

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

March 6, 1999 at 18 years of age while awaiting a double lung transplant. The observance is created to make Maine citizens aware of the importance of donating organs. In each subsequent year, the Governor, in consultation with Maine organ donation agencies and organizations, shall designate an organ donor, recipient or listed individual to be recognized on that year's Organ Donation Awareness Day.

See title page for effective date.

CHAPTER 480

H.P. 171 - L.D. 249

An Act to Give Citizens 70 Years of Age and Older Free Bear and Duck Hunters Stamps

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

Sec. 1. 12 MRSA §7076, sub-§1, as repealed and replaced by PL 1995, c. 462, Pt. A, §33, is amended to read:

1. Residents over 70 years of age. A complimentary license to hunt, trap or fish, including an archery license under section 7102-A, a pheasant hunting permit under section 7106-B ~~and~~, a muzzle-loading hunting license under section 7107-A, a migratory waterfowl permit under section 7109 and a bear hunting permit under section 7110 must be issued to any resident of Maine who is 70 years of age or older upon application to the commissioner. These complimentary licenses, upon issuance, remain valid for the remainder of the life of the license holder, provided the license holder continues to satisfy the residency requirements set out in section 7001, subsection 32 and provided the license is not revoked or suspended. Residents who apply for these complimentary licenses at any time during the calendar year of their 70th birthday must be issued a license upon application, regardless of the actual date during that calendar year in which they attain age 70. A guide license may be renewed without charge for any resident of Maine who is 70 years of age or older upon application to the commissioner. The application must be accompanied by a birth certificate or other certified evidence of the applicant's date of birth and residency. When the holder of a license issued under this subsection no longer satisfies the residency requirements set out in section 7001, subsection 32, the license is no longer valid and further use of the license for purposes of hunting, fishing or trapping constitutes a license violation under section 7371, subsection 3.

Sec. 2. 12 MRSA §7109-A, sub-§4 is enacted to read:

4. Exception. This section does not apply to a resident of the State who is 70 years of age or older and who is issued a complimentary license pursuant to section 7076, subsection 1.

See title page for effective date.

CHAPTER 481

H.P. 903 - L.D. 1281

An Act to Raise Penalties for Cases of Cruelty to Animals or Birds

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

Sec. 1. 17 MRSA §1031, as amended by PL 1997, c. 690, §§69 and 70, is further amended to read:

§1031. Cruelty to animals

1. Cruelty to animals. Except as provided in subsection 1-A, a person, including an owner or the owner's agent, is guilty of cruelty to animals if that person intentionally, knowingly or recklessly:

- A. Kills or attempts to kill any animal belonging to another person without the consent of the owner or without legal privilege;
- B. Except for a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death;
- C. If that person is a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not conform to standards adopted by a national association of licensed veterinarians;
- D. Injures, overworks, tortures, torments, abandons or cruelly beats or intentionally mutilates an animal; gives drugs to an animal with an intent to harm the animal; gives poison or alcohol to an animal; or exposes a poison with intent that it be taken by an animal. The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal;
- E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions;
- F. Keeps or leaves a domestic animal on an uninhabited or barren island lying off the coast of

the State during the month of December, January, February or March without providing necessary sustenance and proper shelter; or

G. Hunts or sells for the purpose of hunting any animal that is not covered by the provisions of Title 12, Part 10.

1-A. Animal cruelty. Except as provided in paragraphs A and B, a person is guilty of cruelty to animals if that person intentionally, knowingly or recklessly kills or attempts to kill a cat or dog.

A. A licensed veterinarian or a person certified under section 1042 may kill a cat or dog according to the methods of euthanasia under chapter 42, subchapter IV.

B. A person who owns a cat or dog, or the owner's agent, may kill that owner's cat or dog by shooting with a firearm provided the following conditions are met.

(1) The shooting is performed by a person 18 years of age or older using a weapon and ammunition of suitable caliber and other characteristics to produce instantaneous death by a single shot.

(2) Death is instantaneous.

(3) Maximum precaution is taken to protect the general public, employees and other animals.

(4) Any restraint of the cat or dog during the shooting does not cause undue suffering.

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

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

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

C. The defendant's conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 10.

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

3. Penalty. Cruelty to animals is a Class D crime. If the State pleads and proves that, at the time

a violation of this section was committed, the defendant had been convicted of 2 or more violations of this section, section 1032 or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. For purposes of this subsection, the dates of the prior convictions must precede the commission of the offense being enhanced by no more than 10 years, although both prior convictions may have occurred on the same date. The enhancement of the crime for sentencing purposes required by this subsection does not apply if the 2 prior offenses were committed within a 3-day period. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date an offense was committed is presumed to be the date stated in the complaint, information, indictment or other formal charging instrument, notwithstanding the use of the words "on or about" or the equivalent. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$250 for each violation of this section. The court may order the defendant to pay the costs of the care, housing and veterinary medical treatment for the animal.

The court, as part of the sentence, may prohibit the defendant from owning, possessing or having on the defendant's premises an animal or animals as determined by the court for a period of time, up to and including permanent relinquishment, as determined by the court. A person placed on probation for a violation of this section with a condition that prohibits owning, possessing or having an animal or animals on the probationer's premises is subject to revocation of probation and removal of the animal or animals at the probationer's expense if this condition is violated. The court as part of the sentence may order, as a condition of probation, that the defendant be evaluated to determine the need for psychiatric or psychological counseling, and, if it is determined appropriate by the court, to receive psychiatric or psychological counseling at the defendant's expense.

4. Criminal or civil prosecution. A person may be arrested or detained for the crime of cruelty to animals in accordance with the rules of criminal procedure. ~~No~~ A person may not be arrested or detained for the civil violation of cruelty to animals. The attorney for the State shall elect to charge a defendant with the crime of cruelty to animals under this section or the civil violation of cruelty to animals under Title 7, section 4011. In making this election, the attorney for the State shall consider the severity of the cruelty displayed, the number of animals involved, any prior convictions or adjudications of animal cruelty entered against the defendant and such other factors as may be relevant to a determination of whether criminal or civil sanctions will best accomplish the goals of the animal welfare laws in the particular case before the attorney for the State. The

election and determination required by this subsection ~~shall~~ are not be subject to judicial review. The factors involved in such election and determination are not elements of the criminal offense or civil violation of animal cruelty and are not subject to proof or disproof as prerequisites or conditions for conviction under this subsection or adjudication under Title 7, section 4011.

Sec. 2. 17 MRSA §1032, as amended by PL 1997, c. 690, §71, is further amended to read:

§1032. Cruelty to birds

1. Cruelty to birds. A person is guilty of cruelty to birds who intentionally ~~or~~, knowingly or recklessly:

A. 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;

B. Shoots at any bird or is present as a party, umpire or judge at such shooting; or

C. Rents any building, shed, room, yard, field or premises or knowingly suffers the use of the building, shed, room, yard, field or premises for these purposes.

2. Penalty. Cruelty to birds is a Class D crime. If the State pleads and proves that, at the time a violation of this section was committed, the defendant had been convicted of 2 or more violations of this section, section 1031 or essentially similar crimes in other jurisdictions, the sentencing class for the crime is one class higher than it would otherwise be. For purposes of this subsection, the dates of the prior convictions must precede the commission of the offense being enhanced by no more than 10 years, although both prior convictions may have occurred on the same date. The enhancement of the crime for sentencing purposes required by this subsection does not apply if the 2 prior offenses were committed within a 3-day period. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date an offense was committed is presumed to be the date stated in the complaint, information, indictment or other formal charging instrument, notwithstanding the use of the words "on or about" or the equivalent. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$100 for each violation of this section.

3. Exception. Nothing in this section may be construed to prohibit 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 Wildlife in accordance with Title 12, chapter 707, subchapter IX.

4. Criminal or civil prosecution. ~~No~~ A person may not be arrested or detained for cruelty to birds. The attorney for the State shall elect to charge a defendant with the crime of cruelty to birds under this section or the civil violation of cruelty to birds under Title 7, section 4012. In making this election, the attorney for the State shall consider the severity of the cruelty displayed, the number of birds involved, any prior convictions or adjudications of bird cruelty entered against the defendant and such other factors as may be relevant to a determination of whether criminal or civil sanctions will best accomplish the goals of the animal welfare laws in the particular case before ~~him~~ the attorney for the State. The election and determination required by this subsection ~~shall~~ is not be subject to judicial review. The factors involved in such election and determination are not elements of the criminal offense or civil violation of bird cruelty and are not subject to proof or disproof as prerequisites or conditions for conviction under this subsection or adjudication under Title 7, section 4012.

See title page for effective date.

CHAPTER 482

H.P. 1276 - L.D. 1837

**An Act to Amend the Harness
Racing Laws**

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

Sec. 1. 8 MRSA §272-A, sub-§2, as amended by PL 1997, c. 735, §2, is further amended to read:

2. Bargaining agent funding. One and one-half percent of ~~the~~ all amounts deposited in the trust account each month must be paid to the exclusive bargaining agent for horsepersons at that racetrack if a representative has been elected pursuant to section 285-A.

Sec. 2. 8 MRSA §275-A, sub-§1, as amended by PL 1997, c. 474, §3 and affected by §6, is repealed and the following enacted in its place:

1. Commercial track. "Commercial track" means a harness horse racing track licensed under this chapter to conduct harness horse racing with pari-mutuel wagering that:

A. If the population of the region is 300,000 or more, based on the 1990 U.S. Census, conducted racing on more than 100 days in each of the previous 2 calendar years; or B. If the population of the region is less than 300,000, based on the 1990 U.S. Census, conducted racing