

# MAINE STATE LEGISLATURE

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12/15/96

L.D. 47

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(Filing No. H- 779 )

**BUSINESS AND ECONOMIC DEVELOPMENT**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 53, L.D. 47, Bill, "An Act to Make Pet Dealers Liable for the Sale of Dogs and Cats That Have Health Problems"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 7 MRSA c. 745 is enacted to read:

CHAPTER 745

SALE OF DOGS AND CATS

§4151. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Animal. "Animal" means a dog, wholly or in part of the species canis familiaris or a cat, wholly or in part of the species felis domesticus.

2. Breeder. "Breeder" means a person, firm, partnership, corporation or association that breeds animals for direct or indirect sale to the public.

3. Health problem. "Health problem" means any disease, illness or any congenital or hereditary condition that would impair the health or function of an animal.

**COMMITTEE AMENDMENT**

2 4. Pet dealer. "Pet dealer" means a person, firm,  
3 partnership, corporation or association, including breeders, that  
4 is required to collect sales tax for the sale of animals to the  
5 public. Pet dealer does not include humane societies, nonprofit  
6 organizations performing the functions of humane societies or  
7 animal control agencies.

8 5. Veterinarian. "Veterinarian" means a person licensed as  
9 a veterinarian in any state.

10 §4152. Disclosure

11 1. Required disclosure. A pet dealer shall deliver to a  
12 purchaser of an animal a written disclosure containing the  
13 following:

14 A. An animal history that includes:

15 (1) The name, address and United States Department of  
16 Agriculture license number of the breeder and any  
17 broker who has had possession of the animal;

18 (2) The date of the animal's birth;

19 (3) The date the pet dealer received the animal;

20 (4) The breed, sex, color and identifying marks of the  
21 animal;

22 (5) The individual identifying tag, tattoo or collar  
23 number;

24 (6) For pure bred animals, the name and registration  
25 number of the sire and dam and the litter number; and

26 (7) A record of inoculations, worming treatments,  
27 medication or any veterinarian treatment received by  
28 the animal while in the possession of the breeder or  
29 dealer;

30 B. A statement signed by the pet dealer that the animal at  
31 time of delivery has no known health problem or a statement  
32 disclosing any known health problem.

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

35 C. A pet dealer who represents an animal as eligible for  
36 registration with an animal pedigree organization shall  
37 provide the retail purchaser with a notice stating that  
38 the animal is eligible for registration with an animal pedigree  
39 organization.

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2 pedigree registration does not assure health or quality of  
3 an animal. Notwithstanding section 4151, breeders are not  
4 bound by the provisions of this paragraph; and

5 D. The pet dealer shall indicate whether or not, to the pet  
6 dealer's knowledge, the animal or its sire or dam is  
7 registered with, and whether the animal is certified by any  
8 organization that maintains a registry pertaining to  
9 congenital or hereditary problems and explain the meaning of  
10 these terms. Notwithstanding section 4151, breeders are not  
11 bound by the provisions of this paragraph.

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

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

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

21 B. The written disclosure made pursuant to this section  
22 must be signed by both the pet dealer certifying the  
23 accuracy of the statement and by the purchaser of the animal  
24 acknowledging receipt of the statement.

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

27 **§4153. Sale prohibited**

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

33 **§4154. Records**

34 The pet dealer shall maintain, for 2 years, a copy of the  
35 statement of consumer rights delivered to the purchaser.

36 **§4155. Rights of the purchaser**

37 1. Unfit for sale. If, within 10 days after receipt of the  
38 animal by the purchaser, a veterinarian states in writing that  
39 the animal has a health problem that existed in the animal at the  
40 time of purchase, the pet dealer shall refund the purchase price  
41 to the purchaser, less any amount paid for veterinary services  
42 rendered to the animal, and shall provide a written statement  
43 explaining the reasons for the refund.

time of delivery or if, within one year after receipt of the animal by the purchaser, a veterinarian states in writing that due to a hereditary or congenital defect the animal has died or has a condition that will shorten its life or will require constant treatment during its life, the animal is considered to have been unfit for sale at the time of sale.

**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 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.

**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 shall provide the purchaser with one of the following remedies selected by the purchaser:

A. Return of the animal to the pet dealer 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.

**4. Veterinary service; fees.** The fee for veterinary service is reasonable if the service is appropriate for the diagnosis and treatment of the health problem and the fee for the service is comparable to fees charged by other veterinarians who are in proximity to the treating veterinarian.

**§4156. Responsibilities of purchaser**

To obtain the remedies provided in section 4155, the purchaser has the following responsibilities with respect to an animal with a health problem.

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

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

18       §4157. Rights of pet dealer

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

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

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

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

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

40       D. The health problem is one that the dealer has indicated  
41       is not covered in the warranty for the animal.

42       §4158. Contest

44       1. Demand for remedy; contest. When a pet dealer wishes to  
45       contest a demand for the remedy specified in section 4155, the  
46       pet dealer may require the purchaser to produce all the  
47       veterinarian's records and the animal for examination or autopsy  
48       by a veterinarian designated by the pet dealer. The pet dealer  
49       shall pay the cost of this examination or autopsy. The pet  
50       dealer shall pay the cost of this examination or autopsy. The pet

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2 dealer has a right of recovery against the purchaser if the pet  
dealer is not obligated to provide a remedy under section 4155.

4 2. Right to court action. If the pet dealer does not  
provide the remedy selected by the purchaser set forth in section  
6 4155, the purchaser may initiate a court action. Upon request to  
the department, by the purchaser and dealer, the commissioner or  
8 a veterinarian employed by the State shall arbitrate the  
dispute. This arbitration must be on a nonbinding basis unless  
10 both purchaser and dealer agree to binding arbitration. The  
prevailing party in the court action has the right to recover  
12 costs and reasonable attorney's fees not to exceed \$500.

14 §4159. Posted notice

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

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

26 §4160. Notice of consumer rights

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

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

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

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

52

The statement of consumer rights must also contain or have attached the disclosure required under section 4152 and the name and phone number of the state agency to be contacted in the event of perceived violations of this chapter.

**§4161. Limitation**

This chapter does not limit the rights or remedies that are otherwise available to a purchaser under any other law. An agreement or contract by a purchaser to waive rights under this chapter is void and unenforceable.

**§4162. Additional penalties**

1. Criminal penalty. A person who violates a United States Department of Agriculture statute or regulation covering animal breeders or groomers, pet dealers or the transportation of animals commits a Class E crime.

2. Civil penalty. A pet dealer commits a violation for which a forfeiture not to exceed \$1,000 per violation may be adjudged if the dealer:

A. Sells an animal without delivery of the disclosure required in section 4152;

B. Fails to maintain the records required by section 4154;

C. Fails to post the notice required by section 4159;

D. Fails to provide the statement of consumer rights required by section 4160; or

E. Sells an animal in violation of section 4153.

3. Action against license. The department may file an action in Administrative Court to revoke or suspend the license of a pet dealer who violates any provision of this chapter.

Further amend the bill by inserting before the statement of fact the following:

**FISCAL NOTE**

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.70 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.



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2 The additional workload and administrative costs associated  
4 with the minimal number of new cases filed in the court system  
6 can be absorbed within the budgeted resources of the Judicial  
Department. The collection of additional fines may increase  
General Fund revenue by minor amounts.

8 The additional enforcement costs can be absorbed by the  
10 Department of Agriculture, Food and Rural Resources utilizing  
existing budgeted resources.'

12  
14 **STATEMENT OF FACT**

16 The original bill and this amendment both primarily address  
18 the subject of dogs and cats that may have no immediately  
observable health problems. This amendment deletes the original  
bill.

20 The amendment states that a dog or cat is considered to have  
22 been unfit for sale if within 10 days a veterinarian states that  
the animal has a health problem that existed at the time of sale  
24 or if within one year a veterinarian states that an animal had a  
hereditary or congenital defect from which it died or has such a  
defect that will shorten its life or require constant treatment.

26 If an animal dies due to conditions that rendered it unfit  
28 for sale, the purchaser may receive an animal of equal value or  
return of the purchase price. If the animal has a health problem  
30 that renders it unfit for sale, the purchaser may receive a  
refund, exchange or 1/2 of the veterinarian fees not to exceed  
32 1/2 of the purchase price.

34 Pet dealers, including breeders, may exempt themselves from  
the liabilities of this amendment if the dealer provides the  
36 purchaser with a list of the animal's known health problems, a  
list of health problems that are known to affect the breed or  
38 health problems the dealer does not warranty.