

# HOUSE BILL No. 5186

July 14, 2009, Introduced by Reps. Byrnes and Tlaib and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 49 (MCL 750.49), as amended by 2006 PA 129, and  
by adding section 49a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 49. (1) As used in this section, "animal" means a  
2       vertebrate other than a human.

3       (2) A person shall not knowingly do any of the following:

4       (a) Own, possess, use, buy, sell, offer to buy or sell,  
5       import, or export an animal for fighting or baiting, or as a target  
6       to be shot at as a test of skill in marksmanship.

7       (b) Be a party to or cause the fighting, baiting, or shooting  
8       of an animal as described in subdivision (a).

9       (c) Rent or otherwise obtain the use of a building, shed,  
10      room, yard, ground, or premises for fighting, baiting, or shooting

1 an animal as described in subdivision (a).

2 (d) Permit the use of a building, shed, room, yard, ground, or  
3 premises belonging to him or her or under his or her control for  
4 any of the purposes described in ~~this section~~ **SUBDIVISION (A)**.

5 (e) Organize, promote, or collect money for the fighting,  
6 baiting, or shooting of an animal as described in ~~subdivisions (a)~~  
7 ~~to (d)~~ **SUBDIVISION (A)**.

8 (f) Be present at a building, shed, room, yard, ground, or  
9 premises where preparations are being made for an exhibition  
10 described in ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**, or be present  
11 at the exhibition, knowing that an exhibition is taking place or  
12 about to take place.

13 (g) Breed, buy, sell, offer to buy or sell, exchange, import,  
14 or export an animal the person knows has been trained or used for  
15 fighting as described in ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**,  
16 or breed, buy, sell, offer to buy or sell, exchange, import, or  
17 export the offspring of an animal the person knows has been trained  
18 or used for fighting as described in ~~subdivisions (a) to (d)~~  
19 **SUBDIVISION (A)**. This subdivision does not prohibit owning,  
20 breeding, buying, selling, offering to buy or sell, exchanging,  
21 importing, or exporting an animal for agricultural or agricultural  
22 exposition purposes.

23 (h) Own, possess, use, buy, sell, offer to buy or sell,  
24 transport, or deliver any device or equipment intended for use in  
25 the fighting, baiting, or shooting of an animal as described in  
26 ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**.

27 **(I) SOLICIT OR INVITE ANOTHER PERSON TO ENGAGE IN THE**

**FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL AS DESCRIBED IN  
SUBDIVISIONS (A) TO (D).**

(3) A person who violates subsection (2)(a) to (e) is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) A fine of not less than \$5,000.00 or more than \$50,000.00.

(c) Not less than 500 or more than 1,000 hours of community service.

(4) A person who violates subsection (2)(f) to ~~(h)~~ **(I)** is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) A fine of not less than \$1,000.00 or more than \$5,000.00.

(c) Not less than 250 or more than 500 hours of community service.

(5) The court may order a person convicted of violating this section to pay the costs of prosecution.

(6) The court may order a person convicted of violating this section to pay the costs for housing and caring for the animal, including, but not limited to, providing veterinary medical treatment.

(7) As part of the sentence for a violation of subsection (2), the court shall order the person convicted not to own or possess an animal of the same species involved in the violation of this section for 5 years after the date of sentencing. Failure to comply with the order of the court ~~pursuant to~~ **ISSUED UNDER** this subsection is punishable as contempt of court.

(8) If a person incites an animal trained or used for fighting

1 or an animal that is the first or second generation offspring of an  
2 animal trained or used for fighting to attack a person and thereby  
3 causes the death of that person, the owner is guilty of a felony  
4 punishable by imprisonment for life or for a term of years greater  
5 than 15 years.

6 (9) If a person incites an animal trained or used for fighting  
7 or an animal that is the first or second generation offspring of an  
8 animal trained or used for fighting to attack a person, but the  
9 attack does not result in the death of the person, the owner is  
10 guilty of a felony punishable by imprisonment for not more than 4  
11 years or a fine of not more than \$2,000.00, or both.

12 (10) If an animal trained or used for fighting or an animal  
13 that is the first or second generation offspring of an animal  
14 trained or used for fighting attacks a person without provocation  
15 and causes the death of that person, the owner of the animal is  
16 guilty of a felony punishable by imprisonment for not more than 15  
17 years.

18 (11) If an animal trained or used for fighting or an animal  
19 that is the first or second generation offspring of an animal  
20 trained or used for fighting attacks a person without provocation,  
21 but the attack does not cause the death of the person, the owner is  
22 guilty of a misdemeanor punishable by imprisonment for not more  
23 than 1 year or a fine of not more than \$1,000.00, or both.

24 (12) Subsections (8) to (11) do not apply if the person  
25 attacked was committing or attempting to commit an unlawful act on  
26 the property of the owner of the animal.

27 (13) If an animal trained or used for fighting or an animal

1 that is the first or second generation offspring of a dog trained  
2 or used for fighting goes beyond the property limits of its owner  
3 without being securely restrained, the owner is guilty of a  
4 misdemeanor punishable by imprisonment for not more than 90 days or  
5 a fine of not less than \$50.00 nor more than \$500.00, or both.

6 (14) If an animal trained or used for fighting or an animal  
7 that is the first or second generation offspring of a dog trained  
8 or used for fighting is not securely enclosed or restrained on the  
9 owner's property, the owner is guilty of a misdemeanor punishable  
10 by imprisonment for not more than 90 days or a fine of not more  
11 than \$500.00, or both.

12 (15) Subsections (8) to (14) do not apply to any of the  
13 following:

14 (a) A dog trained or used for fighting, or the first or second  
15 generation offspring of a dog trained or used for fighting, that is  
16 used by a law enforcement agency of the state or a county, city,  
17 village, or township.

18 (b) A certified leader dog recognized and trained by a  
19 national guide dog association for the blind or for persons with  
20 disabilities.

21 (c) A corporation licensed under the private security business  
22 and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083, when  
23 a dog trained or used for fighting, or the first or second  
24 generation offspring of a dog trained or used for fighting, is used  
25 in accordance with the private security business and security alarm  
26 act, 1968 PA 330, MCL 338.1051 to 338.1083.

27 (16) An animal that has been used to fight in violation of

1 this section or that is involved in a violation of subsections (8)  
2 to (14) shall be confiscated as contraband by a law enforcement  
3 officer and shall not be returned to the owner, trainer, or  
4 possessor of the animal. The animal shall be taken to a local  
5 humane society or other animal welfare agency. If an animal owner,  
6 trainer, or possessor is convicted of violating subsection (2) or  
7 subsections (8) to (14), the court shall award the animal involved  
8 in the violation to the local humane society or other animal  
9 welfare agency.

10 (17) Upon receiving an animal confiscated under this section,  
11 or at any time thereafter, an appointed veterinarian, the humane  
12 society, or other animal welfare agency may humanely euthanize the  
13 animal if, in the opinion of that veterinarian, humane society, or  
14 other animal welfare agency, the animal is injured or diseased past  
15 recovery or the animal's continued existence is inhumane so that  
16 euthanasia is necessary to relieve pain and suffering.

17 (18) A humane society or other animal welfare agency that  
18 receives an animal under this section shall apply to the district  
19 court or municipal court for a hearing to determine whether the  
20 animal shall be humanely euthanized because of its lack of any  
21 useful purpose and the public safety threat it poses. The court  
22 shall hold a hearing not more than 30 days after the filing of the  
23 application and shall give notice of the hearing to the owner of  
24 the animal. Upon a finding by the court that the animal lacks any  
25 useful purpose and poses a threat to public safety, the humane  
26 society or other animal welfare agency shall humanely euthanize the  
27 animal. Expenses incurred in connection with the housing, care,

1 upkeep, or euthanasia of the animal by a humane society or other  
2 animal welfare agency, or by a person, firm, partnership,  
3 corporation, or other entity, shall be assessed against the owner  
4 of the animal.

5 (19) Subject to subsections (16) to (18), all animals being  
6 used or to be used in fighting, equipment, devices and money  
7 involved in a violation of subsection (2) shall be forfeited to the  
8 state. All other instrumentalities, proceeds, and substituted  
9 proceeds of a violation of subsection (2) are subject to forfeiture  
10 under chapter 47 of the revised judicature act of 1961, 1961 PA  
11 236, MCL 600.4701 to 600.4709.

12 (20) The seizing agency may deposit money seized under  
13 subsection (19) into an interest-bearing account in a financial  
14 institution. As used in this subsection, "financial institution"  
15 means a state or nationally chartered bank or a state or federally  
16 chartered savings and loan association, savings bank, or credit  
17 union whose deposits are insured by an agency of the United States  
18 government and that maintains a principal office or branch office  
19 located in this state under the laws of this state or the United  
20 States.

21 (21) An attorney for a person who is charged with a violation  
22 of subsection (2) involving or related to money seized under  
23 subsection (19) shall be afforded a period of 60 days within which  
24 to examine that money. This 60-day period shall begin to run after  
25 notice of forfeiture is given but before the money is deposited  
26 into a financial institution under subsection (20). If the attorney  
27 general, prosecuting attorney, or city or township attorney fails

1 to sustain his or her burden of proof in forfeiture proceedings  
 2 under subsection (19), the court shall order the return of the  
 3 money, including any interest earned on money deposited into a  
 4 financial institution under subsection (20).

5 (22) This section does not apply to conduct that is permitted  
 6 by and is in compliance with any of the following:

7 (a) Part 401 of the natural resources and environmental  
 8 protection act, 1994 PA 451, MCL 324.40101 to ~~324.40119~~ **324.40120**.

9 (b) Part 435 of the natural resources and environmental  
 10 protection act, 1994 PA 451, MCL 324.43501 to 324.43561.

11 (c) Part 427 of the natural resources and environmental  
 12 protection act, 1994 PA 451, MCL 324.42701 to 324.42714.

13 (d) Part 417 of the natural resources and environmental  
 14 protection act, 1994 PA 451, MCL 324.41701 to 324.41712.

15 (23) This section does not prohibit a person from being  
 16 charged with, convicted of, or punished for any other violation of  
 17 law that is committed by that person while violating this section.

18 **SEC. 49A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A**  
 19 **PERSON SHALL NOT DO ANY OF THE FOLLOWING:**

20 **(A) RECORD THE FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL.**

21 **(B) OWN, POSSESS, USE, BUY, SELL, OFFER TO BUY OR SELL,**  
 22 **TRANSPORT, OR DELIVER A RECORDING OF, OR AN ITEM DEPICTING, THE**  
 23 **FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL.**

24 **(2) SUBSECTION (1) DOES NOT APPLY TO A PEACE OFFICER ACTING IN**  
 25 **THE COURSE OF HIS OR HER DUTIES OR AN INDIVIDUAL ENGAGED IN**  
 26 **LEGITIMATE EDUCATIONAL OR SCIENTIFIC ACTIVITIES AND DOES NOT**  
 27 **PROHIBIT SPEECH PROTECTED UNDER AMENDMENT I OF THE CONSTITUTION OF**



1 THE UNITED STATES OR SECTION 5 OF ARTICLE I OF THE STATE  
2 CONSTITUTION OF 1963.

3 (3) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A FELONY  
4 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF  
5 NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00, OR BOTH.

6 (4) AS USED IN THIS SECTION, "ANIMAL" MEANS A VERTEBRATE OTHER  
7 THAN A HUMAN.