

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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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Augusta, Maine
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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

on more than 25 days in each of the previous 2 calendar years.

For the purposes of this subsection, "region" is determined by measuring a distance of 50 miles from the center of the racing track along the most commonly used roadway, as determined by the Department of Transportation, drawing a circle around the center of the racing track using that 50-mile measurement and excluding those municipalities or unorganized territories that do not have boundaries contained entirely by that circle.

Sec. 3. 8 MRSA §279-A, first ¶, as amended by PL 1997, c. 528, §40, is further amended to read:

For the purpose of enabling the ~~department~~ commission to exercise and maintain a proper control over racing conducted under this chapter, the commission may adopt rules for the licensing, with or without fee in the discretion of the commission, of owners, trainers, drivers, grooms and all other persons participating in harness horse racing, including pari-mutuel employees and race officials. The commission may issue conditional licenses to owners, trainers, drivers, grooms and all other persons participating in harness racing, including pari-mutuel employees and race officials if one or more criteria are not met as contained in the commission rules.

Sec. 4. 8 MRSA §281, as amended by PL 1997, c. 528, §42, is further amended to read:

§281. Standard-bred horses

The department shall encourage and promote the breeding of a strain of Maine Standardbreds and make provision to encourage donations of the same by licensees or others to persons or institutions within the State for breeding purposes.

The ~~department~~ commission, by rule, may define a strain of Maine Standardbred, bred or owned in the State of Maine and registered with the department in its registry book. The ~~department~~ commission is also authorized to establish necessary fees for horses and races in the establishment of a Maine Standardbred program, the funds from which must be administered by the department by deposit in a trust account entitled Sire Stakes Fund. All disbursements from the fund must be for the purposes of supplementing purses, costs of administration and any other appropriate expenses incurred by the department. A report must be submitted annually by the executive director to the commissioner setting forth an itemization of all deposits to and expenditures from the fund.

Sec. 5. 8 MRSA §283, as amended by PL 1997, c. 528, §44, is further amended to read:

§283. Reciprocal disciplinary action

The department shall act to obtain current listings from other states of persons in harness racing occupations regulated by the state who have been refused a license or who have had their license revoked or suspended. The ~~department~~ commission shall refuse to license or shall suspend the license of these persons until notification that they are again eligible for licensing in the state or states in question.

Sec. 6. 8 MRSA §285-A, sub-§1, ¶A, as reallocated by PL 1997, c. 735, §6, is repealed and the following enacted in its place:

A. "Eligible voter," with respect to each racing segment, means those owners, trainers and drivers who are licensed by this State and who participated during at least 10% of the race days actually conducted within a racing segment or participated in at least 15 starts at a racing segment.

Sec. 7. 8 MRSA §285-A, sub-§3, as reallocated by PL 1997, c. 735, §6, is amended to read:

3. Public polling to be held. Every eligible voter within a racing segment must be afforded the opportunity to vote at a public polling place for the exclusive bargaining agent to represent horse owners, trainers and drivers within that racing segment. With respect to each commercial track, the public polling must be conducted at the commercial track ~~on one of the first 3 live race dates assigned to the track within the calendar year during which the election is conducted.~~ The date of election and procedures utilized in conducting the public polling must be established by the commission. The public polling with respect to the racing segment that consists of racing at all tracks other than commercial tracks must be conducted during May at a place to be determined by the commission. Notice of the right to vote at ~~such~~ the public polling and of the date, time and place of the public polling must be included with the ballot mailed by the commission pursuant to subsection 2.

Sec. 8. 8 MRSA §285-A, sub-§7, as reallocated by PL 1997, c. 735, §6, is amended to read:

7. Repeal. This section is repealed January 1, ~~2000~~ 2001.

Sec. 9. 8 MRSA §285-B is enacted to read:

§285-B. Dispute resolution; exclusive bargaining agent and racetrack

1. Mediation. If the exclusive bargaining agent and the racetrack are not able or willing to reach an agreement on any issue related to harness racing, an independent 3rd-party mediator, chosen from a list of

5 mediators approved by the department, must be retained prior to seeking enactment of legislation or civil action in a court of law to resolve such an issue. Either party may initiate a request for a mediator. The costs of retaining such a mediator must be shared by the exclusive bargaining agent and the race track.

If the exclusive bargaining agent and the racetrack can not select a mutually agreed upon mediator within 15 days of initiating a request for mediation of a harness racing issue, either party may so advise the department. The department shall thereafter either appoint a mediator or designated employee of the department to serve as mediator. If at mediation the parties are not able to reach an agreement, the mediator shall make findings of fact and prepare a report that addresses the following issues:

A. The identity, nature and character of each issue on which the parties are unable to agree;

B. The relationship of each issue to the viability of the harness racing industry in Maine;

C. The position of the parties on each issue;

D. The value of what each party is offering in relation to that party's demands;

E. How similar disputes are resolved among other parties inside and outside of the harness racing industry;

F. Whether the issue in dispute is governed or affected by any existing rule or statute and, if so, whether the rule or statute should be amended; and

G. A recommendation stating whether the dispute among the parties is best addressed in a private manner, in a court of law, by legislation, by regulation or by arbitration.

The mediator shall present the report to each of the parties and shall file copies with the department, the commission and the Joint Standing Committee on Legal and Veterans Affairs. The mediator shall report to the Joint Standing Committee on Legal and Veterans Affairs by January 15, 2000 to present information on any issue that has been resolved by the mediation described in this section, to present a report if one is complete or to present information regarding the status of ongoing mediation, whichever the case may be.

2. Standards. In making any recommendation, the mediator shall consider the following:

A. Promoting profitability of the harness racing industry;

B. Any existing statute or rule governing the issue in dispute;

C. Custom and practice in the industry;

D. Fair election of the bargaining agent; and

E. Equity among the parties.

3. Costs. The costs for the services of the mediator including, if any, per diem expenses, actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation is conducted, must be shared equally by the racetrack and the exclusive bargaining agent.

4. Violation; penalty. Notwithstanding any other provision of this chapter, failure or refusal to submit to the mediation process as described in this section constitutes a violation of this section for which the commission may impose a penalty not to exceed \$5,000.

5. Repeal. This section is repealed January 1, 2001.

Sec. 10. Retroactivity. The section that amends the Maine Revised Statutes, Title 8, section 275-A, subsection 1 is retroactive to June 17, 1993.

See title page for effective date.

CHAPTER 483

H.P. 1176 - L.D. 1687

An Act Relating to Medicaid Liens

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

Sec. 1. 22 MRSA §14, sub-§1, as amended by PL 1997, c. 795, §1, is further amended to read:

1. Recovery procedures. When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, or under the Maine Health Program, section 3189, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the reasonable value of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a beneficiary under the Medicaid program or under the Maine Health Program. For Medicaid recipients who participated in the Medicaid managed care program, "reasonable value" means the total value of coverable medical services provided measured by the amount that Medicaid would have