

MAINE STATE LEGISLATURE

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THE MICHIE COMPANY
CHARLOTTESVILLE VIRGINIA

Chapter 140.

Cruelty to Animals.

Sec. 1. Maliciously killing or injuring domestic animals; stealing.—Whoever willfully or maliciously kills, wounds, maims, disfigures or poisons any domestic animal or dog, or exposes any poisonous substance with intent that the life of such animal or dog shall be destroyed thereby, or steals or entices away or confines or harbors such animal for the purpose of obtaining a reward or for any other illegal purpose, shall be punished by a fine of not less than \$20 nor more than \$500, or by imprisonment for not more than 4 years. (R. S. c. 127, § 1.)

Cross reference.—Sec c. 68, § 16, re killing animals by poisons.

Former provisions of section.—For a case under this section when it applies

only to domestic animals and not to dogs, see *State v. Harriman*, 75 Me. 562.

Cited in *Wade v. Warden of State Prison*, 145 Me. 120, 73 A. (2d) 128.

Sec. 2. Cruelty to animals.—Every person, who cruelly overdrives, overloads or overworks, who torments, tortures, maims, wounds or deprives of necessary sustenance, or who cruelly beats, mutilates or kills any horse or other animal or causes the same to be done, or having the charge or custody thereof, as owner or otherwise, unnecessarily fails to provide such animal with proper food, drink, shelter and protection from the weather; every person, owning or having the charge or custody of any animal, who knowingly and willfully authorizes or permits the same to suffer tortures or cruelty; and every owner, driver, possessor or person having the custody of an old, maimed, disabled or diseased animal, who cruelly works the same when unfit for labor or who cruelly abandons such animal; and every person who carries or causes to be carried, or has the care of, in or upon a car or other vehicle or otherwise, any animal in a cruel or inhuman manner shall for every such offense be punished by a fine of not less than \$5 nor more than \$200, or by imprisonment for not more than 11 months. (R. S. c. 127, § 2.)

Section describes two offenses.—The first clause of this section describes one offense, and the second clause another. One offense implies an act done; the other an act omitted. One clause makes any person liable to punishment who cruelly ill-treats an animal in any of certain ways named. The other clause makes only the person who has the “charge and custody” of the animal liable for an unnecessary failure to provide for his wants. A complaint, therefore, would be bad for duplicity if the two offenses were completely alleged. *State v. Haskell*, 76 Me. 399.

It is not an offense under this section to neglect to feed an animal, if the person complained of has not the charge and custody of such animal. *State v. Haskell*, 76 Me. 399.

When complaint not duplicitous.—A complaint which charges that “the defendant did, a horse belonging to himself, cruelly and unlawfully torment, torture, maim, beat, wound, and deprive of necessary sustenance,” is not amenable to the objection of duplicity. Only one offense is charged. *State v. Haskell*, 76 Me. 399.

“Charge” and “custody” defined.—The words, “charge,” and “custody,” are frequently used synonymously. The lexicographers give them as synonyms. They are placed in this section, however, disjunctively, and in such cases need not be conjunctively averred, and cannot be disjunctively averred. The statute word, “custody,” therefore, in a complaint, sufficiently charges the defendant’s control. *State v. Clark*, 86 Me. 194, 29 A. 984.

Meaning of “as owner or otherwise.”—It is not necessary to define the nature of the defendant’s custody, “as owner or otherwise.” Those words were inserted for the very purpose of obviating any supposed necessity of that sort. This section intends to reach persons having either the “charge or custody,” if there can be any distinction made in the meaning of those words, without requiring any further particulars to be averred or proved, as such a requirement might paralyze any attempt to punish apparent cruelty. It is sufficient to charge and prove, that the defendant, having the custody of the animal, was guilty of the inhuman treatment prohibited

by the statute. *State v. Clark*, 86 Me. 194, 29 A. 984.

Meaning of "unnecessarily."—The word "unnecessarily" in this section cannot be construed so as to relieve the owner of cattle of the duty to furnish them adequate food, notwithstanding that pasturage may

not be available and the procurement of other proper food may entail additional expense. See *State v. Jordan*, 126 Me. 115, 136 A. 483.

Cited in *Eldridge v. O'Connell*, 114 Me. 457, 96 A. 744.

Sec. 3. Shooting of pigeons and other birds for amusement; not applicable to wild game.—Whoever keeps or uses any live pigeon, fowl or other bird for a target or to be shot at, either for amusement or as a test of skill in marksmanship, and whoever shoots at any bird as aforesaid or is present as a party, umpire or judge at such shooting, and whoever rents any building, shed, room, yard, field or premises, or knowingly suffers the use of the same for such purpose, shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days. Nothing in this section prohibits the shooting of wild game in its wild state or the shooting of birds at field trials under the supervision of the department of inland fisheries and game in accordance with the provisions of section 151 of chapter 37. (R. S. c. 127, § 3. 1953, c. 11, § 1.)

Sec. 4. Premeditated fights between animals. — Whoever instigates, or aids in getting up, or acts as umpire or judge, or is connected with, or participates in any fight between game birds or game cocks, dogs or bulls, or between dogs and rats or other animals, premeditated by any person having custody thereof, shall be punished by a fine of not more than \$200, or by imprisonment for not less than 10 days nor more than 6 months. (R. S. c. 127, § 4.)

Sec. 5. Complaint, warrant and proceedings to prevent and to punish.—If any person competent to testify in civil suits makes complaint on oath before any judge of a municipal court or trial justice that an offense specified in section 4 is about to be committed, setting forth in such complaint the grounds of his belief, such magistrate may issue his warrant directed to any competent officer, therein reciting the name and residence of the complainant and the substance of his complaint, and directing such officer to prevent the violation of said section by arresting any persons whom he finds willfully violating the same, and by bringing the respondents before such magistrate for trial. (R. S. c. 127, § 5.)

Sec. 6. Keeping places for fighting or baiting dogs, cocks or other creatures.—Whoever keeps or uses, or is in any way connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of fighting or baiting any dog, cock or other creature, and whoever aids or assists therein, or suffers any place to be so kept or used shall be punished by a fine of not more than \$50 or by imprisonment for not more than 2 months. (R. S. c. 127, § 6.)

Sec. 7. Owning or training any bird or animal to fight. — Whoever owns, possesses, keeps or trains any bird or animal with intent that the same shall be engaged in an exhibition of fighting shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days. (R. S. c. 127, § 7.)

Sec. 8. Officers may enter buildings where birds or animals kept for unlawful training; dwelling protected. — Any sheriff, deputy sheriff, constable, police officer, officer of any society for the prevention of cruelty to animals or any other person authorized to make arrests may enter any building or enclosure where he has reason to believe that any bird or creature is kept for any unlawful purpose hereinbefore named; and whoever resists or interferes with such officer shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months. Nothing in this section allows any officer to enter a dwelling house without a warrant. (R. S. c. 127, § 8.)

Sec. 9. Exhibition of bears; menageries excepted.—Whoever shall go about from town to town, or from place to place in any town, exhibiting any bear, shall be punished by a fine of not more than \$20 or by imprisonment for not more than 30 days, and such bear, after such notice to the owner thereof as the court may order, and a hearing thereon, may be declared forfeited and ordered to be killed; but this section shall not be construed to prohibit the transportation or exhibition of bears in any authorized menagerie. (R. S. c. 127, § 9.)

See c. 37, § 18, re roadside menageries.

Sec. 10. Railroads to give cars containing animals continuous passage and preference to other freight.—Railroad companies within the state shall give cars containing cattle, sheep, swine or other animals a continuous passage in preference to other freight; and cars loaded with such animals at any station shall have precedence over all other freight. A greater number of animals shall not be loaded into any car than can stand comfortably therein. Animals of one kind only shall be loaded in the same apartment. Young animals shall not be loaded in the same apartment with those larger and mature, except in case of dams with their own and other sucklings, which shall in all cases be transported in the same apartment and separate from other animals. Calves shall have free access to their dams and shall not be muzzled, except that calves, for a period not to exceed 24 hours, may be transported in a separate compartment. During December, January, February and March, cars used for the transportation of animals shall be sufficiently boarded on the sides and ends to afford proper protection to such animals in case of storms or severely cold weather. A railroad company or other transportation line violating any provision of this section forfeits not less than \$50 nor more than \$500, for every such offense. (R. S. c. 127, § 10.)

Sec. 11. Animals brought into state allowed rest, shelter, food and water; animals in transit.—Animals coming into the state on the same or connecting roads or other transportation lines shall, within 28 hours after they were loaded, be unloaded, comfortably yarded and, in cold or inclement weather, comfortably sheltered, and shall be furnished with a sufficient quantity of proper food and good water; and they shall continue so yarded or sheltered, fed and watered for a reasonable time. All animals in transit within the state shall be so unloaded, yarded or sheltered, fed and watered every 28 hours, unless delayed by accident or other unavoidable circumstances. Animals arriving at their destination within the state, or for embarkation on steamers between the hours of 3 in the forenoon and 6 in the afternoon, shall be so unloaded, yarded or sheltered, fed and watered within 6 hours thereafter and before embarkation. Animals arriving between the hours of 6 in the afternoon and 3 in the forenoon, shall be so unloaded, yarded or sheltered, fed and watered before 9 o'clock in the forenoon following and before embarkation, if remaining in the state. The railroad company or transportation line having animals in charge within the state at the expiration of the limit of time herein specified for unloading, feeding and watering is liable to the penalties herein specified, for such neglect. A railroad company or other transportation line violating any provision of this section forfeits not less than \$50 nor more than \$500, for every such offense. (R. S. c. 127, § 11.)

Sec. 12. Time of confinement extended upon request; sheep.—Upon the written request of the owner or person in custody of any particular shipment of animals, which written request shall be separate and apart from any printed bill of lading or any railroad form, the time of confinement of any particular shipment of animals may be extended to 36 hours; a railroad company or transportation line shall not be required to unload sheep in the nighttime, but where the time expires in the nighttime, in case of sheep, the same may continue in transit to a suitable place for unloading, not exceeding, however, the limitation of 36 hours during which they may be confined. A railroad company or other

transportation line violating any provision of this section forfeits not less than \$50 nor more than \$500, for every such offense. (R. S. c. 127, § 12.)

Sec. 13. Application to owners, shippers, etc.—Sections 10 and 11 shall apply to the owners, shippers, charterer of cars or other person having the care, custody or charge of animals loaded into any car or transported upon any railroad; and such owners, shippers, charterer of cars or other person having the care, custody or charge of animals loaded into cars or transported over any railroad, for a violation of any of the provisions of said sections 10 and 11, shall be subject to the same penalties as are imposed upon railroad companies for a like violation by said sections. (R. S. c. 127, § 13.)

Sec. 14. Railroad companies have lien on animals for penalties and for care and protection.—Any railroad company or other transportation line shall have a lien on all animals in transit for reimbursement of penalties paid in consequence of the direction or orders of the owner or other person having such animals in charge, and for all extra expenses or damages incurred in the care and protection of animals according to this chapter, and is not liable for any detention of such animals for the purposes herein named. (R. S. c. 127, § 14.)

Sec. 15. Officers may take possession of animals detained in violation of law; lien.—Any sheriff, deputy sheriff, police officer, constable, officer of any society for the prevention of cruelty to animals or other person authorized to make arrests may take possession of any animals detained in violation of the provisions of this chapter and may unload the same, comfortably yard or shelter, feed, water and care for them and have a lien thereon for a reasonable sum for such care, and is not liable for any damages for detention of the same. (R. S. c. 127, § 15.)

Sec. 16. Enforcement of lien.—Persons or corporations having such lien as provided for in the preceding section may enforce it by a sale thereof, in the same manner as in case of enforcements of liens on goods in possession and choses in action provided for in sections 77 to 85, inclusive, of chapter 178. (R. S. c. 127, § 16.)

Constitutionality of former statute.—For a case concerning the constitutionality of former statute (R. S. 1930, c. 135, § 63) providing for the enforcement of the lien, see *Jordan v. Gaines*, 136 Me. 291, 8 A. (2d) 585.

Sec. 17. Old, maimed, disabled, diseased, injured or abandoned animals destroyed. — Any sheriff, deputy sheriff, constable, police officer or agent for any society for the prevention of cruelty to animals or any person authorized to make arrests may apply to any municipal court or trial justice for process to permit the applicant to take possession of any old, maimed, disabled, diseased or injured animal or any animal whose owner has cruelly abandoned or cruelly fails to take care of or provide for, or for process to cause the same to be destroyed. If the owner is known, a copy of such application shall be served upon him in hand with an order of court to appear at a time and place named, to show cause why such animal should not be taken or destroyed. If the owner cannot be found by reasonable diligence, or is out of the state although a resident therein, a copy of such application and order of court shall be left at his last and usual place of abode. If the owner is not known, then the court shall order notices to be posted in 2 public and conspicuous places in the town, stating the case and circumstances and giving 48 hours' notice of hearing thereon. At such hearing, if it appears that such animal has been abandoned by its owner, or that such animal is old, maimed, disabled, diseased or injured, or its owner has cruelly failed to take care of it and provide for it, the court shall order such animal to be destroyed or shall issue process, directing the applicant for such process or some other suitable person to take possession of such animal. The court may direct the applicant or some other suitable person to take possession of and provide for

said animal pending the hearing on the process sought under the provisions of this section or pending any continuance of said hearing; said persons to have a lien for their expenses thus incurred, said lien to be enforced as hereinafter provided. The defendant may appeal as in a civil action and pending such appeal the court may order the applicant or some other suitable person to take possession of said animal and to furnish the same with proper shelter, nourishment and care for the same, but before such appeal shall be allowed, the defendant shall give sufficient security to satisfy the applicant or such other person as the court shall direct to take possession of said animal, approved by the court, to pay all of the expenses for the care and support of such animal pending appeal.

Any person taking possession of any animal as provided in this section shall have a lien thereon for his expense of furnishing the same with proper shelter, nourishment and care, and may enforce said lien in the same manner as liens on goods in possession and choses in action; and the court in giving judgment for such lien shall include thereon a pro rata amount for pasturage, feed and shelter, provided by the lienor from the date of the commencement of proceedings to the date of the judgment. (R. S. c. 127, § 17.)

Constitutionality of former statute.—For animals without notice to the owner, see a case concerning the constitutionality of Randall v. Patch, 118 Me. 303, 108 A. 97. a former statute (R. S. 1916, c. 126, § 59) See also King v. Hayes, 80 Me. 206, 13 A. which provided for the destruction of 882.

Sec. 18. Dogs brought to veterinarian. — Any person finding a sick, stray, injured or abandoned dog may take the same to any licensed veterinarian, humane society or shelter within the state, who may accept the same. Any licensed veterinarian, humane society or shelter accepting such a sick, stray, injured or abandoned dog shall keep the same for a period of 2 weeks and shall be entitled to receive from the state the sum of \$1 per day for such period or part thereof as they shall provide food and shelter, provided that such licensed veterinarian, humane society or shelter shall notify the clerk of their respective town or city within 24 hours after accepting such a dog, such notice to include a detailed description of the dog and the circumstances of its finding. Upon the expiration of said 2 weeks if the owner of the dog has not appeared to claim the same then said licensed veterinarian, humane society or shelter may give away, sell or otherwise humanely dispose of said dog; proceeds from any sale shall be deducted from any claim for board made to the state. In the event the owner of such a dog shall appear and claim the dog while still in possession of said keeper, the owner may have and receive the same upon payment of all charges provided for in this section. All moneys paid by the state to such keepers shall be taken from the fund received from dog licenses. (1953, c. 367.)

See c. 100, § 9 et seq., re licensing of dogs.

Sec. 19. Officers may interfere to prevent cruelty; interference with officer, misdemeanor.—Such officer or agent may lawfully interfere to prevent the perpetration of any act of cruelty upon an animal in his presence, and whoever interferes with or obstructs such officer or agent in the discharge of his duty is guilty of a misdemeanor. (R. S. c. 127, § 18.)

See c. 135, § 21, re assaults upon or interference with officers.

Sec. 20. Care of sheep abandoned on islands; lien.—The keeping or leaving of sheep on any of the uninhabited and barren islands lying off the coast of Maine within said state during the months of December, January, February and March of any year without providing sufficient food and proper shelter therefor shall be deemed prima facie evidence that the owner or person having the custody and control of such sheep is guilty of cruelty to animals and subject to the penalties provided in section 2. Any person may take charge of such sheep whose

owner has cruelly abandoned it, or cruelly fails to take care and provide for it, and may furnish the same with proper shelter, nourishment and care at the owner's expense, and have a lien thereon for the same; and may enforce said lien in the manner provided for in section 17. (R. S. c. 127, § 19.)

Constitutionality of former statute.—For anywhere abandoned or mistreated, see a case concerning the constitutionality of Jordan v. Gaines, 136 Me. 291, 8 A. (2d) 585. a former statute (R. S. 1930, c. 135, § 67) which provided for the taking of any animal

Sec. 21. Docking horses' tails; disposal of fines.—Whoever cuts the solid part of the tail of any horse in the operation known as docking, or by any other operation performed for the purpose of shortening the tail, and whoever causes the same to be done or assists in doing such cutting, unless the same is proved to be a benefit to the horse, shall be punished by a fine of not more than \$100. All fines collected under the provisions of this section upon or resulting from the complaint or information of an officer or agent of the Maine state society for the protection of animals shall be paid over to said society in aid of the benevolent objects for which it was incorporated. (R. S. c. 127, § 20.)

Sec. 22. Officers to prosecute for violations; payment for services.—Sheriffs, deputy sheriffs, police officers, constables and agents appointed under the provisions of the following section shall investigate all cases of cruelty to animals coming to their knowledge and shall inspect all stockyards actively engaged in handling animals for shipment when authorized to do so by the county commissioners of the county within which said stockyards or places of shipment are located, and shall be paid for such inspection on the same basis as is herein provided for investigation of cases of cruelty to animals. Said officers and agents shall cause offenders to be prosecuted in all cases in which the offense may appear to be of a sufficiently aggravated nature to require prosecution; all fines imposed for the punishment of such offenses shall be paid over to the county treasurer of the county in which the offense may have been committed. For services and expenses in conducting such investigations such agents shall be paid a reasonable sum by the county in which such services are rendered and expenses incurred, and for their travel the same fees as are now allowed officers by law for the service of a warrant for arrest, but no county shall be liable to pay the fees of such agents for their travel outside of its lines; provided, however, that all claims of such agents for such travel and services shall first be audited and approved by the county commissioners of the county liable to pay the same. (R. S. c. 127, § 21.)

See c. 119, § 11, re verification of accounts and claims against state and municipalities.

Sec. 23. Governor and council to appoint state humane agents.—Upon application by the mayor and aldermen of any city, the selectmen of any town, the county commissioners of any county or the president and 3 directors of any society for the prevention of cruelty to animals, the governor and council may issue a badge and commission to any person designated to arrest any person charged with violating any of the preceding 21 sections, the same as any sheriff, deputy sheriff or constable can do, and whose jurisdiction shall extend throughout the state. Such persons so designated shall be known as and denominated state humane agents. (R. S. c. 127, § 22. 1945, c. 234.)

Cited in Eldridge v. O'Connell, 114 Me. 457, 96 A. 744; Cole v. Pendleton, 118 Me. 486, 105 A. 715.

Sec. 24. Handling of animals seized by humane agent.—No person acting under authority of a state humane agent shall sell, breed or trade animals

coming into their possession by reason of office, or shall provide or supply dealers, commercial kennels or laboratories with such animals.

Livestock to be sold at public auction shall be exempted from the provisions of this section. (1947, c. 181.)

Sec. 25. Jurisdiction.—Trial justices shall on complaint cause to be arrested any person charged with the commission in their counties of any of the offenses described in the 23 preceding sections; the offense may be deemed to have been committed in any county where such animal may be found; and when such offenses are not of a high and aggravated nature, they may try and punish by a fine of not less than \$5 nor more than \$20, and by imprisonment for not more than 30 days; but when on examination the offense appears to be one not within their jurisdiction for trial, they may cause the person or persons charged with the commission of the same to recognize with sureties to appear before the superior court, and in default thereof to be committed to jail. (R. S. c. 127, § 23. 1953, c. 308, § 101.)

Sec. 26. Definitions.—In this chapter and in every law relating to or affecting animals, the masculine includes the feminine, the singular includes the plural, the word “animal” includes every living brute creature, the words “torment,” “torture” and “cruelty” include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted and the words “owner” or “person” include corporations as well as individuals. (R. S. c. 127, § 24.)

Sec. 27. Vivisection in schools supported wholly or in part by public money.—No person in any of the schools of the state supported wholly or in part by public money shall practice vivisection or perform any experiment upon a living animal, or exhibit to any pupil in such school an animal which has been vivisected or experimented upon. Whoever willfully violates any of the provisions of this section shall be punished by a fine of not less than \$10 nor more than \$25. (R. S. c. 127, § 25.)

Sec. 28. Sale of diseased horses. — It shall be unlawful for any person holding an auctioneer’s license to receive or offer for sale or to sell at public auction, or for any person to sell at private sale, any horse which by reason of debility, disease or lameness, or for other cause could not be worked in this state without violating the laws against cruelty to animals, but this section shall not be construed to prohibit the sale to and the purchase of animals by humane societies incorporated under the laws of this state for the purpose of humanely killing the same. Any licensed auctioneer violating any provision of this section shall forfeit his license, and any person violating any provision of this section shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment for not more than 6 months. (R. S. c. 127, § 26.)

Sec. 29. Moving picture films not to involve in preparation deliberate cruelty to animals.—No person knowingly and willfully, as owner, manufacturer, photographer, exhibitor, manager, director or agent or in any other capacity, shall prepare, manufacture, make, exhibit or participate in the preparation, manufacturing, making or exhibiting of any moving or motion picture film involving in its preparation, manufacture or making, intentional and deliberate cruelty to animals for the sole purpose of furnishing a scene for said moving or motion picture film. Any person who violates any provision of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 3 months, or by both such fine and imprisonment. Any corporation violating any such provision shall be responsible for the knowledge and acts of its agent and servants therein and shall be punished by a fine as herein provided, and such corporation and its agent or servant may be punished for the same act. Trial justices shall have jurisdiction of all offenses under this section. (R. S. c. 127, § 27.)