

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 218

6
7 S.P. 87

In Senate, January 18, 1983

8 Received by the Secretary of the Senate on January 18, 1983. Referred to
9 the Committee on Agriculture, and ordered printed pursuant to Joint Rule 14.

10 JOY J. O'BRIEN, Secretary of the Senate

11 Presented by Senator Wood of York.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Make More Efficient the
18 Enforcement of Laws Relating to Cruelty
19 to Animals.
20

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

23 Sec. 1. 7 MRSA §2, 3rd ¶, as amended by PL 1979,
24 c. 731, §6, is further amended to read:

25 The commissioner does not have authority to exer-
26 cise or interfere with the exercise of any discre-
27 tionary statutory authority granted to the following,
28 which authority shall be exclusively within the spe-
29 cific board, bureau, agency, commission, committee or
30 other governmental unit: The Maine Dairy and Nutri-
31 tion Council Committee, the Maine Dairy Promotion
32 Board, the Maine Milk Commission, the Seed Potato
33 Board, the Harness Racing Commission, the Maine
34 Potato Commission, the Soil and Water Conservation

1 Commission, the Board of Veterinary Medicine and the
2 Board of Pesticide Control, and the Animal Welfare
3 Board.

4 Sec. 2. 7 MRSA §12, as amended by PL 1977, c.
5 694, §41, is further amended to read:

6 §12. Rules, regulations and standards

7 The commissioner shall adopt, consistent with the
8 Maine Administrative Procedure Act, rules and regula-
9 tions for carrying out this Title, Title 10, chapter
10 309, ~~Title 17, chapter 43~~ and Title 32, chapter 61.
11 He may fix standards of purity, quality or strength
12 when ~~such~~ these standards are not specified or fixed
13 by law, and shall publish them together with such
14 other information concerning articles of commercial
15 feeding stuff, commercial fertilizer, drug or food as
16 he may deem to be of public benefit.

17 Sec. 3. 7 MRSA §13, 1st ¶, as amended by PL
18 1973, c. 598, §4, is further amended to read:

19 The commissioner shall diligently enforce all
20 provisions of this Title, ~~Title 17, chapter 43~~ and
21 Title 32, chapter 27 and shall be entitled to and
22 shall receive the assistance of the Attorney General
23 and of the several county attorneys. He may recover
24 the penalties imposed for violations of this Title
25 and Title 32, chapter 27 in a civil action brought in
26 his own name, the venue to be as in other civil ac-
27 tions, and if he prevails in any such action, shall
28 recover full costs, or he may prosecute for viola-
29 tions hereof by complaint or indictment, and such
30 prosecution shall be commenced in the county in which
31 the offense was committed.

32 Sec. 4. 7 MRSA §14, as amended by PL 1977, c.
33 694, §42, is further amended to read:

34 §14. Hearings on violations

35 When the commissioner becomes cognizant of the
36 violation of any provision of this Title, Title 10,
37 chapter 309, ~~Title 17, chapter 43~~, Title 22, sections
38 2151 to 2162 and Title 32, chapters 27 and 61, he
39 shall provide opportunity for hearing in a manner

1 consistent with the Maine Administrative Procedure
2 Act and shall, in any case, cause a copy of the find-
3 ing or, in case of a packer of food, a copy of the
4 charge to be preferred, to be given to that person
5 concerned and the person from whom the sample was
6 obtained, and the person whose name appears upon the
7 label, if a resident of the State. When the hearing
8 relates to the packing of apples, it shall be held in
9 the county where the inspection was made.

10 Sec. 5. 7 MRSA §3451, 13th ¶, as amended by PL
11 1979, c. 731, §19, is further amended to read:

12 The commissioner, his authorized agent, the Ani-
13 mal Welfare Board or its agents, a state humane agent
14 or a veterinarian employed by the State may, at any
15 reasonable time, enter any boarding kennel, kennel or
16 pet shop, excepting any building used for human habi-
17 tation heretofore recognized as not subject to search
18 warrant and make examination and conduct any recog-
19 nized test for the existence of any contagious or
20 infectious diseases or conditions. The commissioner
21 or his authorized agent may inspect pet shops, board-
22 ing kennels and kennels in accordance with the sani-
23 tation and health regulations established by the
24 Department of Agriculture, Food and Rural Resources.
25 A veterinarian employed by the State or any licensed
26 veterinarian may quarantine such pet shop, boarding
27 kennel and kennel in person or by registered mail,
28 and such quarantine shall be maintained as long as
29 the commissioner deems necessary. The decision and
30 order for this quarantine shall not be considered
31 licensing or an adjudicatory proceeding, as defined
32 by the Maine Administrative Procedure Act.

33 Sec. 6. 7 MRSA §3451, 14th ¶, as amended by PL
34 1977, c. 694, §145, is further amended to read:

35 The Administrative Court, upon complaint of the
36 commissioner, the Animal Welfare Board or the Attor-
37 ney General, may revoke or suspend a pet shop, kennel
38 and boarding kennel license providing any person,
39 firm or corporation maintaining such pet shop, kennel
40 and boarding kennel violates any quarantine or main-
41 tains animals or birds contrary to the rules and
42 regulations promulgated by the commissioner or fails
43 to keep records required by the commissioner.

1 · Sec. 7. 17 MRSA §1051, first ¶, as amended by PL
2 1979, c. 731, §19, is repealed and the following
3 enacted in its place:

4 The Animal Welfare Board shall enforce all provi-
5 sions of this chapter, and, wherever used in this
6 chapter, unless otherwise specified, the word "board"
7 means Animal Welfare Board or its agents.

8 Sec. 8. 17 MRSA §1176, as amended by PL 1973,
9 c. 598, §11, is further amended to read:

10 §1176. Officers may take possession of animals
11 unlawfully detained; lien

12 The ~~emmissioner~~ board or any sheriff, deputy
13 sheriff, police officer, constable, state humane
14 agent or other person authorized to make arrests may
15 take possession of any animals detained in violation
16 of this chapter and may unload the same, comfortably
17 yard or shelter, feed, water and care for them and
18 have a lien thereon for a reasonable sum for ~~such~~
19 that care, and is not liable for any damages for
20 detention of the same.

21 Sec. 9. 17 MRSA §1177, as amended by PL 1973, c.
22 598, §12, is further amended to read:

23 §1177. Enforcement of lien

24 The ~~emmissioner~~ board or any persons or corpora-
25 tions having such lien as provided for in section
26 1176 may enforce it by a sale thereof, in the same
27 manner as in case of enforcements of liens on goods
28 in possession and choses in action provided for in
29 Title 10, chapter 631.

30 Sec. 10. 17 MRSA §1211, sub-§§1, 2 and 3, as
31 enacted by PL 1979, c. 317, are amended to read:

32 1. Possession. The ~~emmissioner~~ board or agent
33 for any society for the prevention of cruelty to ani-
34 mals or any sheriff, deputy sheriff, constable,
35 police officer, state humane agent, animal control
36 officer or any person authorized to make arrests may
37 apply to the District Court or the Superior Court for
38 process to permit the applicant to take possession of

1 any old, maimed, disabled, diseased or injured animal
2 or any animal whose owner has cruelly abandoned or
3 cruelly fails to take care of or provide for, or for
4 process to cause the same to be destroyed or turned
5 over to the applicant or some other suitable person.
6 If the owner is known, a copy of the application
7 shall be served upon him in hand with an order of
8 court to appear at a time and place named, to show
9 cause why the animal should not be taken or destroyed
10 or turned over to the applicant or some other suit-
11 able person. If the owner cannot be found by reason-
12 able diligence, or is out of the State although a
13 resident therein, a copy of the application and order
14 of court shall be left at his last and usual place of
15 abode. If the owner is not known, then the court
16 shall order notices to be posted in 2 public and con-
17 spicuous places in the town, where the animal was
18 found, stating the case and circumstances and giving
19 48 hours' notice of hearing thereon. At the hearing,
20 if it appears that the animal has been abandoned by
21 its owner, or that the animal is old, maimed, dis-
22 abled, diseased or injured, or its owner has cruelly
23 failed to take care of it and provide for it, the
24 court shall order the animal to be destroyed or shall
25 issue process, directing the applicant for process or
26 some other suitable person to take and retain posses-
27 sion of and provide for the animal pending disposi-
28 tion by the court, and to sell or dispose of the same
29 or return the same to the owner as may be ordered by
30 the court, which order shall be subject to modifi-
31 cation from time to time.

32 2. Ex parte order. The ~~commissioner~~ board or
33 agent for any society for the prevention of cruelty
34 to animals or any sheriff, deputy sheriff, constable,
35 police officer, state humane agent, animal control
36 officer or any person authorized to make arrests may
37 apply to the District Court, Superior Court or a com-
38 plaint justice for an ex parte order to permit the
39 applicant to take possession of any old, maimed, dis-
40 abled, diseased or injured animal or any animal whose
41 owner has cruelly abandoned or cruelly fails to take
42 care of or provide for, or for process to cause the
43 same to be turned over to the applicant or some other
44 suitable person. These orders may be entered ex parte
45 upon findings by the court or complaint justice that
46 there is a reasonable likelihood that:

1 A. The person of the defendant is not subject to
2 the jurisdiction of the court for the purposes of
3 a hearing or the owner cannot be found by reason-
4 able diligence, or is out of the State although a
5 resident therein, and there is a danger that
6 unless immediate action is taken the condition of
7 an injured, overworked, tormented, tortured,
8 abandoned, poisoned or mutilated animal, animal
9 deprived of necessary sustenance, necessary medi-
10 cal attention, proper shelter or protection from
11 the weather or humanely clean conditions will be
12 so substantially impaired or worsened or that the
13 animal's life will be jeopardized or that a great
14 degree of medical attention will be necessary to
15 restore the animal to a normal, healthy condi-
16 tion;

17 B. There is a clear danger if the owner or his
18 agent is notified in advance of the issuance of
19 the application order as set forth in subsection
20 1, he may remove the animal from the State, will
21 conceal it or will otherwise make it unavailable;

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

24 D. An animal is being or has been injured,
25 overworked, tormented, tortured, abandoned, poi-
26 soned, mutilated, deprived of necessary
27 sustenance, necessary medical attention, proper
28 shelter or protection from the weather or
29 humanely clean conditions and unless an ex parte
30 order issues allowing the commissioner or any
31 sheriff, deputy sheriff, constable, police offi-
32 cer, state humane agent, animal control officer
33 or any person authorized to make arrests to take
34 possession the animal will die, or its condition
35 will be so substantially impaired or worsened
36 that the attention will be necessary to restore
37 the animal to a normal, healthy condition.

38 This section shall not apply to animals, who are
39 currently being well cared for when it is neces-
40 sary to euthanize those animals due to old age of
41 the animal. "Well cared for" shall mean that the
42 animal is receiving necessary sustenance, neces-
43 sary medical attention, proper shelter, protec-

1 tion from the weather, and humanely clean condi-
2 tions, and it has not been nor is it being
3 overworked, tormented, tortured, abandoned, poi-
4 soned, beaten, mutilated or exposed to a poison
5 with the intent that it be taken by the animal.
6 This section shall not apply to a person's con-
7 duct designed to control or eliminate rodents,
8 ants or other common pests on his own property.

9 3. Dissolution or modification of ex parte
10 order. On 2-days notice or such shorter notice as the
11 court may prescribe, the ~~commissioner~~ board or agent
12 for any society for the prevention of cruelty to ani-
13 mals or any sheriff, deputy sheriff, constable,
14 police officer, state humane agent or any person
15 authorized to make arrests, an owner whose animal has
16 been possessed by any of the aforesaid authorized
17 agents pursuant to an ex parte order, may appear in
18 the District Court or Superior Court, and move the
19 dissolution or modification of the ex parte order,
20 and in that event the court shall proceed to hear and
21 determine that motion as expeditiously as the ends of
22 justice require. At the hearing the authorized agent,
23 who has taken the animal under the ex parte order,
24 shall have the burden of justifying any finding in
25 the ex parte order which the defendant has challenged
26 by affidavit. The affidavit required by this rule
27 shall set forth specific facts sufficient to warrant
28 the required findings and shall be upon the affiant's
29 own knowledge, information or belief; and, so far as
30 upon information and belief, shall state that he
31 believes this information to be true.

32 Sec. 11. 17 MRSA §1212, as amended by PL 1975,
33 c. 70, §1, is further amended to read:

34 §1212. Prevention of cruelty

35 The ~~commissioner~~ board or any person authorized
36 to make arrests may lawfully interfere to prevent the
37 perpetration of any act of cruelty upon an animal in
38 his presence.

39 Sec. 12. 17 MRSA §1213, as repealed and replaced
40 by PL 1973, c. 598, §15, is amended to read:

41 §1213. Prosecutions; payment for services

1 Sheriffs, deputy sheriffs, police officers, con-
2 stables and, state humane agents, and agents for any
3 society for the prevention of cruelty to animals
4 shall investigate all cases of cruelty to animals
5 coming to their knowledge and report the same to the
6 ~~commissioner~~ board. The ~~commissioner~~ board shall
7 cause offenders to be prosecuted in all cases in
8 which the offense may appear to be of a sufficiently
9 aggravated nature to require prosecution.

10 Sec. 13. 17 MRSA §1214, as repealed and replaced
11 by PL 1973, c. 666, §2, is repealed.

12 Sec. 14. 17 MRSA §1214-A is enacted to read:

13 §1214-A. Animal Welfare Board.

14 1. Board appointments. An Animal Welfare Board
15 is hereby created. It shall consist of 5 members,
16 including the Commissioner of Agriculture, Food and
17 Rural Resources who shall serve ex officio. The
18 remaining 4 members of the board shall be appointed
19 by the Governor from among nominations made to the
20 Governor by qualified humane societies domiciled in
21 this State.

22 A. A qualified humane society is a nonprofit
23 corporation existing pursuant to Title 13,
24 section 901, chapter 81, in possession of tax ex-
25 empt status pursuant to the United States
26 Internal Revenue Code, Section 501(c)(3) and hav-
27 ing a membership of 100 or more persons.

28 2. Term. Each appointed member shall serve for
29 a term of 4 years or until his successor has quali-
30 fied. Upon expiration of the term of office of any
31 appointed member of the board, the member's successor
32 shall be appointed by the Governor, or in the case of
33 a vacancy for any reason the Governor shall appoint a
34 member to fill the unexpired term. One member of the
35 board shall be designated by the Governor as chair-
36 man.

37 3. Powers, rules and regulations. The board is
38 charged with the enforcement of the provisions of
39 this chapter. In addition, the board may conduct
40 inspections of boarding kennels, kennels and pet
41 shops as authorized by Title 7, chapter 703.

