expenditures of the animal welfare program within the department. The funds must be returned to the account before the close of the state fiscal year in which the advance was made.

Sec. 2. 7 MRSA §714, sub-§1, as amended by PL 2007, c. 459, §2, is further amended to read:

1. Application for registration. A person may not distribute in this State a commercial feed, except a customer-formula feed, that has not been registered pursuant to this section. The application for registration must be submitted in the manner prescribed by the commissioner on forms furnished by the commissioner. The annual fee is \$80 per product name for pet food ~~except that~~ and the total annual fee for a home-based manufacturer of pet food is ~~\$100~~ \$80. The annual fee is \$80 per product name for all other commercial feed. Upon approval by the commissioner the registration must be issued to the applicant. All registrations expire on the 31st day of December. The commissioner may issue a registration for a one-year,

2-year or 3-year period. Registrations for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year registration is 2 times the annual fee. The fee for a 3-year registration is 3 times the annual fee.

Sec. 3. 7 MRSA §3907, sub-§8-A, as amended by PL 2005, c. 510, §3, is further amended to read:

8-A. Breeding kennel. "Breeding kennel" means a location where 5 or more adult dogs, wolf hybrids or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. "Breeding kennel" does not include a kennel licensed by a municipality under section 3923-C when the dogs are kept primarily for hunting, show, training, mushing, field trials or exhibition purposes and not more than 16 dogs are offered for sale, sold or exchanged for value within a 12-month period.

Sec. 4. 7 MRSA §3907, sub-§12-D, as amended by PL 2001, c. 399, §4, is further amended to read:

12-D. Dangerous dog. "Dangerous dog" means a dog that bites an individual or a domesticated animal who is not trespassing on the dog owner's or keeper's premises at the time of the bite or a dog that causes a reasonable and prudent person who is not on the dog owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear imminent bodily injury by assaulting or threatening to assault that individual or individual's domestic animal. "Dangerous dog" does not include a dog certified by the State and used for law enforcement use. "Dangerous dog" does not include a dog that bites or threatens to assault an individual who is on the dog owner's or keeper's premises if the dog has no prior history of assault and was provoked by the individual immediately prior to the bite or threatened assault.

For the purposes of this definition, "dog owner's or keeper's premises" means the residence or residences, including buildings and land and motor vehicles, belonging to the owner or keeper of the dog.

Sec. 5. 7 MRSA §3907, sub-§15-B is enacted to read:

15-B. Humanely clean conditions. "Humanely clean conditions" means that both indoor areas and outdoor enclosures are cleaned on a periodic basis to remove excretions and other waste materials, dirt and trash with sufficient frequency to minimize health hazards and to provide adequately clean living conditions for the species of animal.

Sec. 6. 7 MRSA §3907, sub-§17, as amended by PL 2003, c. 536, §2, is further amended to read:

17. Kennel. "Kennel" means 5 or more dogs or wolf hybrids kept in a single location under one ownership for breeding, hunting, show, training, field trials ~~and, mushing or~~ exhibition purposes. The sale or exchange of one litter of puppies within a 12-month period alone does not constitute the operation of a kennel.

Sec. 7. 7 MRSA §3919-D is enacted to read:

§3919-D. Temporary animal shelter

The department may temporarily impound animals within an enclosure other than a licensed animal shelter, and such an enclosure constitutes a temporary animal shelter. When animals are held at a temporary animal shelter for more than 21 days, the shelter must comply with the standards established by the department for licensed animal shelters.

Sec. 8. 7 MRSA §3931-A, sub-§5 is enacted to read:

5. License number requirements. A breeding kennel shall prominently display in written advertising the state-issued kennel license number.

The breeding kennel shall provide its license number to a person purchasing or receiving an animal from the breeding kennel.

Sec. 9. 7 MRSA §3952, sub-§1, as amended by PL 2007, c. 170, §1, is further amended to read:

1. Procedure. Any person who is assaulted or threatened with imminent bodily injury by a dog or any person witnessing an assault or threatened assault against a person or domesticated animal or a person with knowledge of an assault or threatened assault against a minor, within 30 days of the assault or threatened assault, may make written complaint to the sheriff, local law enforcement officer or animal control officer that the dog is a dangerous dog. For the purposes of this chapter, "domesticated animal" includes, but is not limited to, livestock as defined in section 3907, subsection 18-A.

Upon investigation of the complaint, the sheriff, local law enforcement officer or animal control officer may issue a civil violation summons for keeping a dangerous dog.

If, upon hearing, the court finds that the dog is a dangerous dog as defined in section 3907, subsection 12-D, the court ~~may~~ shall impose a fine and shall:

A. Order the dog confined in a secure enclosure except as provided in subsection 8. For the purposes of this paragraph, "secure enclosure" means a fence or structure of at least 6 feet in height forming or making an enclosure suitable to prevent the entry of young children and suitable to confine a dangerous dog in conjunction with other measures that may be taken by the owner or keeper, such as tethering the dangerous dog. The

secure enclosure must be locked, be designed with secure top, bottom and sides and be designed to prevent the animal from escaping from the enclosure; or

B. Order the dog to be euthanatized if it has killed, maimed or inflicted serious bodily injury upon a person or has a history of a prior assault.

The court may order restitution in accordance with Title 17-A, chapter 54 for any damages inflicted upon a person or a person's property.

Sec. 10. 7 MRSA §4011, sub-§1, ¶H, as amended by PL 2001, c. 425, §2, is further amended to read:

H. Injects, inserts or causes ingestion of any substance used solely to enhance the performance of an animal by altering the animal's metabolism to that animal's detriment, including but not limited to excessive levels of sodium bicarbonate in equines used for competition; ~~or~~

Sec. 11. 7 MRSA §4011, sub-§1, ¶I, as enacted by PL 2001, c. 425, §3, is amended to read:

I. Kills or tortures an animal to frighten or intimidate a person or forces a person to injure or kill an animal; ~~or~~

Sec. 12. 7 MRSA §4011, sub-§1, ¶J is enacted to read:

J. Confines an animal in a building, enclosure, car, boat, vehicle or vessel of any kind when extreme heat or extreme cold will be harmful to its health.

Sec. 13. 7 MRSA §4011, sub-§2, ¶B, as enacted by PL 1987, c. 383, §3, is amended to read:

B. The conduct was designed to control or eliminate rodents, ants or other common pests on the defendant's own property; ~~or~~

Sec. 14. 7 MRSA §4011, sub-§2, ¶C, as amended by PL 2003, c. 414, Pt. B, §15 and affected by c. 614, §9, is further amended to read:

C. The conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13; ~~or~~

Sec. 15. 7 MRSA §4011, sub-§2, ¶D is enacted to read:

D. The animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the department.

Sec. 16. 7 MRSA §4015, sub-§2, ¶C, as amended by PL 2007, c. 439, §27, is repealed.

Sec. 17. 7 MRSA §4016, sub-§3 is enacted to read:

3. Affirmative defenses. It is an affirmative defense to alleged violations of this chapter that the animal was kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the department.

Sec. 18. 7 MRSA §4018, sub-§1, as enacted by PL 2001, c. 422, §11, is amended to read:

1. Report by veterinarian. A Except as provided in subsection 1-A, a veterinarian licensed in accordance with Title 32, chapter 71-A who, while acting in a professional capacity, has reasonable cause to suspect that an animal is the subject of cruelty or neglect in violation of this chapter or Title 17, chapter 42, may report the suspected violation to the commissioner; or the commissioner's designee, an animal control officer, attorney for the State or law enforcement officer. A veterinarian making a report under this section may appear and testify in a judicial or administrative proceeding concerning the condition or care of the animal.

Sec. 19. 7 MRSA §4018, sub-§1-A is enacted to read:

1-A. Report by veterinarian required. A veterinarian licensed in accordance with Title 32, chapter 71-A who, while acting in a professional capacity, has reasonable cause to suspect that an animal is the subject of aggravated cruelty under Title 17, section 1031, subsection 1-B shall report the suspected violation to the commissioner or the commissioner's designee. A veterinarian making a report under this section may appear and testify in a judicial or administrative proceeding concerning the condition or care of the animal.

Sec. 20. 7 MRSA §4019 is enacted to read:
§4019. Removal from unattended motor vehicle

1. Removal authorized. A law enforcement officer, humane agent or animal control officer may take all steps that are reasonably necessary to remove an animal from a motor vehicle if the animal's safety, health or well-being appears to be in immediate danger from heat, cold or lack of adequate ventilation and the conditions could reasonably be expected to cause extreme suffering or death.

2. Notice required. A law enforcement officer, humane agent or animal control officer who removes an animal in accordance with subsection 1 shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing the officer's or agent's name and office and the address of the location where the animal may be claimed. The owner may claim the animal only after payment of all charges that have accrued for the maintenance, care, medical treatment and impoundment of the animal.

3. Immunity. A law enforcement officer, humane agent or animal control officer who removes an animal from a motor vehicle pursuant to subsection 1 is immune from criminal or civil liability that might otherwise result from the removal.

Sec. 21. 7 MRSA §4151, sub-§4, as amended by PL 2007, c. 439, §31, is repealed.

Sec. 22. 7 MRSA §4151, sub-§4-A is enacted to read:

4-A. Seller. "Seller" means the owner or operator of a breeding kennel as defined in section 3907, subsection 8-A or the owner or operator of a pet shop as defined in section 3907, subsection 23. "Seller" includes animal dealers required to be licensed by the United States Department of Agriculture. "Seller" does not include humane societies, nonprofit organizations performing the functions of humane societies or animal shelters licensed in accordance with section 3932-A.

Sec. 23. 7 MRSA §4152, as amended by PL 1997, c. 690, §51, is further amended to read:

§4152. Disclosure

1. Required disclosure. A ~~pet-dealer~~ seller shall deliver to a purchaser of an animal a written disclosure containing the following:

- A. An animal history that includes:
 - (1) For ~~pet-dealers~~ sellers licensed with the United States Department of Agriculture, the name, address and United States Department of Agriculture license number of the breeder and any broker who has had possession of the animal;
 - (2) The date of the animal's birth;
 - (3) The date the ~~pet-dealer~~ seller received the animal;
 - (4) The breed, sex, color and identifying marks of the animal;
 - (5) The individual identifying tag, tattoo or collar number;
 - (6) For pure bred animals, the name and registration number of the sire and dam and the litter number; and
 - (7) A record of inoculations, worming treatments, medication or any veterinarian treatment received by the animal while in the possession of the breeder or dealer;
- B. A statement signed by the ~~pet-dealer~~ seller that the animal at time of delivery has no known health problem or a statement disclosing any known health problem.

The statement must include the date at which the ~~dealer~~ seller is aware that the animal was last seen by a veterinarian;

C. A ~~pet-dealer~~ seller who represents an animal as eligible for registration with an animal pedigree organization shall provide the retail purchaser with a notice stating that pedigree registration does not assure health or quality of an animal; and

D. The ~~pet-dealer~~ seller shall indicate whether or not, to the ~~pet-dealer's~~ seller's knowledge, the animal or its sire or dam is registered with, and whether the animal is certified by any organization that maintains a registry pertaining to congenital or hereditary problems and explain the meaning of these terms.

2. Optional disclosure. The ~~pet-dealer~~ seller may provide the purchaser with a list of congenital or hereditary problems that are known to affect the breed being purchased and a list of any health problems for which the ~~dealer~~ seller does not warrant the animal.

3. Disclosure procedures. The following disclosure procedures must be followed.

A. The disclosure required by subsection 1 must be made part of the statement of consumer rights set forth in section 4160.

B. The written disclosure made pursuant to this section must be signed by both the ~~pet-dealer~~ seller certifying the accuracy of the statement and by the purchaser of the animal acknowledging receipt of the statement.

C. The ~~dealer~~ seller shall make a prospective purchaser aware that the purchaser may see this information prior to purchase.

Sec. 24. 7 MRSA §4153, as enacted by PL 1995, c. 589, §1, is amended to read:

§4153. Sale prohibited

Notwithstanding section 4152, a ~~pet-dealer~~ seller may not sell an animal that has any obvious clinical sign of infectious, contagious, parasitic or communicable disease or abnormality or has any disease, illness or condition that requires hospitalization or nonelective surgical procedures.

Sec. 25. 7 MRSA §4155, sub-§2, as enacted by PL 1995, c. 589, §1, is amended to read:

2. Death; remedies. When an animal dies due to a health problem that would have rendered the animal unfit for sale pursuant to subsection 1, and that health problem existed in the animal at the time of delivery to the purchaser but was not disclosed under the provisions of section 4152, the ~~pet-dealer~~ seller shall provide the purchaser with one of the following remedies selected by the purchaser:

- A. An animal of equal value, if available; or

B. A refund of the full purchase price of the animal.

Sec. 26. 7 MRSA §4155, sub-§3, as enacted by PL 1995, c. 589, §1, is amended to read:

3. Health problem; remedies. When an animal has a health problem that renders the animal unfit for sale pursuant to subsection 1, and that health problem existed in the animal at the time of delivery to the purchaser but was not disclosed under the provisions of section 4152, the ~~pet-dealer~~ seller shall provide the purchaser with one of the following remedies selected by the purchaser:

A. Return of the animal to the ~~pet-dealer~~ seller for a refund of the full purchase price of the animal;

B. Exchange of the animal for an animal of the purchaser's choice of equivalent value, providing a replacement is available; or

C. Retainment of the animal and reimbursement for 1/2 of the reasonable veterinary fees not to exceed 1/2 of the original purchase price of the animal.

Sec. 27. 7 MRSA §4155, sub-§5, as enacted by PL 2007, c. 439, §32, is amended to read:

5. Sellers not exempt. ~~Pet-dealers~~ Sellers may not, contractually or otherwise, exempt themselves from the remedies provided by this section for deaths or health problems caused by infectious, contagious, parasitic or communicable disease.

Sec. 28. 7 MRSA §4156, sub-§1, as enacted by PL 1995, c. 589, §1, is amended to read:

1. Veterinary diagnosis. The purchaser must notify the ~~pet-dealer~~ seller, within 2 business days, of the diagnosis by a veterinarian of a health problem and provide the ~~pet-dealer~~ seller with the name and telephone number of the veterinarian and a copy of the veterinarian report on the animal.

Sec. 29. 7 MRSA §4156, sub-§2, as enacted by PL 1995, c. 589, §1, is amended to read:

2. Refund. If the purchaser wishes to receive a full refund for the animal, the purchaser must return the animal no later than 2 business days after receipt of a written statement from a veterinarian indicating that the animal is unfit due to a health problem. With respect to a dead animal, the purchaser must provide the ~~pet-dealer~~ seller with a written statement from a veterinarian indicating that the animal died from a health problem that existed on or before the receipt of the animal by the purchaser.

Sec. 30. 7 MRSA §4157, as amended by PL 2007, c. 439, §33, is further amended to read:

§4157. Rights of seller

1. Refusal to sell. A ~~pet-dealer~~ seller may refuse to sell an animal to a potential purchaser who appears not to accept or understand the provisions of this chapter.

2. Exemption from purchaser remedies. A refund, replacement or reimbursement of veterinary fees is not required if any one or more of the following conditions are met.

A. The health problem or death of the animal resulted from maltreatment, neglect or a disease contracted while in the possession of the purchaser or from an injury sustained subsequent to receipt of the animal by the purchaser.

B. A disclosure statement was provided to the purchaser pursuant to section 4152 that disclosed the health problem for which the purchaser seeks to return the animal.

C. The health problem is a hereditary or congenital one covered by section 4152.

Sec. 31. 7 MRSA §4158, sub-§1, as enacted by PL 1995, c. 589, §1, is amended to read:

1. Demand for remedy; contest. When a ~~pet-dealer~~ seller wishes to contest a demand for the remedy specified in section 4155, the ~~pet-dealer~~ seller may require the purchaser to produce all the veterinarian's records and the animal for examination or autopsy by a veterinarian designated by the ~~pet-dealer~~ seller. The veterinarian designated by the seller must be practicing at a veterinary clinic within 100 miles of the purchaser's residence. The ~~pet-dealer~~ seller shall pay the cost of this examination or autopsy. The ~~pet-dealer~~ seller has a right of recovery against the purchaser if the ~~pet-dealer~~ seller is not obligated to provide a remedy under section 4155.

Sec. 32. 7 MRSA §4158, sub-§2, as amended by PL 1997, c. 690, §53, is further amended to read:

2. Right to court action. If the ~~pet-dealer~~ seller does not provide the remedy selected by the purchaser set forth in section 4155, the purchaser may initiate a court action. The prevailing party in the court action has the right to recover costs and reasonable attorney's fees.

Sec. 33. 7 MRSA §4159, as enacted by PL 1995, c. 589, §1, is amended to read:

§4159. Posted notice

A ~~pet-dealer~~ seller whose facility has public access shall post, in a prominent location in the area to which a prospective purchaser would have access, a notice printed in a minimum of 48-point, bold-faced type and containing the following language:

"YOU ARE ENTITLED TO A STATEMENT OF CONSUMER RIGHTS AND DISCLOSURE OF YOUR ANIMAL'S HEALTH HISTORY AND THE WARRANTY ON YOUR ANIMAL. YOU MAY ASK TO SEE THESE ITEMS PRIOR TO PURCHASE. MAKE SURE YOU RECEIVE THESE ITEMS AT THE TIME OF PURCHASE."

Sec. 34. 7 MRSA §4160, sub-§1, as enacted by PL 1995, c. 589, §1, is amended to read:

1. Written notice. A ~~pet-dealer~~ seller shall provide the purchaser a written notice of rights, signed by the ~~pet-dealer~~ seller, certifying the accuracy of the information contained in the notice. The notice must be signed by the purchaser, acknowledging that the purchaser has reviewed and understood the written notice. A signed copy must be retained by the ~~pet-dealer~~ seller and one copy given to the purchaser. The notice must be in a minimum of 16-point, bold-faced type and must state the following:

"A STATEMENT OF MAINE LAW GOVERNING THE SALE OF DOGS AND CATS:

The sale of dogs and cats is subject to consumer protection regulations. Maine law also provides safeguards to protect ~~pet-dealers~~ sellers and animal purchasers. Attached is a copy of the Maine Revised Statutes, Title 7, chapter 745. Contained in this law is a statement of your consumer rights and remedies. Also attached is your pet's health history and specific warranty information."

Sec. 35. 7 MRSA §4160, sub-§2, as enacted by PL 1995, c. 589, §1, is amended to read:

2. Oral notice. In addition, all medical information required to be disclosed pursuant to this section must be orally disclosed to the purchaser by the ~~dealer~~ seller prior to purchase.

Sec. 36. 7 MRSA §4163, first ¶, as enacted by PL 2007, c. 439, §34, is amended to read:

A person may not advertise for sale, sell or exchange for value more than one cat or dog under the age of 6 months in a 12-month period unless that person has a valid animal shelter, kennel, breeding kennel or pet shop license or a valid vendor's license issued under this section.

Sec. 37. 7 MRSA §4163, sub-§1, as enacted by PL 2007, c. 439, §34, is amended to read:

1. Vendor's license; fee. A person may apply for a vendor's license by completing and submitting to the department an application form provided by the department ~~along with a \$25 vendor's license fee~~. Upon receipt of a completed application ~~and the fee~~, the department shall issue a vendor's license and an identifying license number that is valid for a period of

~~60~~ 90 days from the date of issuance. A person is entitled to one vendor's license in a 12-month period at no charge. A fee of \$25 must be submitted with each additional application for a vendor's license within a 12-month period.

Sec. 38. 17 MRSA §1011, sub-§8-A, as amended by PL 2005, c. 510, §9, is further amended to read:

8-A. Breeding kennel. "Breeding kennel" means a location where 5 or more adult dogs, wolf hybrids or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. "Breeding kennel" does not include a kennel licensed by a municipality under Title 7, section 3923-C when the dogs are kept primarily for hunting, show, training, mushing, field trials or exhibition purposes and not more than 16 dogs are offered for sale, sold or exchanged for value within a 12-month period.

Sec. 39. 17 MRSA §1011, sub-§15-B is enacted to read:

15-B. Humanely clean conditions. "Humanely clean conditions" means that both indoor areas and outdoor enclosures are cleaned on a periodic basis to remove excretions and other waste materials, dirt and trash with sufficient frequency to minimize health hazards and to provide adequately clean living conditions for the species of animal.

Sec. 40. 17 MRSA §1011, sub-§17, as enacted by PL 1987, c. 383, §4, is amended to read:

17. Kennel. "Kennel" means one pack or collection of dogs kept in a single location under one ownership for breeding, hunting, show, training, field trials ~~and~~ mushing or exhibition purposes.

Sec. 41. 17 MRSA §1021, sub-§1, ¶A, as enacted by PL 1987, c. 383, §4, is amended to read:

A. To take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has ~~cruelly~~ abandoned or cruelly treated it and turn over the animal to the applicant or other suitable person; or

Sec. 42. 17 MRSA §1021, sub-§3, as enacted by PL 1987, c. 383, §4, is amended to read:

3. Hearing. If it appears at the hearing that the animal has been cruelly abandoned or cruelly treated by its owner or the animal is maimed, disabled, diseased, dehydrated, malnourished or injured, the court shall:

A. Direct the applicant or other suitable person to take possession of and provide for the animal, order its sale, adoption, ~~donation or return of the animal to its owner~~ or placement; or

B. Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful; or

C. If appropriate, allow the animal to be returned to its owner.

Sec. 43. 17 MRSA §1021, sub-§4, ¶A, as amended by PL 1997, c. 690, §63, is further amended to read:

A. A state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or the commissioner may apply to the District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has ~~cruelly~~ abandoned or cruelly treated it and turn it over to the applicant or any other suitable person.

An order may be entered ex parte upon findings by the court or justice of the peace that there is a reasonable likelihood that:

(1) The defendant is not subject to the jurisdiction of the court for the purposes of a hearing or the owner cannot be found by reasonable diligence or is out-of-state although a resident of this State, and there is a danger that unless immediate action is taken:

(a) The condition of an injured, overworked, tormented, tortured, abandoned, poisoned or mutilated animal, or animal deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions will be substantially impaired or worsened;

(b) The animal's life will be jeopardized; or

(c) A great degree of medical attention will be necessary to restore the animal to a normal, healthy condition;

(2) There is a clear danger that if the owner or the owner's agent is notified in advance of the issuance of the order of court, as provided in subsection 3, the owner or the owner's agent may remove the animal from the State, conceal it or otherwise make it unavailable;

(3) There is immediate danger that the owner or the owner's agent will kill or injure the animal; or

(4) An animal is being or has been injured, overworked, tormented, tortured, abandoned, poisoned, mutilated, or deprived of necessary sustenance, necessary medical attention,

proper shelter or protection from the weather or humanely clean conditions and, unless an ex parte order issues allowing the applicant to take possession of the animal, the animal will die, its condition will be substantially impaired or worsened or medical attention will be necessary to restore the animal to a normal, healthy condition.

Sec. 44. 17 MRSA §1021, sub-§5-A, as amended by PL 1995, c. 490, §24, is further amended to read:

5-A. Seizure by state humane agent or state veterinarian without court order. A state humane agent or a state veterinarian who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of and retain the cruelly treated animal. Upon taking possession of an animal under this section, the humane agent or the state veterinarian shall present the owner with a notice that:

A. States the reason for seizure;

B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and

C. Advises the owner of the ensuing court procedure.

If the owner can not be found, the humane agent or the state veterinarian shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent or the state veterinarian shall contact the animal shelter or shelters used by the municipality in which the animal was found. The humane agent or the state veterinarian shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent or the state veterinarian shall apply to the court for a possession order. The court shall set a hearing date and that hearing date must be within ~~40~~ 21 days of the date the animal was seized. The humane agent or the state veterinarian shall arrange care for the animal, including medical treatment, if necessary, pending the hearing.

The humane agent or the state veterinarian shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the

hearing that the animal has been ~~cruelly~~ abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery.

Sec. 45. 17 MRSA §1031, sub-§1, ¶J, as amended by PL 2003, c. 452, Pt. I, §13 and affected by Pt. X, §2, is further amended to read:

J. Kills or tortures an animal to frighten or intimidate a person or forces a person to injure or kill an animal. Violation of this paragraph is a Class D crime; ~~or~~

Sec. 46. 17 MRSA §1031, sub-§1, ¶J-1, as enacted by PL 2003, c. 452, Pt. I, §13 and affected by Pt. X, §2, is amended to read:

J-1. Violates paragraph J and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime; ~~or~~

Sec. 47. 17 MRSA §1031, sub-§1, ¶K is enacted to read:

K. Confines an animal in a building, enclosure, car, boat, vehicle or vessel of any kind when extreme heat or extreme cold will be harmful to its health. Violation of this paragraph is a Class D crime.

Sec. 48. 17 MRSA §1031, sub-§2, as amended by PL 2003, c. 414, Pt. B, §31 and c. 452, Pt. I, §17 and affected by Pt. X, §2 and c. 614, §9, is further amended to read:

2. Affirmative defense. It is an affirmative defense to prosecution under this section that:

A. The defendant's conduct conformed to accepted veterinary practice or was a part of scientific research governed by accepted standards;

B. The defendant's conduct or that of the defendant's agent was designed to control or eliminate rodents, ants or other common pests on the defendant's own property; ~~or~~

C. The defendant's conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13; ~~or~~

D. The animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the Department of Agriculture, Food and Rural Resources.

Evidence of proper care of any animal is not admissible in the defense of alleged cruelty to other animals.

Sec. 49. 17 MRSA §1037, sub-§2, ¶B, as amended by PL 2005, c. 340, §3, is further amended to read:

B. Except as provided in subsections 5 and 7, shelter from inclement weather must be ~~as follows~~ provided according to this paragraph.

(1) An artificial shelter, with a minimum of 3 sides and a waterproof roof, appropriate to the local climatic conditions for the species ~~concerned and breed of the animal~~ must be provided as necessary for the health of the animal.

(2) If a dog is tied or confined unattended outdoors under weather conditions that adversely affect the health of the dog, a shelter ~~of suitable size with a floor above ground and waterproof roof~~ must be provided in accordance with subsection 7, paragraph A to accommodate the dog and protect it from the weather and, in particular, from severe cold. Inadequate shelter may be indicated by the shivering of the dog due to cold weather for a continuous period of ~~30~~ 10 minutes or by symptoms of frostbite or hypothermia. A metal barrel is not adequate shelter for a dog.

Sec. 50. 17 MRSA §1037, sub-§2, ¶C, as enacted by PL 1987, c. 383, §4, is repealed.

Sec. 51. 17 MRSA §1037-A is enacted to read:

§1037-A. Affirmative defense

It is an affirmative defense to alleged violations of sections 1035, 1036 and 1037 that the animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the Department of Agriculture, Food and Rural Resources.

See title page for effective date.

CHAPTER 703

H.P. 1459 - L.D. 2075

An Act To Amend Motor Vehicle Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §242, sub-§10, as enacted by PL 2007, c. 456, §2, is amended to read:

10. Receipt of money and property. The council may accept grants or contributions of money or other things of value from any source, public or private. The council receives funds from the sale of agriculture education plates pursuant to Title 29-A, section