

SENATE No. 1204**The Commonwealth of Massachusetts**

PRESENTED BY:

James T. Welch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relating to the remedy for the sale of sick puppies and kittens.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James T. Welch</i>	<i>Hampden</i>	
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>1/25/2019</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/25/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/30/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Bradford Hill</i>	<i>4th Essex</i>	<i>2/1/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2019</i>

<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>2/1/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/4/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>2/4/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/6/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/8/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/9/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>6/7/2019</i>

SENATE No. 1204

By Mr. Welch, a petition (accompanied by bill, Senate, No. 1204) of James T. Welch, Walter F. Timilty, Lori A. Ehrlich, Jason M. Lewis and other members of the General Court for legislation relative to the remedy for the sale of sick puppies and kittens. Municipalities and Regional Government.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relating to the remedy for the sale of sick 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 SECTION 1. Chapter 140 is hereby further amended by inserting after section 141C the
2 following 2 sections:-

3 Section 141D. For the purposes of this, the following words shall have the following
4 meanings unless the context clearly requires otherwise: “Buyer”, a person who purchases an
5 animal from a seller without the intent to resell the animal.

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

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

8 “Kitten”, a cat under 1 year of age.

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

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

12 “Puppy”, a dog under 1 year of age.

13 “Rescue organization”, an organization the primary mission and practice of which is the
14 placement of abandoned, unwanted, neglected or abused animals, that does not obtain dogs or
15 cats from a breeder or broker for payment or compensation and that is an organization exempt
16 from taxation under section 501(c)(3) of the federal Internal Revenue Code or any corresponding
17 sections of the federal Internal Revenue Code, as amended from time to time.

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

20 “Unfit for sale”, a defect that is congenital or hereditary and that has a significant adverse
21 effect on the health of the puppy or kitten or a disease, deformity, injury, physical condition or
22 illness that has a significant adverse effect on the health of the puppy or kitten and which was
23 manifest, capable of diagnosis or likely to have been contracted prior to or at the time of
24 the sale or delivery of the puppy or kitten to the buyer.

25 Section 141E.

26 (a) A veterinarian licensed in the commonwealth may declare a puppy or kitten unfit for
27 sale in advance of or after the sale by providing a written statement that includes:

28 (i) the name and address of the buyer or potential buyer;

29 (ii) the date on which the puppy or kitten was examined;

30 (iii) the breed, sex and age of the puppy or kitten;

(iv) an affirmation that the veterinarian examined the puppy or kitten;

(v) a diagnosis that: (A)(1) the puppy or kitten had previously had a contagious or infectious disease or severe parasitism, currently has a contagious or infectious disease or severe parasitism or has died from a contagious or infectious disease or severe parasitism; (2) that the veterinarian found the presence of symptoms of the disease or severe parasitism; and (3) that the disease or severe parasitism is likely to have been contracted prior to or at the time of the sale or delivery of the puppy or kitten to the buyer; or (B) the puppy or kitten has a congenital or hereditary condition that: (1) significantly and adversely impacts the health of the puppy or kitten; (2) requires hospitalization or a nonelective surgical procedure; or (3) caused the death of the puppy or kitten;

(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) an affirmation that the examination occurred: (A) within 14 days after the transfer of the puppy or kitten if the puppy or kitten was declared unfit for sale based on an illness that existed in the puppy or kitten prior to or at the time of the sale or transfer of the puppy or kitten; (B) within 1 year after the sale or transfer of a puppy or kitten if declared unfit for sale based on a hereditary or congenital condition that has a significant adverse effect on its health; or (C) within 1 year after the sale or transfer of a puppy or kitten 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.

(b) A puppy or kitten shall not be found unfit for sale based upon:

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

(ii) a health problem or hereditary or congenital condition if the problem or condition was separately disclosed by the seller 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 puppy or kitten'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 puppy or kitten is clinically ill or dies due to the condition.

(c) (1) If a purchased puppy or kitten has been declared unfit for sale under subsection (b), the buyer may:

(i) return the puppy or kitten to the seller for treatment by a veterinarian at no cost to the buyer; provided, however, that the puppy or kitten shall be returned to the buyer when the puppy or kitten's health has been cleared by the veterinarian.

(ii) return the puppy or kitten to the seller for a refund of the purchase price, the sales tax paid and any additional point of sale fees paid, and reimbursement for reasonable veterinary fees

paid for the diagnosis and treatment of the puppy or kitten in an amount not to exceed the original purchase price of the puppy or kitten and the sales tax;

(iii) if a replacement dog or cat of equivalent value is available and satisfactory to the buyer, exchange the puppy or kitten for the dog or cat and provide reimbursement to the buyer for reasonable veterinary fees paid for the diagnosis and treatment of the puppy or kitten in an amount not to exceed 150 percent of the original purchase price of the puppy or kitten, the sales tax paid and any additional point of sale fees paid; or

(iv) retain the purchased puppy or kitten and receive reimbursement for reasonable veterinary fees paid for the diagnosis and treatment of the purchased puppy or kitten in an amount not to exceed the original purchase price of the puppy or kitten, the sales tax paid and any additional point of sale fees paid on the original purchase of the puppy or kitten.

A seller of a puppy or kitten shall inform a buyer of the buyer's options under this section at the point of sale.

(2) If: (i) within 14 days after delivery of the puppy or kitten the puppy or kitten dies because on an illness that existed in the puppy or kitten prior to or at the time of the sale or delivery of the puppy or kitten; or (ii) within 1 year after the sale or delivery of a puppy or kitten the puppy or kitten dies because of a hereditary or congenital condition that has a significant adverse effect on its health, the buyer may obtain reasonable veterinary fees for the diagnosis, treatment and disposal of the purchased puppy or kitten in an amount not to exceed the original purchase price of the puppy or kitten, the sales tax paid and any additional point of sale fees paid and: (A) a refund of the purchase price of the puppy or kitten, the sales tax paid and any

additional point of sale fees paid; or (B) a replacement dog or cat that is of equivalent value and satisfactory to the buyer.

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

For the purpose of this subsection, “puppy” or “kitten” shall mean a puppy or kitten that was under 1 year of age at the time of purchase.

(d) If a seller wishes to contest a demand made by a buyer for veterinary expenses or for a refund or an exchange under this section, the seller may require the buyer to produce the puppy or kitten for examination by a second licensed veterinarian designated by the seller and at the seller’s expense not more than 30 days after the demand. If the puppy or kitten is deceased, the seller may 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 after receipt of the purchased puppy or kitten for the examination, the buyer may initiate an action in a court of competent jurisdiction to recover or obtain a reimbursement of veterinary expenses or for a refund or an exchange.

(e) Unless the seller contests the remedy chosen by the buyer under subsection (c), the remedy shall be made to the buyer not more than 30 days after the seller receives the veterinarian’s statement that the puppy or kitten was unfit for sale.

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

(g) This section shall not apply to: (i) shelters or nonprofit organizations that house or

115 adopt animals to protect the animals from cruelty, neglect, abuse or homelessness; (ii)
116 municipal animal control facilities; and (iii) facilities that contract with a municipality to assist in
117 the adoption of stray animals as part of the municipality's animal control services.