



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 710 (as reported without amendment)
Sponsor: Senator David Knezek
Committee: Judiciary

Date Completed: 4-5-18

RATIONALE

The Michigan Penal Code includes a number of prohibitions with respect to animal fighting, and requires animals trained or used for fighting to be seized and taken to a local humane society or animal welfare agency. The Code specifies that expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal must be assessed against its owner. Apparently, however, animal owners who are arrested for these offenses seldom claim the animals, and the humane society or agency that has custody of an animal while a case is pending often must assume the expense of caring for it. If the owner is convicted of an animal fighting offense, the animal is forfeited to, or becomes the property of, the State; however, there is no mechanism for forfeiting the animal earlier if the expenses for its care are not paid. Evidently, waiting to dispose of an animal until the conclusion of a criminal case against its owner can be prohibitively expensive for the shelter when the owner does not pay the required expenses. The delay also prolongs the animal's stay in the shelter, when it could be rehabilitated and placed in a new home.

In addition, the Code prohibits the subsequent transfer or adoption of fighting animals, or their progeny, from shelters or animal welfare agencies. Some claim that this prohibition, especially as it pertains to a fighting animal's offspring, is overly broad and not supported by science. To address these issues, it has been suggested that the Penal Code allow the transfer of fighting animals or their offspring under certain circumstances, and that the process of seizing and forfeiting animals be modified.

CONTENT

The bill would amend the Michigan Penal Code to do the following with respect to an animal that was trained or used for fighting and seized by a law enforcement officer:

- **Require an animal control agency (a shelter or law enforcement agency) that took custody of the animal to notify its owner of the seizure within 72 hours.**
- **Allow the agency to dispose of the animal by adoption, transfer, or euthanasia after 14 days, if its owner or possessor had not posted a security deposit or bond.**
- **Establish a procedure for the person who owned or possessed the seized animal to post a security deposit or bond to prevent the disposition of the animal, and require the person to renew the deposit or bond if a criminal trial were continued.**
- **Require the security deposit or bond to be in an amount sufficient to pay for the costs of the agency to house and care for the animal.**
- **Allow the agency to draw on the security deposit or bond to cover the costs of the animal's seizure, care, and disposition.**
- **Allow the agency to euthanize the animal, despite the payment of a security deposit or bond, in certain cases.**
- **Allow the partial return of a security deposit or bond, if the person who owned or possessed the animal were found not guilty in an animal fighting criminal action.**
- **Allow, instead of require, an animal control agency to apply to a court for a hearing to euthanize an animal.**

The bill also would do the following:

- **Prohibit a person from obtaining or permitting the use of, or being present at a vehicle or any other venue for the purpose of using an animal for fighting, baiting, or target shooting.**
- **Specify that a prohibition against breeding, buying, selling, exchanging, importing, or exporting an animal trained or used for fighting, or the offspring of such an animal, would not prohibit the adoption of an animal.**
- **Allow court-ordered costs assessed against a person convicted of animal fighting to include the cost of investigating the violation as well as the cost for disposition of the animal.**
- **Eliminate from certain offenses and penalties language referring to the first or second generation offspring of a dog trained or used for fighting.**

The bill would take effect 90 days after its enactment.

Prohibition regarding Fighting Animals; Adoption

Section 49 of the Penal Code contains various prohibitions relating to the use of an animal for fighting or baiting, or as a shooting target. Among other things, the Code prohibits a person from knowingly renting or obtaining the use of, permitting the use of, or being present at, a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal. Under the bill, these prohibitions would include obtaining or permitting the use of, or being present at a vehicle or any other venue for the purpose of using an animal for fighting, baiting, or target shooting.

The Code also prohibits a person from knowingly breeding, buying, selling, exchanging, importing, or exporting an animal that the person knows has been trained or used for fighting or is the offspring of an animal trained or used for fighting. The bill would eliminate the prohibition as it relates to the offspring of an animal trained or used for fighting. The bill also specifies that this provision would not prohibit an animal control agency from owning, adopting, or transferring ownership of an animal for the purpose of adoption of an animal trained or used for fighting, baiting, or shooting.

Where Section 49 of the Code refers to a humane society or other animal welfare agency, the bill would refer to an "animal control agency". "Animal control agency" would mean an animal control shelter, an animal protection shelter, or a law enforcement agency. ("Animal control shelter" and "animal protection shelter" would mean those terms as defined in Public Act 287 of 1969, which regulates those shelters and pet shops. The Act defines "animal control shelter" 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. "Animal protection shelter" means a facility operated by a person, humane society, society for the prevention of cruelty to animals, or any other nonprofit organization for the care of homeless animals.)

The Code allows a court to order a person convicted of violating Section 49 to pay costs for the housing and care of the animal, including providing veterinary medical treatment. The bill also would allow the court-ordered costs to include the costs of investigating the violation of Section 49 and disposition of the animal. ("Disposition" would include the transfer, euthanasia, or adoption of an animal.)

Attacks by Animal Trained, Used for Fighting: Offspring

The Code prescribes penalties for a number of offenses in which an animal trained or used for fighting, or an animal that is the first or second generation offspring of such an animal, attacks a person or is inadequately confined. The Code exempts from these offenses a dog trained for fighting, or the first or second generation offspring of such a dog, that is used by a law enforcement agency or a corporation licensed under the Private Security Business and Security Alarm Act. The

bill would eliminate the language referring to the first or second generation offspring of a dog trained or used for fighting. Also, the bill would make an exception for a dog trained or used for fighting that was owned or possessed by an animal control agency or that had been transferred from an agency that owned or possessed the dog.

Seizure & Disposition of Animal

An animal that has been used to fight or that is involved in another violation of Section 49 must be confiscated by a law enforcement officer and may not be returned to the person who owned, trained, or possessed it. The animal must be taken to a local humane society or other animal welfare agency and, if the person who owned, trained, or possessed the animal is convicted of violating Section 49, the court must award the animal to the local humane society or other animal welfare agency. Under the bill, except as otherwise provided, the animal instead would have to be taken to a local animal control agency and, if the owner, trainer, or possessor were convicted, would have to be awarded to that agency for evaluation and disposition.

Within 72 hours after the animal was seized, the animal control agency taking custody of it would have to give notice of the seizure by one of the following methods:

- Posting at the location of the seizure.
- Delivery to a person residing at the location of the seizure.
- Registered mail to the location of the seizure, if the owner were unknown.
- Registered mail to the last known address of the animal's owner, if the owner were known.

The notice would have to include all of the following:

- A description of each seized animal.
- The time, date, location, and description of circumstances under which the animal was seized.
- The address and telephone number of the location where the animal was being held and contact information for the individual from whom information regarding a security deposit or bond could be obtained.
- A statement that the person who owned or possessed the animal could post a security deposit or bond to prevent the forfeiture of the animal; that failure to do so within 14 days would result in forfeiture of the animal; and that the person could request a hearing to contest the requirement to post a security deposit or bond or the amount of the security deposit or bond.
- A statement that the animal's owner or possessor was responsible for all costs for investigating the violation, the animal's housing and care, and its disposition, unless the court determined that the animal's seizure was not justified.

At a hearing, the prosecuting attorney would have the burden to establish that there was probable cause to believe that a violation of Section 49 occurred, and by a preponderance of the evidence that the amount of the security deposit or bond was fair and reasonable for the care of and provision for the seized animal. If the court found that the prosecuting attorney had met this burden, the animal would be forfeited to the animal control agency that seized it unless the owner or possessor of the animal posted the required security deposit or bond. An owner's or possessor's failure to appear at a scheduled hearing would result in automatic forfeiture of the animal if the date of the hearing were more than 14 days after the date on the notice.

If the court found that the prosecuting attorney had not met this burden, the court could order either of the following: a) that the animal's owner or possessor did not have to post a security deposit or bond to prevent forfeiture of the animal before the criminal action under Section 49 was resolved; or b) that the animal's owner or possessor would have to post the security deposit or bond in amount determined by the court to be fair and reasonable for the care of the seized animal until the criminal action was resolved. If the court ordered a security deposit or bond, the court would have to specify the date by which the animal would be forfeited if the security deposit or bond were not posted.

The animal control agency would have to hold the seized animal for 14 consecutive days, including weekends and holidays, beginning on the date notice was given. After the 14-day period, if the animal's owner or possessor had not posted a security deposit or bond, the animal would be forfeited and the agency could dispose of the animal by adoption, transfer to another agency, or humane euthanasia. An agency that transferred an animal or disposed of it through adoption would have to provide a copy of the animal's history, including a description of why the animal was seized, veterinary records, and behavioral assessments, to the person to whom the animal was transferred or adopted.

Security Deposit or Bond

The person who owned or possessed a seized animal could prevent forfeiture and disposition of the animal by posting a security deposit or bond with the court within 14 days after receiving the notice required under the bill. The bond would have to be in an amount sufficient to secure payment of all costs of the investigation and the animal's housing and care during a 30-day period of boarding and veterinary treatment after examination by a licensed veterinarian. Subject to a hearing, the animal control agency would have to determine the amount of the bond within 72 hours after the animal was seized and would have to inform the animal's owner or possessor of that amount upon request. The owner or possessor would have to give the agency proof of the posting of the security deposit or bond within 14 days after receiving the notice of seizure or within the time period set by the court following a hearing.

An animal control agency holding a seized animal could draw on a security deposit or bond in 30-day increments, to cover the actual reasonable costs incurred in the animal's seizure, care, keeping, and disposition from the date of the seizure to the date of the official disposition of the animal in the criminal action.

If a security deposit or bond were posted, and the criminal trial did not occur within the initial 30-day period or were continued to a later date, the owner or possessor would have to post an additional security deposit or bond in the amount previously determined by the agency or in a hearing. If the animal's owner or possessor failed to post a new security deposit or bond with the court before the previous one expired, the animal would be forfeited to the agency that was caring for it.

If the person who owned or possessed the animal were found not guilty in the criminal action, the amount of the security deposit or bond posted to prevent disposition of the animal could be returned to the owner or possessor at the court's discretion and the animal would have to be returned to the owner, unless the animal was injured or diseased past recovery, or it posed a public safety threat.

If the person who owned or possessed a seized animal posted a security deposit or bond and the court determined that the animal was a threat to public safety, the posting of the deposit or bond would not prevent disposition of the animal. The amount of the deposit or bond posted to prevent disposition of the animal would have to be returned, minus the reasonable cost incurred by the agency for the care and euthanasia of the animal.

Euthanasia of Seized Animal

Under the Code, upon receiving a seized animal, or at any time afterward, an appointed veterinarian, the humane society, or other animal welfare agency may humanely euthanize the animal if, in the opinion of that veterinarian, humane society, or other animal welfare agency, the animal is injured or diseased past recovery or the animal's continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering. Under the bill, an animal control agency could humanely euthanize the animal or have it euthanized, under the same circumstances. This provision would apply to an animal whether or not a security deposit or bond had been posted. The Code requires a humane society or other animal welfare agency that receives a seized animal to apply to the district court or municipal court for a hearing to determine whether the animal must

be humanely euthanized because of its lack of any useful purpose and the public safety threat it poses. The bill would allow, instead of require, an animal control agency to apply to the court for such a hearing. The bill also would eliminate the language referring to the animal lacking a useful purpose.

MCL 750.49

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Code prohibits the breeding, buying, selling, exchanging, importing, or exporting of an animal that has been trained or used for fighting, or that animal's progeny. This prohibition relies on incorrect assumptions about the temperament of an animal based on the animal's, or its parent's, having been trained or used for fighting. As such, courts generally order the destruction of animals found in animal fighting operations, regardless of whether they were used for fighting. According to Best Friends Animal Society, Michigan is one of 10 states where such animals are summarily euthanized. Instead, each animal's fitness for adoption should be evaluated based on an assessment of the animal's health and behavior. The bill would give an animal awarded to an animal control agency the benefit of an evaluation before its disposition. At the same time, the bill would protect members of the public who adopt such animals by requiring an agency to provide a copy of the animal's history to the adopter.

The bill also would improve the forfeiture process for animals seized in connection with an animal fighting case. Generally, an owner who is being tried for such a crime is concerned with avoiding conviction and does not attempt to claim the animal. Without a bond to ensure that the criminal defendant remains responsible for the costs of caring for the animal while the case is pending, the organization that has custody of the animal assumes responsibility for paying for its housing, food, and veterinary care. Criminal cases can take months to resolve. Consequently, the high cost of caring for these animals creates an incentive for law enforcement not to investigate animal fighting crimes.

Under the bill, an animal would not be held for the duration of the proceeding unless its owner posted a cost-of-care bond. This would place the financial burden of caring for an animal on its owner and not on local animal control agency or nonprofit organization. If an owner failed to post the bond, an agency could dispose of the animal humanely through adoption, transfer, or euthanasia. This would spare animals from a protracted stay in a shelter. Also, in some cases, an agency could dispose of a seized animal even though a bond or security deposit had been posted, which could prevent an injured or ill animal from continuing to suffer and prevent an agency from continuing to incur costs to take care of it. Because the bill includes notice and hearing requirements for a security deposit or bond, it would protect the due process rights of the owner. The bill also would allow the bond to be refunded if the defendant were acquitted.

Opposing Argument

Prohibiting the adoption of a seized dog's progeny is justified based on the nature and breeding of fighting dogs. Certain traits are considered desirable for fighting dogs, such as size and strength, a tendency to avoid signaling prior to an attack, and tenacity. The offspring of a dog bred for fighting is more likely to have those traits, regardless of whether it is used for fighting. These typically include pit bulls.¹ While these dogs may not be more likely than other breeds to attack

¹ The term "pit bull" does not describe a particular breed of dog, as there is no such breed. "Pit bull" usually refers to the Staffordshire Bull Terrier, American Staffordshire Terrier, American Pit Bull Terrier, or a dog that substantially conforms to the American Kennel Club standards for those breeds.

humans, the traits they exhibit, and the damage that they can inflict, are unique. Allowing these animals to be adopted represents an unacceptable level of risk to public safety.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could have a positive fiscal impact on the State and local government. It would make various prohibitions no longer applicable to the owner of the first or second generation offspring of a dog trained or used for fighting. The prohibitions also would not apply to an animal control agency or an individual who adopted a dog trained or used for fighting from an animal control agency as provided under the Code.

Fewer misdemeanor and felony arrests and convictions could reduce resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The Code allows the court to order a person convicted of these violations to pay the costs of prosecution, which may limit the savings realized. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any decrease in prison intakes, in the short term, the marginal savings to State government is approximately \$3,764 per prisoner per year. Any associated decrease in fine revenue would reduce funding to public libraries.

The bill would require an animal control agency taking custody of an animal that was involved in a violation to give notice within 72 hours and hold the animal for 14 days. If the owner had not posted a security bond within that time or requested a hearing, the agency could dispose of the animal by means of adoption, transfer, or euthanasia. The agency would have to provide a copy of the animal's history in the case of transfer or adoption. The additional costs imposed by these requirements would vary by jurisdiction, although the court is currently allowed to assess the costs against the owner of the animal, under certain circumstances, for expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal. The bill also would allow the court to order a person convicted of these violations to pay the costs of investigating the violation and the costs of disposition of the animal, including transfer, euthanasia, or adoption of the animal.

Fiscal Analyst: Ryan Bergan

SASVA1718\sb710a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.