

SENATE No. 2370

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Thursday, June 23, 2016

The committee on Ways and Means, to whom was referred the Senate Bill relative to protecting puppies and kittens (Senate, No. 1103),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2370).

For the committee,
Karen E. Spilka

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An Act relative to protecting puppies and kittens.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 140 of the General Laws is hereby amended by striking out section 137C, as
2 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

3 Section 137C. The mayor of a city, the selectmen of a town, the police commissioner in
4 the city of Boston, a chief of police or an animal control officer may inspect a kennel or cattery
5 or cause the inspection of a kennel or cattery. If a person holding a license or applying for a
6 license to operate a kennel or cattery refuses to allow an inspector to enter and inspect a kennel
7 or cattery, that shall be grounds for denial, suspension or revocation of a person's license to
8 operate a kennel or cattery. Inspections of kennels or catteries under section 174F may be done
9 by the commissioner and shall take place between the hours of 7:00 a.m. and 7:00 p.m. unless an
10 alternate time is mutually agreed upon by the inspector and the licensee. The licensee or their
11 authorized agent shall be present during the inspection and the licensee shall be given a
12 reasonable notice prior to the inspection; provided, however, that, if deemed necessary to
13 adequately perform the inspection, the commissioner or other authorized inspector may
14 determine it is appropriate to not provide advance notice to the licensee before arriving at the

15 facility. If a kennel or cattery regulated under said section 174F is located at a private residence,
16 only the areas of the residence that are used for kennel or cattery purposes or for the maintenance
17 of kennel or cattery records shall be required to be available for inspection. If, in the judgment of
18 the authorized inspector, a kennel or cattery is not being maintained in a sanitary and humane
19 manner or if records are not properly kept as required by law and in compliance with rules and
20 regulations established by the department under said section 174F, the inspector shall, by order,
21 issue the licensee a written citation or notice explaining the noncompliant issue and requiring the
22 licensee to come into compliance within a reasonable, specified time frame or summarily revoke
23 or suspend the license for the kennel or cattery, depending on the severity of the offense. If the
24 licensee fails to come into compliance within the time period specified by the inspector, the
25 inspector shall, by order, revoke the license for the kennel or cattery. Upon the petition of 25
26 citizens, filed with the mayor of a city, the selectmen of a town or the police commissioner in the
27 city of Boston setting forth a statement that those citizens are aggrieved or annoyed to an
28 unreasonable extent constituting a nuisance by a dog maintained in the city or town due to
29 excessive barking or other conditions connected with a kennel or cattery, the mayor, selectmen
30 or police commissioner, as the case may be, shall give notice, within 7 days after the filing of the
31 petition, to all interested parties of a public hearing to be held within 14 days after the date of the
32 notice. The mayor, selectmen or police commissioner shall, within 7 days after the public
33 hearing, investigate or cause to be investigated the subject matter of the petition and shall, by
34 order, either suspend or revoke the kennel or cattery license, otherwise regulate the kennel or
35 cattery or dismiss the petition. A written notice of an order revoking or suspending the license,
36 regulating the kennel or cattery or dismissing the petition shall be mailed immediately to the
37 officer issuing the license and to the holder of the license. Within 10 days of the written notice of

38 the order, the holder of the license may file a petition in the district court in the judicial district in
39 which the kennel or cattery is maintained seeking review of the order. The decision of the court
40 shall be final and conclusive upon the parties. A person maintaining a kennel or cattery after the
41 license to maintain a kennel or cattery has been so revoked or suspended shall be punished by a
42 fine of not more than \$250.

43 SECTION 2. Said chapter 140 is hereby further amended by inserting after section 141B
44 the following 3 sections:-

45 Section 141C. For the purposes of sections 141D and 141E, the following words shall
46 have the following meanings unless the context clearly requires otherwise:

47 “Animal”, a dog or cat under 1 year of age.

48 “Buyer”, a person who purchases an animal from a seller without the intent to resell the
49 animal.

50 “Cat”, a member of the *Felis catus* family.

51 “Direct violation”, a violation of the Animal Welfare Act, 7 U.S.C. 2131, et seq. or the
52 regulations issued under the Animal Welfare Act, that has a high potential for adversely affecting
53 the health of an animal as provided for by the Animal Welfare Inspection Guide, Appendix B,
54 issued by the United States Department of Agriculture.

55 “Dog”, a member of the *Canis familiaris* family or a resultant hybrid.

56 “Offer for sale”, to sell, offer for sale or adoption, barter, auction, give away or otherwise
57 or otherwise find a permanent physical placement for a dog or cat.

58 “Pet shop”, a business licensed under section 39A of chapter 129.

59 “Rescue organization”, an organization whose primary mission and practice is the
60 placement of abandoned, unwanted, neglected or abused animals and that does not obtain dogs or
61 cats from a breeder or broker for payment or compensation and that is also a tax exempt
62 organization under paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue
63 Code, 26 U.S.C. 501, or any subsequent corresponding sections of the federal Internal Revenue
64 Code, as from time to time amended.

65 “Seller”, an individual, partnership, association, corporation or an officer or employee of
66 an individual, partnership, association or corporation that sells animals to the public.

67 “Unfit for purchase”, a defect which is congenital or hereditary and which has a
68 significant adverse effect on the health of the animal or a disease, deformity, injury, physical
69 condition or illness which has a significant adverse effect on the health of the animal and which
70 was manifest, capable of diagnosis or likely to have been contracted prior to or at the time of the
71 sale and delivery of the animal to the buyer.

72 Section 141D. (a) No dog or cat less than 8 weeks of age shall be transferred by a
73 person. A violation of this subsection shall result in a \$100 fine for each animal transferred.

74 (b) A veterinarian licensed in the commonwealth may declare an animal unfit for
75 purchase in advance of or after the purchase by providing a written statement that includes:

76 (i) the buyer’s name and address;

77 (ii) the date the animal was examined;

78 (iii) the breed, sex and age of the animal;

79 (iv) that the veterinarian examined the animal;

80 (v) a diagnosis that either: (1) the animal previously had, currently has or has died

81 from a contagious or infectious disease or severe parasitism, that the veterinarian found the

82 presence of symptoms of the disease or severe parasitism and that the disease or severe

83 parasitism is likely to have been contracted prior to or at the time of the sale and delivery of the

84 animal to the buyer; or (2) the animal has a congenital or hereditary condition that significantly

85 and adversely impacts the health of the animal, requires hospitalization or a non-elective surgical

86 procedure or caused the death of the animal;

87 (vi) the precise findings of the examination, diagnostic tests or necropsy;

88 (vii) the treatment recommended, if any, and an estimate or the actual cost of the

89 treatment;

90 (viii) that the examination occurred either: (1) within 14 days of the transfer of the

91 animal if the animal was declared unfit for purchase based on an illness that existed in the animal

92 prior to or at the time of the sale and transfer of the animal; (2) within 1 year after the sale and

93 transfer of the animal if the animal was declared unfit for purchase based on a hereditary or

94 congenital condition that has a significant adverse effect on the health of the animal; or (3)

95 within 1 year after the sale and transfer of the animal if the breed, sex or health of the animal was

96 misrepresented at the time of the transfer; and

97 (ix) the veterinarian's name, address, telephone number and signature.

98 (c) An animal shall not be found unfit for purchase based upon:

99 (i) injuries sustained or illnesses likely to have been contracted subsequent to the
100 date of sale and transfer;

101 (ii) a health problem or hereditary or congenital condition that is separately
102 disclosed by the seller verbally and in writing at the time of sale and the seller and the buyer sign
103 the written disclosure at the time of sale;

104 (iii) a hereditary or congenital condition if the seller provides the buyer with
105 written documentation at the time of sale or transfer establishing that prior to breeding, the
106 animal's parents were screened for health issues according to breed-specific protocols and
107 requirements established by the Canine Health Information Center or a comparable recognized
108 animal health registry; or

109 (iv) veterinary findings of internal or external parasites unless the animal is
110 clinically ill or dies due to the condition.

111 (d) (1) If an animal is declared unfit for purchase under subsection (b), the seller shall
112 provide the buyer with 1 of the following remedies chosen by the buyer:

113 (i) return the animal to the seller for a refund of the purchase price, plus
114 the sales tax and reimbursement for reasonable veterinary fees for diagnosing and treating the
115 animal in an amount not to exceed the original purchase price of the animal, plus the sales tax;

116 (ii) if a replacement animal is available, exchange the animal for an animal
117 of the buyer's choice of equivalent value and reimbursement for reasonable veterinary fees for
118 diagnosing and treating the animal that was unfit for purchase in an amount not to exceed the
119 original purchase price of the animal, plus the sales tax; or

120 (iii) retain the animal and receive reimbursement for reasonable veterinary
121 fees for diagnosis and treatment of the animal in an amount not to exceed 150 per cent of the
122 original purchase price of the animal, plus the sales tax on the original purchase price of the
123 animal.

124 (2) If the animal dies as a result of a condition that would have resulted in the
125 animal being declared unfit for purchase under subsection (b), the buyer may obtain reasonable
126 veterinary fees for diagnosing, treating and disposing of the animal in an amount not to exceed
127 the original purchase price of the animal, plus the sales tax and either: (i) a refund for the
128 purchase price of the animal, plus the sales tax; or (ii) a replacement animal of equivalent value
129 of the buyer's choice.

130 (3) Nothing in this subsection shall require a seller to provide a buyer with a
131 replacement animal if a replacement animal is not available.

132 (e) If a seller wishes to contest a demand made by a buyer for veterinary expenses, a
133 refund or an exchange under this section, the seller may require the buyer to produce the animal
134 for examination by a second licensed veterinarian designated by the seller within 10 days and at
135 the seller's expense. If the animal is deceased, the seller may choose to have the second
136 veterinarian review records provided by the buyer's veterinarian, including the necropsy report.
137 If the buyer and the seller are unable to reach an agreement as set forth in subsection (d) within
138 10 business days following receipt of the animal for the examination, the buyer may initiate an
139 action in a court of competent jurisdiction to recover or obtain a reimbursement of veterinary
140 expenses, a refund or an exchange.

141 (f) Unless the seller contests the remedy chosen by the buyer under subsection (d), the
142 remedy shall be made to the buyer not later than 10 days after the seller receives the
143 veterinarian's statement that the animal was unfit for purchase.

144 (g) Nothing in this section shall limit the rights or remedies otherwise available to a buyer
145 under another law.

146 (h) This section shall not apply to: (i) shelters or non-profit organizations that house or
147 adopt animals to protect the animals from cruelty, neglect, abuse or homelessness; (ii) municipal
148 animal control facilities; or (iii) facilities that contract with a municipality to assist in the
149 adoption of stray animals as part of the municipality's animal control services.

150 Section 141E. (a) A pet shop shall not purchase a dog or cat for resale or offer for sale a
151 dog or cat that originated at or was purchased from a breeder, person, firm or corporation that:

152 (i) is not in possession of a current license issued by the United States Department
153 of Agriculture pursuant to the Animal Welfare Act, 7 U.S.C. 2131, et seq, and any license that
154 may be required by an applicable state agency;

155 (ii) has had its federal or state license suspended in the last 5 years;

156 (iii) was found to have committed a direct violation of the Animal Welfare Act, 7
157 U.S.C. 2131, et seq, during the 3-year period prior to the purchase;

158 (iv) was found to have committed 3 or more indirect violations of the Animal
159 Welfare Act, 7 U.S.C. 2131, et seq, during the 3-year period prior to the purchase; or

160 (v) is cited on the 2 most recent United States Department of Agriculture
161 inspection reports prior to the purchase of the animal by the pet shop for no-access violations
162 pursuant to enforcement of the Animal Welfare Act, 7 U.S.C. 2131, et seq.,

163 (b) A pet shop shall not purchase a dog or cat for resale or offer for sale a dog or cat that
164 originated at or was purchased from a breeder, person, firm or corporation that is not in
165 compliance with the requirements for commercial breeder kennels or catteries or personal
166 kennels or catteries under section 174F at the time of purchase of the animal by the pet shop.

167 (c) A pet shop offering a dog or cat for sale shall maintain records verifying compliance
168 with this section and documenting the source of each dog or cat the pet shop acquires, including
169 a description of the dog or cat and the name, address and United States Department of
170 Agriculture license number of the breeder for a minimum of 2 years following the date of
171 acquisition of the dog or cat. The records shall be made available immediately upon the request
172 of the mayor of a city, the selectmen of a town, the police commissioner in the city of Boston, a
173 chief of police or an animal control officer.

174 (d) A pet shop offering a dog or cat for sale shall post, in a conspicuous location on the
175 cage or enclosure for each dog or cat in the cage or enclosure, a sign declaring:

176 (i) the date and place of birth of each dog or cat and the actual age or, if not
177 known, the approximate age of the dog or cat;

178 (ii) the sex, color markings and other identifying information of each dog or cat,
179 including any tag, tattoo, collar number or microchip information; and

180 (iii) the first and last name of the breeder of the dog or cat, the full street address
181 of where the breeder is doing business, the telephone number of the breeder, an email address, if
182 available, by which to contact the breeder, the breeder's United States Department of Agriculture
183 license number and, if the breeder is required to be licensed in the state in which the breeder is
184 located, the breeder's state license number.

185 (e) Nothing in this section shall prevent a pet shop from acquiring a dog or cat for resale
186 or from selling or offering for sale a dog or cat obtained from a shelter, as defined in section
187 136A, or a rescue organization.

188 (f) A pet shop that violates this section shall be punished by a fine of not more than \$50
189 for a first offense, a fine of not more than \$100 for a second offense and a fine of not more than
190 \$300 for a third or subsequent offense. Each dog or cat sold in violation of this section shall
191 constitute a separate offense.

192 (g) Nothing in this section shall prohibit a city or town from adopting an ordinance that is
193 more stringent than this section.

194 SECTION 3. Said chapter 140 is hereby further amended by inserting after section 174E
195 the following section:-

196 Section 174F. The department shall make rules and regulations for commercial breeder
197 kennels or catteries and personal kennels or catteries where at least 8 sexually intact female dogs
198 or cats between the ages of 1 to 8 years of age, inclusive, are kept to breed the dogs or cats and
199 sell the offspring as household pets. The rules and regulations shall ensure that the animals have
200 proper housing, including requirements for adequate space, temperature, solid flooring and a
201 prohibition on the stacking of cages, nutrition, hydration, behavioral requirements, grooming,

202 staffing, handling, health and veterinary care, waste disposal, exercise, socialization and other
203 general standards of care, and are bred in accordance with responsible breeding practices. In
204 developing rules and regulations under this section, the department shall consider the
205 recommended standards of the American Veterinary Medical Association.

206 SECTION 4. This act shall take effect on January 1, 2017.