

ANIMAL STERILIZATION

House Bill 4239 with committee amendment First Analysis (3-19-97)

Sponsor: Rep. Gerald Law
House Committee: Health Policy

THE APPARENT PROBLEM:

In Michigan, over 200,000 dogs and cats are euthanized each year in public and private animal shelters. Many lost and more abandoned animals die from sickness, hunger, or injury. Millions of dollars of private donations and public tax dollars are spent each year in picking up, housing and caring for, and/or euthanizing these animals. With the legalization of ferrets as pets, the problem of homeless animals can only increase. Several animal control shelters in the state currently require people to spay or neuter the animals adopted from their shelters. Over the years, these shelters have seen a significant decrease in the numbers of homeless and unwanted animals coming to the shelter, which in turn has resulted in a decrease in the number of animals euthanized. Therefore, some people believe that state law should encourage pet owners to have their animals spayed and neutered. Such a policy, it is argued, would reduce statewide the number of unwanted and uncared for animals coming into shelters and then needing to be euthanized. Legislation has been proposed to require both publicly- and privately-operated animal shelters to require that animals adopted from their shelters be sterilized.

THE CONTENT OF THE BILL:

The bill would amend Public Act 287 of 1969, which regulates pet shops, dog pounds, and animal shelters. Among other provisions and new definitions, the bill would require animal control shelters and animal protection shelters to contract with those adopting a non-sterilized dog, cat, or ferret to have the animal sterilized within a specified time.

The bill would also provide for penalties for noncompliance with the contract. Under the bill, animal breeders would be exempt from the act's licensing and registration requirements and therefore would not be subject to the sterilization requirements if they sold or otherwise transferred their own animals, or first generation offspring from their animals, and did not act as animal shelters. Further, the licensing and registration exemption would extend to a person who

obtained an animal with the intent to resell the animal or find it a different home provided the person has no more than two such animals at any one time and limits these transactions to no more than six in a twelve-month period. However, the exemption would not exempt the animals from vaccination, licensing, and handling requirements under provisions in the Dog Law of 1919 and Public Act 358 of 1994 (MCL 287.261 et al. and MCL 287.891 et al.).

Shelters. Currently, the act regulates "dog pounds" (governmental entities) and "animal shelters" (nonprofit entities). The bill would replace the term "dog pound" with the term "animal control shelter". An animal control shelter would be defined as "a facility operated by a municipality for the impoundment and care of animals that are found in the streets or at large, animals that are otherwise held due to the violation of a municipal ordinance or state law, or animals that are surrendered to the animal control shelter". The term "animal shelter" would be changed to "animal protection shelter", but would retain the existing definition. Further, under current law, the definition of "animal" excludes rodents. Under the bill, rodent would not be excluded from the definition.

Under the bill, shelters or their designees would be required to contract with any person adopting a non-sterilized animal to have it sterilized. The sterilization would be required within four weeks of the adoption for animals six months of age or older, or four weeks from the date the animal turns six months old. A deposit of at least \$25 would be collected by the shelter and returned when the person adopting the animal presented a veterinarian's certificate verifying that the animal was sterilized within the prescribed time limit. Failure to comply would result in the loss of the deposit money, which would go to the shelter to finance sterilizations; to educate the public about the benefits of sterilizing dogs, cats and ferrets; and to ensure compliance with the sterilization law. However, an exception to the sterilization requirement would be made for an animal certified by a veterinarian to be at risk of a serious,

permanent medical or health problem. In cases where an animal died before it was sterilized, but within the time period specified on the contract for the sterilization procedure, the deposit would be returned upon verification of the animal's death by a veterinarian. A deposit would not be required for dogs transferred to local, state, or federal law enforcement agencies or to organizations or trainers that train guide or leader dogs for persons who are blind. (In addition, animals transferred to research facilities would not be subject to the required deposit, as those transfers would not fall under the definition of "adoption". "Adoption" would mean "a transfer of ownership, with or without remuneration, of a dog, cat, or ferret from an animal control shelter or animal protection shelter to an individual for the purpose of being a companion animal for that individual." A companion animal would include but not be limited to a hunting dog or a guard dog.)

In addition, shelters would be required to keep annual records of the total number of dogs, cats, ferrets, and other animals received; returned to owners; adopted out; sold or transferred; sterilized and not sterilized; and euthanized. Each of these categories would be broken down as to whether the animal was under or above six months of age. A copy of the record would be provided to the Department of Agriculture by March 31 of the following year.

Penalties. In addition to any other remedies provided under the act, shelters violating the animal sterilization provisions of the bill would be subject to revocation of their registration. A person who did not comply with the contract to sterilize a dog, cat, or ferret would be subject to paying liquidated damages of \$100 to cover a shelter's costs to enforce the contract. A representative of a shelter would be required to verbally direct the adopting person's attention to the liquidated damages agreement in the contract. Failure to comply with the contract requirements under the bill would, at a court's discretion, result in having the animal returned to the original shelter or to a veterinarian or other shelter, where the animal would be euthanized or adopted out to a person willing to have it sterilized.

Under the bill, the director of the Department of Agriculture would be able to obtain injunctions against those violating the act, and obtain declaratory judgments that a particular act, method, or practice was in violation of the act.

The bill would take effect 90 days after enactment.

MCL 287.331 et al.

BACKGROUND INFORMATION:

House Bill 4239 is a reintroduction of previous

legislation in the 1995-96 legislative session -- House Bill 5926 which passed both the House and Senate but was not ordered enrolled, and enrolled House Bill 4653 that was vetoed by the governor due to the following concerns: that the new reporting requirements by animal control shelters could have Headlee implications by containing unfunded mandates on local units of government, that language requiring pet shops to distribute literature on pet sterilization as a requirement for licensure was too vague, the awarding of attorney fees to shelters for a person's failure to meet the terms of an adoption contract, and an incorrect reference which rendered a penalty section of the bill meaningless. (Note: For more information, see the House Legislative Analysis Section's analysis on House Bill 5926 dated 11-12-96 and enrolled House Bill 4654 dated 4-12-96.)

According to information from animal shelter advocates, twenty other states have adopted laws requiring mandatory sterilization of dogs and cats adopted from public and private animal shelters (Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Rhode Island, Texas, and Virginia). A few states even subsidize the surgeries. In all the states, non-compliance results in forfeiture of a deposit. Twelve of the states also make non-compliance a violation of law.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local government. (3-18-97)

ARGUMENTS:

For:

More than 70,000 puppies and kittens are born every day in the United States, yet only one in five will be cared for the duration of its lifetime. A female dog and her offspring can be the source of 67,000 puppies over six years; a cat and her offspring can bring 420,000 other cats into the world in just seven years. Uncared for animals not only are at risk for death and injury to themselves, but also pose health risks to humans through animal bites and scratches and the spread of rabies. Passage of this bill would not eliminate unwanted animals, but it would be a major first step in reducing the numbers of animals coming into shelters, and would especially reduce the high cost of euthanizing and disposing of these animals. According to information from the Michigan Humane Society, Kent County Animal Control Shelter has seen a 61 percent decrease in both the numbers of cats and dogs received at the shelter and animals euthanized since instituting a

mandatory spay/neuter program in 1972. The privately-run Humane Society of Huron Valley, which serves Washtenaw County, has seen a 67 percent decrease in animals received at the shelter and a 71 percent decrease in the number of animals euthanized since its mandatory spay/neuter program went into effect in 1975. Even in counties where mandatory spay/neuter programs are not enforced as aggressively, shelters are still seeing a significant drop in the number of animals being brought to the facilities and the number of animals being euthanized. Therefore, instituting a statewide mandatory spay/neuter program and increasing enforcement efforts should result in considerable savings in tax dollars and private donations as the cost to operate the shelters declines in response to fewer unwanted animals and fewer animals being euthanized.

For:

Mandatory sterilization of dogs, cats, and ferrets adopted from animal control and protection shelters, along with the resulting fees for non-compliance, will go a long way in increasing responsibility for pets adopted from these shelters. For instance, a person investing only \$5 or \$10 for an animal from a shelter may not seek necessary medical attention for a sick dog when they can get another dog for \$5. With the bill in place, those adopting animals from the shelters will be much more committed to seeing that the animal gets proper food, shelter, and medical attention.

Against:

The governor already vetoed a similar bill, House Bill 4654 of 1996, because, among other things, the bill's provisions could constitute unfunded mandates on local governments that operate animal control shelters.

Response:

According to proponents of the bill, House Bill 4239 adequately addresses the governor's concerns. A troublesome provision requiring pet shops to distribute literature on the problems of pet over-population and the benefits of pet sterilization as a requirement of licensure was eliminated, as was the provision that the shelters be awarded attorney fees when enforcing a contract. The concern over the bill having Headlee implications due to the new reporting requirements constituting an unfunded mandate is unfounded. First of all, the decision by a municipality to have an animal control shelter is voluntary. Some municipalities opt to contract with privately operated animal protection shelters. Secondly, most of the data to be collected listed in the bill is already required to be gathered by departmental regulations. According to the Department of Agriculture, the only new reporting requirements would be to record the number of adopted animals that were and were not sterilized and to send a copy of all data collected to the department annually. The cost of these

two reporting additions would be minimal. The last concern, an incorrect reference in a penalty section that references the wrong section in regards to contract language, can be easily fixed by amendment.

Against:

Some people are concerned that veterinarians may raise fees for sterilization procedures if there is mandatory sterilization for dogs, cats, and ferrets adopted from animal control or protection shelters.

Response:

Sterilization is a one-time procedure. Veterinarians usually build their practices around preventive procedures such as rabies and distemper vaccines, heartworm testing, and treating illnesses. They want and cultivate repeat customers. A veterinarian charging outrageous fees for sterilization procedures would be hard-pressed to entice pet owners to come back for a rabies shot.

Against:

A deposit, coupled with a possible fine of a hundred dollars, plus the cost of the sterilization procedure, would be a deterrent for adopting dogs, cats, and ferrets from animal control or protection shelters. Some people are concerned that deposit fees higher than \$25 would especially be a deterrent in rural or economically depressed areas of the state. Though the deposit is refundable, there could be a lag time of up to six to seven months between the adoption of the animal and the refund of the deposit. The time frame would depend on the age of the animal at adoption and how long a shelter would need to process a refund after receiving proof that the sterilization procedure had been completed. To have a deposit tied up for six months or longer would place an undue burden on some people adopting animals.

Response:

Twenty other states already have similar legislation, and have seen no decrease in the number of adoptions from shelters. Michigan's Bay County Animal Control Department has had a very similar program to the one proposed in House Bill 4239 in operation for several years. The department reports a 90 percent compliance rate with the sterilization requirement and has seen an increase in the level of responsibility on the part of people adopting animals. Where many feel that a \$25 deposit is sufficient, some people believe that a deposit of at least \$50 is more in line with the cost of sterilizing an animal, and thus would serve to increase voluntary compliance. They feel that too low of a deposit would make it cheaper for a person to forfeit the deposit than to have the animal sterilized. However, the bill's provision specifying only a minimum deposit would give a county or shelter the discretion to set a deposit amount that serves the needs of the local area.

Reply:

If enforced, noncompliance with the sterilization requirement of this bill would result in more than just the forfeiting of the deposit. A person would be subject to a fine of \$100 for liquidated damages plus the chance of losing custody of the animal. These fees and the possible loss of the animal are far greater than the cost of the sterilization procedure and should be a sufficient incentive for voluntary compliance.

Against:

Some animal groups feel the bill does not adequately differentiate between animals being adopted from shelters and animals that are reclaimed by their rightful owners. An earlier version of the bill did make such a differentiation, but the provision has been removed from the current bill.

Further, the bill exempts those who obtain animals with the express intention of reselling the animal or finding it a home from being licensed as a shelter, but only if they handle no more than two animals at a time or no more than six animals in a 12-month period. However, there are many groups and individuals who "rescue" homeless dogs and cats and place them into homes that would not qualify for the licensing exemption as they typically handle more than six dogs or cats in a year. It is not uncommon for one of these "rescuers" to place one or more animals a month. But, under the bill, the person or group would have to be licensed as an animal protection shelter if they exceeded the limit. Since many municipalities have local ordinances that limit the number of animals a person may have on his or her premises, this restriction should be deleted and a municipality should be able to establish its own rules.

Response:

Reportedly, the provision pertaining to an exemption from mandatory sterilization for animals being reclaimed by their owners was removed because some county shelters have a policy of neutering animals that repeatedly get loose and end up at the shelter. Repeat offenders not only cost taxpayer dollars for animal control officers to capture them, but also pose the problem of mating with other animals while loose and thus continuing the cycle of producing unwanted pets that the bill is attempting to address.

In addition, restricting the number of animals that a person can handle without being licensed as a shelter is an attempt to prevent the problem of animal rescuers inadvertently becoming animal collectors. Often, well-meaning people get overwhelmed by the numbers of homeless animals coming their way. If they cannot quickly place the animals in homes, the numbers quickly increase to a point where the animals begin to pose a health risk. The bill's restriction on the number of animals that can handled without being licensed would

allow the Department of Agriculture to require licensing in such situations, thus ensuring that proper sanitation and care are being provided.

POSITIONS:

The Michigan Humane Society supports the bill. (3-18-97)

The Department of Agriculture supports the bill. (3-18-97)

The Michigan Veterinary Medical Association supports the bill. (3-18-97)

A representative of the Michigan Association of Animal Control Officers testified in support of the bill. (3-18-97)

A representative of the animal section of the Michigan State Bar testified in support of the bill. (3-18-97)

The Michigan Association for Pure Bred Dogs and the Michigan Hunting Dog Federation support the concept of the bill, but would like the bill to be amended to exempt dogs being reclaimed at shelters from the mandatory sterilization requirement and remove the restriction on the number of rescued dogs that can be handled without having to be licensed as a shelter. (3-18-97)

Analyst: S. Stutzky

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