FILED ON: 6/30/2016

SENATE . . . . . No. 2390

Senate, June 28, 2016 -- Text of the Senate Bill providing additional penalties for the improper treatment of certain animals (Senate, No. 2390) (being the text of Senate, No. 2370, printed as amended)

The Commonwealth of Massachusetts

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

An Act providing additional penalties for the improper treatment of certain animals.

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

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

Section 137C. The mayor of a city, the selectmen of a town, the police commissioner in the city of Boston, a chief of police or an animal control officer may inspect a kennel or cattery or cause the inspection of a kennel or cattery. If a person holding a license or applying for a license to operate a kennel or cattery refuses to allow an inspector to enter and inspect a kennel or cattery, that shall be grounds for denial, suspension or revocation of a person's license to operate a kennel or cattery. Inspections of kennels or catteries under section 174F may be done by the commissioner or an authorized inspector and shall take place between the hours of 7:00 a.m. and 7:00 p.m. unless an alternate time is mutually agreed upon by the inspector and the licensee. The licensee or their authorized agent shall be present during the inspection and the

licensee shall be given a reasonable notice prior to the inspection; provided, however, that, if deemed necessary to adequately perform the inspection, the commissioner or other authorized inspector may determine it is appropriate to not provide advance notice to the licensee before arriving at the facility. If a kennel or cattery regulated under said section 174F is located at a private residence, only the areas of the residence that are used for kennel or cattery purposes or for the maintenance of kennel or cattery records shall be required to be available for inspection. If, in the judgment of the authorized inspector, a kennel or cattery is not being maintained in a sanitary and humane manner or if records are not properly kept as required by law and in compliance with rules and regulations established by the department under said section 174F, the inspector shall, by order, issue the licensee a written citation or notice explaining the noncompliant issue and requiring the licensee to come into compliance within a reasonable, specified time frame or summarily revoke or suspend the license for the kennel or cattery, depending on the severity of the offense. If the licensee fails to come into compliance within the time period specified by the inspector, the inspector shall, by order, revoke the license for the kennel or cattery. Upon the petition of 25 citizens, filed with the mayor of a city, the selectmen of a town or the police commissioner in the city of Boston setting forth a statement that those citizens are aggrieved or annoyed to an unreasonable extent constituting a nuisance by a dog or cat maintained in the city or town due to excessive barking or other conditions connected with a kennel or cattery, the mayor, selectmen or police commissioner, as the case may be, shall give notice, within 7 days after the filing of the petition, to all interested parties of a public hearing to be held within 14 days after the date of the notice. The mayor, selectmen or police commissioner shall, within 7 days after the public hearing, investigate or cause to be investigated the subject matter of the petition and shall, by order, either suspend or revoke the kennel or cattery license,

otherwise regulate the kennel or cattery or dismiss the petition. A written notice of an order revoking or suspending the license, regulating the kennel or cattery or dismissing the petition shall be mailed immediately to the officer issuing the license and to the holder of the license. Within 10 days of the written notice of the order, the holder of the license may file a petition in the district court in the judicial district in which the kennel or cattery is maintained seeking review of the order. The decision of the court shall be final and conclusive upon the parties. A person maintaining a kennel or cattery after the license to maintain a kennel or cattery has been so revoked or suspended shall be punished by a fine of not more than $250.

SECTION 1A. Chapter 140 of the General Laws is hereby amended by striking out section 141 and inserting in place thereof the following section:-

Section 141. Whoever violates section 137, 137B or 138 shall be assessed a fine of not less than $50, which shall be paid to the city or town wherein the violation occurred.

Whoever violates section 137A shall be assessed a fine of not less than $250 for a first offense, a fine of not less than $500 for a second offense and a fine of not more than $1,500 for a third or subsequent offense. The fine shall be paid to the city or town wherein the violation occurred; provided, however, that if a person is unable to pay the fine under this paragraph, the individual may agree, in lieu of payment, to relinquish ownership and control of all dogs on the premises to animal control or another appropriate law enforcement agency.

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

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

"Animal", a dog or cat under 1 year of age.

"Buyer", a person who purchases an animal from a seller without the intent to resell the animal.

"Cat", a member of the Felis catus family.

"Direct violation", a violation of the Animal Welfare Act, 7 U.S.C. 2131, et seq. or the regulations issued under the Animal Welfare Act, that has a high potential for adversely affecting the health of an animal as provided for by the Animal Welfare Inspection Guide, Appendix B, issued by the United States Department of Agriculture or a successor document published by the United States Department of Agriculture for the same purpose.

"Dog", a member of the Canis familiaris family or a resultant hybrid.

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

"Pet shop", a business licensed under section 39A of chapter 129.

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

"Seller", an individual, partnership, association, corporation or an officer or employee of an individual, partnership, association or corporation that sells animals to the public.

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

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

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

(i) the buyer's name and address;

(ii) the date the animal was examined;

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

(iv) that the veterinarian examined the animal;

(v) a diagnosis that either: (1) the animal previously had, currently has or has died from a contagious or infectious disease or severe parasitism, that the veterinarian found the presence of symptoms of the disease or severe parasitism and that the disease or severe parasitism is likely to have been contracted prior to or at the time of the sale and delivery of the animal to the buyer; or (2) the animal has a congenital or hereditary condition that significantly and adversely impacts the health of the animal, requires hospitalization or a non-elective surgical procedure or caused the death of the animal;

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

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

(viii) that the examination occurred either: (1) within 14 days of the transfer of the animal if the animal was declared unfit for purchase based on an illness that existed in the animal prior to or at the time of the sale and transfer of the animal; (2) within 1 year after the sale and transfer of the animal if the animal was declared unfit for purchase based on a hereditary or congenital condition that has a significant adverse effect on the health of the animal; or (3) within 1 year after the sale and transfer of the animal if the breed, sex or health of the animal was misrepresented at the time of the transfer; and

(ix) the veterinarian's name and signature and the address and telephone number of the veterinarian's primary place of veterinary practice.

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

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

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

(iii) a hereditary or congenital condition if the seller provides the buyer with written documentation at the time of sale or transfer establishing that prior to breeding, the animal's parents were screened for health issues according to breed-specific protocols and

requirements established by the Canine Health Information Center or a comparable recognized animal health registry; or

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

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

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

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

(iii) retain the animal and receive reimbursement for reasonable veterinary fees for diagnosis and treatment of the animal in an amount not to exceed 150 per cent of the original purchase price of the animal, plus the sales tax and any additional point of sale fees on the original purchase price of the animal; or

(iv) return the animal to the seller for treatment by a veterinarian of the seller’s choice at no cost to the buyer; provided, however, that the animal shall be returned to the buyer when the animal’s health is cleared by the veterinarian

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

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

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

(f) Unless the seller contests the remedy chosen by the buyer under subsection (d), the remedy shall be made to the buyer not later than 30 days after the seller receives the veterinarian’s statement that the animal was unfit for purchase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 174F. The department shall make rules and regulations for commercial breeder kennels or catteries and personal kennels or catteries where at least 8 sexually intact female dogs or cats between the ages of 1 to 8 years of age, inclusive, are kept to breed the dogs or cats and sell the offspring as household pets. The rules and regulations shall ensure that the animals have proper housing, including requirements for adequate space, temperature, solid flooring and a prohibition on the stacking of cages, nutrition, hydration, behavioral requirements, grooming, staffing, handling, health and veterinary care, waste disposal, exercise, socialization and other general standards of care, and are bred in accordance with responsible breeding practices. In developing rules and regulations under this section, the department shall consider the recommended standards of the American Veterinary Medical Association.

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