

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 389**

H. P. 292

House of Representatives, February 7, 1979

Referred to the Committee on Agriculture. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Drinkwater of Belfast.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT Authorizing the Issuing of Ex Parte Orders by the Courts and Complaint Justices to Allow Humane Agents and other Authorized Officers to take Possession of Neglected, Mistreated or Injured Animals.**

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

17 MRSA § 1211, as amended by PL 1973, c. 598, § 13, is repealed and the following enacted in its place:

**§ 1211. Destruction of certain animals**

1. Possession. The commissioner or any sheriff, deputy sheriff, constable, police officer, state humane agent or any person authorized to make arrests may apply to the District Court or the Superior Court 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 or turned over to the applicant or some other suitable person. If the owner is known, a copy of the 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 the animal should not be taken or destroyed or turned over to the applicant or some other suitable person. If the owner cannot be found by reasonable diligence, or is out of the State although a resident therein, a copy of the 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, where the animal was found, stating the case and circumstances and giving 48 hours' notice of hearing thereon. At the hearing, if it appears that the animal has been abandoned by its owner, or that the 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 the animal to be destroyed or shall issue process, directing the applicant for process or some other suitable person to take and retain possession of and provide for the animal pending disposition by the court, and to sell or dispose of the same or return the same to the owner as may be ordered by the court, which order shall be subject to modification from time to time.

2. Ex Parte order. The commissioner or any sheriff, deputy sheriff, constable, police officer, state humane agent or any person authorized to make arrests may apply to the District Court, Superior Court or a complaint justice for an ex parte order 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 turned over to the applicant or some other suitable person. These orders may be entered ex parte upon findings by the court or complaint justice that there is a reasonable likelihood that:

A. The person of 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 application, or is out of the State although a resident therein, and there is a danger that unless immediate action is taken the condition of an injured, overworked, tormented, tortured, abandoned, poisoned or mutilated animal, animal deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions will be so substantially impaired or worsened or that the animal's life will be jeopardized or that a great degree of medical attention will be necessary to restore the animal to a normal, healthy condition;

B. There is a clear danger if the owner or his agent is notified in advance of the issuance of the application as set forth in subsection 1, he may remove the animal from the State, will conceal it or will otherwise make it unavailable;

C. There is an immediate danger that the owner or his agent will kill or injure the animal; or

D. An animal is being or has been injured, overworked, tormented, tortured, abandoned, poisoned, mutilated, 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 commissioner or any sheriff, deputy sheriff, constable, police officer, state humane agent or any person authorized to make arrests to take possession the animal will die, or its condition will be so substantially impaired or worsened that the attention will be necessary to restore the animal to a normal, healthy condition.

This section shall not apply to animals, who are currently being well cared for when it is necessary to euthanize those animals due to old age of the animal. "Well cared for" shall mean that the animal is receiving necessary sustenance, necessary medical attention, proper shelter, protection from the weather, and humanely clean conditions, and it has not been nor is it being overworked, tormented, tortured, abandoned, poisoned, beaten, mutilated or exposed to a poison with the intent that it be taken by the animal. This section shall not apply to a person's conduct designed to control or eliminate rodents, ants or other common pests on his own property.

3. Dissolution or modification of ex parte order. On 2-day's notice or such shorter notice as the court may prescribe, the commissioner or any sheriff, deputy sheriff, constable, police officer, state humane agent or any person authorized to make arrests, an owner whose animal has been possessed by any of the aforesaid authorized agents pursuant to an ex parte order, may appear in the District Court or Superior Court, and move the dissolution or modification of the ex parte order, and in that event the court shall proceed to hear and determine that motion as expeditiously as the ends of justice require. At the hearing the authorized agent, who has taken the animal under the ex parte order, shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. The affidavit required by this rule shall set forth specific facts sufficient to warrant the required findings and shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that he believes this information to be true.

4. Responsibility. In the event of the return of the animal to the owner, the owner shall pay all fees and all expenses incurred in connection with taking and keeping of the animal and providing it with care and support. In the event of sale of the animal all of the fees and expenses of taking, keeping, caring for and supporting shall be deducted from the sale price and the balance if any turned over to the owner or forfeited to the county from which the process issued. The court may direct the applicant or some other suitable person to take possession of and provide for the animal pending the hearing on the process sought under this section or pending any continuance of the hearing; the persons providing for the animal pursuant to order or direction of the court to have, unless the complaint is dismissed, a lien for their expenses thus incurred, the lien to be enforced as provided. The defendant may appeal as in a civil action and pending the appeal the court may order the applicant or some other suitable person to take possession of the animal and to furnish the same with proper shelter, nourishment and care for the same, but before the appeal shall be allowed, the defendant shall give sufficient security to satisfy the applicant or other person as the court shall direct to take possession of the animal, approved by the court, to pay all of the expenses for the care and support of the animal pending appeal.

5. Lien. 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 the lien in the same

manner as liens on goods in possession and choses in action. The court in giving judgment for the 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 or the final disposition of the animal as ordered by the court.

STATEMENT OF FACT

This bill authorizes the issuing of ex parte orders by the courts and complaint justices to allow humane agents and other authorized officers to take possession of neglected, mistreated or injured animals.