

Chapter 434 of the Acts of 2006

AN ACT RELATIVE TO PENALTIES FOR ANIMAL FIGHTING.

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. Section 77 of chapter 272 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 26 to 28, inclusive, the words "may, after an appropriate hearing to determine the defendant's fitness for continued custody of the abused animal, be ordered to surrender or" and inserting in place thereof the following word:- shall.

SECTION 2. Section 88 of said chapter 272, as so appearing, is hereby amended by striking out, in lines 5 and 6, the words "or trained for fighting" and inserting in place thereof the following words:- owned, possessed, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94.

SECTION 3. Said section 88 of said chapter 272, as so appearing, is hereby further amended by striking out the words "birds, dogs or other animals", in lines 13 and 14, and inserting in place thereof the following words:- such animals and all paraphernalia, implements, equipment or other property used or employed, or intended to be used or employed, in violation of section 94.

SECTION 4. Said section 88 of said chapter 272, as so appearing, is hereby further amended by striking out, in lines 14 to 16, inclusive, the words "at any such exhibition or where preparations for such exhibition are being made, or where birds, dogs or other animals are kept or trained for fighting".

SECTION 5. Said chapter 272 is hereby further amended by striking out section 89, as so appearing, and inserting in place thereof the following section:-

Section 89. Any officer authorized to serve criminal process, or any special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals, or any municipal officer involved with animal control may, without a warrant, enter any place or building in which there is an exhibition of any fighting birds, dogs or other animals, preparations are being made for such an exhibition, or birds, dogs or other animals are owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94. Any such officer may arrest all persons there present and take possession of and remove from the place of seizure such animals there found in violation of said section 94, and hold the same in custody subject to the order of court as hereinafter provided.

SECTION 6. Said chapter 272 is hereby further amended by striking out section 91, as so appearing, and inserting in place thereof the following section:-

Section 91. After seizure and removal of animals or property used or employed, or intended to be used or employed, in violation of section 94, application shall be made to a district court for a decree of forfeiture of the animals or property. If, after hearing on the application, notice thereof having been previously given as the court orders, it shall be found that the animals, at the time of seizure, were engaged, or were intended to be engaged, in fighting at an exhibition thereof or the animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94,

such animals shall be adjudged forfeited and the court shall thereupon, unless an appeal is taken as provided in the following section, issue an order for killing them. The order shall be directed to any officer authorized to serve criminal process and the officer receiving such order shall cause the animals to be killed within 24 hours thereafter. Animals or property seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or person entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.

SECTION 7. Said chapter 272 is hereby further amended by striking out section 94, as so appearing, and inserting in place thereof the following section:-

Section 94. Whoever: (i) owns, possesses, keeps or trains any bird, dog or other animal, with the intent that it shall be engaged in an exhibition of fighting; (ii) establishes or promotes an exhibition of the fighting of any birds, dogs or other animals; (iii) loans, sells, exports or otherwise transfers any bird, dog or other animal for the purpose of animal fighting; or (iv) owns, possesses or keeps any bird, dog or other animal for the purpose of breeding such animal with the intent that its offspring be used for animal fighting shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 1 year, or by a fine of not more than \$1,000 or by both such fine and imprisonment.

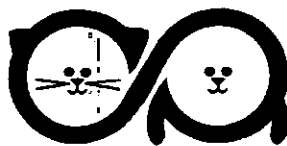
Approved January 3, 2007.

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Animal Rescue League of Boston

Helping animals since 1899.

Paul J. Brennan
Chairman of the Board

Arthur G. Slade
President

Stuart B. Strong, Jr.
Secretary

Jamie A. Loh
Treasurer

TO: Senator Robert S. Creedon, Senate Chairperson
Representative Eugene L. O'Flaherty, House Chairperson
Joint Committee on Judiciary

FROM: The Animal Rescue League of Boston
Alan B. Borgal – Law Enforcement Director

RE: House Bill 1765

DATE: November 1, 2005

ACTION REQUESTED: Favorable Report

The Animal Rescue League of Boston would like to be recorded as being in favor of House Bill 1765, A Bill Relative to Animal Fighting and Penalties.

Chapter 272, Sections 88, 89, 91, 92 and 94 currently treats animal fighting as a felony but is lacking in definitions to properly protect these animals seized in an alleged animal fighting or blood sport investigation and subsequent prosecution. A violation of this law, if considered a felony, can result in maximum sentencing of five years in state prison; if treated as a misdemeanor, the sentencing can be up to one year in jail and/or a One Thousand Dollar (\$1,000.00) fine or by such fine and imprisonment in jail or house of correction. Currently this is the law with which an owner, possessor, keeper or custodian of an animal used for fighting is investigated and prosecuted.

Whereas Chapter 272, Sec. 95 'Aiding or being present at exhibition of fighting animals' is treated as a misdemeanor and has only a fine of not more than two hundred and fifty dollars or by imprisonment for not more than one month or both.

The inherent limitations of this statute however has been in the ability to only protect the animals found being used for fighting or trained for fighting. In our investigations this would usually be adult animals that the current statute would protect. Experienced State Humane Officers and Animal Control Officers are fully aware that the breeding and producing of the future fighting stock and the subsequent trading of these animals are also major factors in keeping this cruel sport alive and well in the United States and

beyond. This fighting stock is later used in association with these cruel acts to further promote the blood sports and continue the furtherance of animal fighting activities.

Sentences and the ability to seize animals and paraphernalia associated with animal fighting are considered, at least in part, to be a deterrent to this type of crime. It should be taken into account, then, that reliable studies (Kellert and Felthous), (Randall Lockwood and Frank R. Ascione) demonstrate the correlation between animal abuse and violence against people. A statute granting the courts and officers greater flexibility in the seizure and forfeiture of animals and paraphernalia used in animal fighting would send a clear message to those who would violate these laws. It may also send a message to the courts themselves that animal fighting is further considered a more serious crime and antisocial act.

These laws, under Chapter 272, govern chastity, morality, decency and good order. In investigating these crimes we now have an Anti-Cruelty to Animals in Massachusetts that has a felony provision. Animal Fighting is also a cruel act. Again, we are talking about the same act of violence against a living creature.

Let our effort, as small as it is, be in the direction of correcting this inequity. The penalties and the ability to seize fighting animals and paraphernalia associated with these cruel and violent acts should fit the crime in the year 2005.

Massachusetts led the way early in 1859 in having one of the first Anti-Animal Fighting Statutes in the country. Today in 2005, almost 146 years later we still have an inadequate Anti-Animal Fighting Statute and the only major increase in the law is a fine of 1,000 dollars. It has taken the Massachusetts Legislature 146 years to add another 800 hundred dollars to a law that our forefathers obviously thought would continue to protect the Animals and People of the Commonwealth for such acts of good order. I think it is time to add these necessary changes to the Anti-Animal Fighting Statutes and further protect fighting animals and seize those animals and the paraphernalia used in the connection of animal fighting that is both barbaric and an unnecessary cruel crime.

Many New England States are in the process or have already enacted felony laws to protect animals from cruel acts. Massachusetts has gone from pioneering the enacting of the first laws to protect animals to one of last in the Country to seriously review this important piece of legislation. Massachusetts has two of the largest Humane Societies in the country striving to educate and enhance animal's lives within its borders and currently has one of the most archaic and ineffective statutes to further protect its animals from such acts of cruelty. Animal Fighters today have become more sophisticated and have gone underground to avoid detection. The perpetrators of these cruel acts know that the current statutes on the books are not strong enough to deter their blood sport activities and many are willing to take the chance because of the inadequacies in the current laws.

As a Massachusetts Special State Police Officer for twenty-five years I have attached such examples of animal fighting. I enclose these photos not to shock you but to impact the reasons for passing this act in to law. I would also be willing to meet with the Committee to allow the viewing of several investigative videos seized during former Blood Sport Investigations. **Such acts of Cruelty still exist in Massachusetts and we will need to continue to investigate these cruel acts of animal fighting and prevent them from occurring in the future.**

The Animal Rescue League of Boston *strongly urges you to act favorably* in regards to these acts and further strengthen the power to enforce and protect Animals in the Commonwealth. Please give our Police Officers, Courts and the Judges the latitude to make their determination on these matters to fit the crime.

Thank you for your consideration.

Respectfully,
Alan B. Borgal
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The Massachusetts Society for Medical Research

Founded 1953

February 2, 2006

Representative Eugene L. O'Flaherty
Chairman, Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

Re: Support for H. 1765 with Amendment

Dear Chairman O'Flaherty:

The Massachusetts Society for Medical Research (MSMR) is a non-profit membership organization focused on the ethical and humane use of animals in biomedical research, teaching and testing.

Our members include colleges and universities, hospitals, biotechnology and pharmaceutical companies, professional associations, and suppliers to the biomedical research industry.

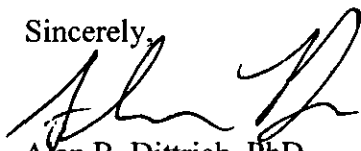
With one proviso, MSMR supports the goals and language of H. 1765, An Act Relating to Penalties for Animal Fighting, and agrees with our colleagues at the Massachusetts Society for the Prevention of Cruelty to Animals that the legislation will be beneficial to the well-being of animals in Massachusetts.

That important proviso is that MSMR would urge amendment of the language in Section 12 of the bill as follows: insert the words "and unjustifiably" after the word "recklessly". This will help reduce the chance that a misinterpretation of the legislation will negatively affect legal, regulated biomedical research involving laboratory animals that is overseen by animal care and use committees.

Massachusetts ranks second in the nation in per capita biomedical research funding; a significant part of that research depends at one stage or another on the considered use of research animals. We believe that by careful crafting of the bill's language, animal fighting can be eliminated without jeopardizing crucial research and the medical benefits that will follow.

Thank you.

Sincerely,



Alan B. Dittrich, PhD
President

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H. 1765

Ac Act Relating to Penalties for Animal Fighting

MSPCA position: SUPPORT

Sections 1-10

Sections 1-10 of this legislation will clarify Massachusetts' statutes pertaining to animal fighting. Specifically, **H. 1765, An Act Relating to Penalties for Animal Fighting**, will make it clear that law enforcement officers are authorized to seize paraphernalia used or intended to be used for animal fighting and animals being bred to fight. Under current animal fighting statutes, it is already illegal to keep or train an animal with the intent that it be used for fighting, and law enforcement officers are authorized by statute to seize and apply for forfeiture of such animals.

The statutes relating to animal fighting can be found in Mass. General Laws Ch. 272 §§88 through 95, inclusive. These sections penalize engaging, promoting, or being present at an animal fight and authorize law enforcement officers to "search such place, building or tenement at any hour of the day or night and take possession of all such birds, dogs or other animals there found, and arrest all persons there present at any such exhibition or where preparations for such exhibitions are being made, or where birds, dogs or other animals are kept or trained for fighting." Section 91 requires application to the court for forfeiture of such animals seized. Collectively, the statutes mentioned demonstrate a sustained legislative intent to penalize the barbaric practice of animal fighting.

In all fifty states, dog fighting is illegal. It is a felony in forty-three states, including Massachusetts. Cockfighting is illegal in all but two states, neither of which is in New England. The MSPCA and other law enforcement agencies have investigated, prosecuted and obtained convictions of people for engaging in dog and cockfighting in Massachusetts. In particular, dog fighting has greatly increased in the past 25 years. We believe that many of the dangerous dog incidents that have been occurring in Boston and around the state are related to dogs being trained to fight.

It is important that law enforcement officers, during an investigation, are able to seize breeding animals. Several other states have specific provisions in their statutes for seizing and forfeiting animals being bred to fight (Michigan, MCL sec. 750.49; Illinois, 510 ILCS 70/4.02; Oregon sec. 167.365). As is currently the case with animals seized for being kept or trained to fight, the burden is on the prosecution to prove intent.

There is a nexus between animal fighting and selling and breeding animals for this purpose. Stud fees can go as high as \$1,000; puppies bring in from \$150 to \$1,500. Game fowl can range from \$75 to \$300 for a single game cock, and from \$150 to more than \$1,000 for brood trios; and

fertilized eggs can cost between \$25 and \$65. Not seizing the animal being used to breed fighting animals is akin to seizing marijuana without seizing the plants from which it is produced.

While existing statutes should give law enforcement officers authority to seize paraphernalia relating to animal fighting, the MSPCA has been challenged on this authority and are therefore seeking to have this specifically provided for in the statutes. (M.G.L. Ch. 276 §1 authorizes the seizure of "...property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime..."). Other states' statutes have this authority to seize paraphernalia specifically in their animal fighting statutes (see, for example, Illinois, Michigan, Louisiana, Mississippi, California, Oklahoma, Texas and Utah). Paraphernalia relating to animal fighting is relevant to the fact-finder when making a determination of intent when presented with all the evidence.

The current omissions in these statutes invite legal challenges that are for municipalities and other entities that must hold animals costly to meet. These proposed changes will remedy this problem and make our animal fighting laws and their enforcement more effective.

Section 11

Section 11 would make it mandatory that if a person is convicted of animal cruelty under this section that the person shall be ordered to surrender or forfeit to the custody of any society, incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals, the animal whose treatment was the basis of such conviction. Previously, the court may have ordered the animals surrendered or forfeited. This change is based on our belief that animals that have been abused should not be returned to their abusers. Furthermore, the prospect of animal forfeiture, in some cases, might provide incentive to a defendant to resolve his/her case via plea agreement, thereby liberating precious Court resources. Moreover, the prospect of forfeiture will augment the existing deterrent effect of the animal cruelty statutes, helping to keep defendants out of the criminal justice system in the first place.

Section 12

Section 12 would clarify possible ambiguity and expressly define as violation of the Massachusetts' animal cruelty laws to "intentionally, knowingly, or recklessly fail to provide veterinary care that a reasonably prudent person knows or should know is necessary to prevent suffering to an animal."

The amendment was carefully drafted with specific language to distinguish the more egregious cases in which it is objectively *obvious* that veterinary care is *necessary* to relieve an animal's suffering, and all other circumstances where an animal's suffering may not be reasonably obvious or apparent.

A recent animal cruelty case in the state of New York illustrates the need for this section in Massachusetts to strengthen and clarify our own animal cruelty laws. In the *State of New York v. Arroyo*, the court overruled a prior and long-standing precedent, in *State v. O'Rourke*, and determined that the terms "necessary sustenance" and "unjustifiable physical pain" were not explicit enough to provide fair notice to a defendant who knowingly failed to provide veterinary

care to treat a large tumor that had grown on his dog's stomach. As a result, the Arroyo court found that the animal cruelty statute was too vague to create a duty to provide veterinary care for one's animals.

The Massachusetts' animal cruelty statutes resemble New York's, in the sense that affirmative responsibility among pet owners to provide veterinary care for their animals is implied by obligations to prevent suffering and cruelty and to provide necessary sustenance. The statute uses the same vague language – phrases such as “deprives of necessary sustenance,” and “knowingly and willfully authorizes or permits [the animal] to be subjected to unnecessary torture, suffering or cruelty of any kind...” Enacting the proposed amendment would clarify the existing animal cruelty laws and will give specific express notice to animal owners and possessors that they have an obligation to provide their animals with veterinary care that is necessary to prevent or relieve their animals' suffering.

While the wording varies from state to state, over twenty states have some kind of provision in their animal cruelty statutes creating a duty to provide necessary medical or veterinary care. Some statutes create more explicit duties than others. For example, both Maine and Vermont expressly define as violations of their animal cruelty statutes to deprive an animal of “necessary medical attention.” The New Hampshire statute is even broader and more comprehensive, stating that a person is guilty of animal cruelty if he deprives an animal of “necessary care.” Phrases such as “necessary care” and “necessary medical attention” could be interpreted in many ways. In contrast, the proposed amendment to the Massachusetts' laws provides greater clarity and notice to pet owners than the laws in the other New England states. In fact, the proposed amendment is tailored to limit criminal violations only in circumstances where there is *obvious* suffering due to a lack of veterinary care that the defendant knew of, or should have known of. By objectively and reasonably limiting the scope and reach of the cruelty statute, the proposed amendment will serve to expressly further the implied intent of the statute while insulating from prosecution all reasonable actions, actors and persons making reasonable errors.

Regrettably, the need for this section is well illustrated by a Massachusetts' case that is factually similar to the New York state case mentioned above. Recently, MSPCA law enforcement officers discovered a dog that had a tumor growing from her external genitalia that had been ignored by her owner, and had actually grown to the size of a small grapefruit. The tumor dragged on the ground and interfered with the dog's ambulation. If this amendment is enacted, cases involving extreme neglect hopefully will occur less frequently as a result of express notice to animal caretakers, and will be prosecuted more cleanly in cases where criminal neglect does occur.

We have discussed Section 12 with the Massachusetts Society for Medical Research (MSMR) and they have expressed concerns about ensuring that this provision does not negatively impact their interests. We would suggest that Section 12 could be amended to add the words “and unjustifiably” after the word “recklessly” to address these concerns.

