

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 245

H.P. 178

House of Representatives, January 31, 2017

An Act To Repeal the Affirmative Defense for Cruelty to Animals

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CARDONE of Bangor.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: FOLEY of Wells, HANDY of Lewiston.

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

2 **Sec. 1. 7 MRSA §4011, sub-§2**, as amended by PL 2007, c. 702, §§13 to 15, is
3 further amended to read:

4 **2. Affirmative defenses.** It is an affirmative defense to this section that:

5 A. The conduct was performed by a licensed veterinarian or was a part of scientific
6 research governed by accepted standards;

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

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

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

14 Evidence of proper care of any animal ~~shall~~ is not be admissible in the defense of alleged
15 cruelty to other animals.

16 **Sec. 2. 7 MRSA §4016, sub-§3**, as enacted by PL 2007, c. 702, §17, is repealed.

17 **Sec. 3. 7 MRSA §4020, sub-§4**, as enacted by PL 2009, c. 127, §1 and affected
18 by §3, is amended to read:

19 **4. Relation to other laws.** The provisions of this section are in addition to, and not
20 in lieu of, any other laws protecting animal welfare. This section may not be construed to
21 limit any state law or rules protecting the welfare of animals or to prevent a local
22 governing body from adopting and enforcing its own animal welfare laws and
23 regulations.

24 ~~The affirmative defense provisions in section 4016, subsection 3 do not apply to this~~
25 ~~section. It is not an affirmative defense to alleged violations of this section that the calf~~
26 ~~or sow was kept as part of an agricultural operation and in compliance with best~~
27 ~~management practices for animal husbandry.~~

28 **Sec. 4. 17 MRSA §1031, sub-§2**, as amended by PL 2007, c. 702, §48 and PL
29 2011, c. 657, Pt. W, §5, is further amended to read:

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

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

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

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

4 ~~D. The animal is kept as part of an agricultural operation and in compliance with best~~
5 ~~management practices for animal husbandry as determined by the Department of~~
6 ~~Agriculture, Conservation and Forestry.~~

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

9 **Sec. 5. 17 MRSA §1037-A**, as enacted by PL 2007, c. 702, §51 and amended by
10 PL 2011, c. 657, Pt. W, §5, is repealed.

11 **Sec. 6. 17 MRSA §1039, sub-§6**, as enacted by PL 2009, c. 127, §2 and affected
12 by §3, is amended to read:

13 **6. Criminal or civil prosecution.** A person may be arrested or detained for a
14 violation of subsection 2 in accordance with the rules of criminal procedure. A person
15 may not be arrested or detained for the civil violation of cruel confinement under Title 7,
16 section 1039. The attorney for the State may elect to charge a defendant with a criminal
17 violation under this section or a civil violation under Title 7, section 4020. In making this
18 election, the attorney for the State shall consider the severity of the cruelty displayed, the
19 number of animals involved, any prior convictions or adjudications of animal cruelty
20 entered against the defendant and such other factors as may be relevant to a determination
21 of whether criminal or civil sanctions will best accomplish the goals of the animal welfare
22 laws in the particular case before the attorney for the State. The election and
23 determination required by this subsection are not subject to judicial review. The factors
24 involved in the election and determination are not elements of the criminal offense or
25 civil violation of cruel confinement and are not subject to proof or disproof as
26 prerequisites or conditions for conviction under this section or adjudication under Title 7,
27 section 4020.

28 ~~It is not an affirmative defense to prosecution under this section that the sow or calf is~~
29 ~~kept as part of an agricultural operation and in compliance with best management~~
30 ~~practices for animal husbandry.~~

31 **SUMMARY**

32 This bill repeals the provisions of law that establish an affirmative defense for certain
33 violations under the animal welfare laws that the animal is kept as part of an agricultural
34 operation and in compliance with best management practices for animal husbandry as
35 determined by the Department of Agriculture, Conservation and Forestry.