



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

BILL



ANALYSIS

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

House Bill 5561 (Substitute H-3 as reported without amendment)
Sponsor: Representative John Jellema
House Committee: Judiciary and Civil Rights
Senate Committee: Agriculture and Forestry

Date Completed: 11-13-96

RATIONALE

In the last couple years, two animal neglect and cruelty cases in Ottawa County involved large numbers of animals, and one of the cases also resulted in a significant cost to the county. The first case arose in March 1994 and involved approximately 160 cattle, many of which were dying due to lack of nourishment during a harsh winter. Apparently, the owner of the cattle was determined to be mentally ill and a conservator was authorized to dispose of the animals. Since the cattle were sold as livestock (and the proceeds turned over to the owner's estate), the county did not incur a high cost. The second incident, however, apparently cost the county over \$56,000 to care for the neglected animals. This case arose in March 1995 and involved approximately 130 horses, cows, baby goats, rabbits, and dogs that were starving, living in filth, and running into neighbors' yards. Evidently, when the county brought cruelty charges against the owners, they absconded and were not located until July 1995. Although they were convicted, the defendants were released after serving the maximum term of 90 days, and were still considered the lawful owners of the animals.

In the meantime, the State enacted Public 334 of 1994, which took effect on April 1, 1995. This Act amended the Michigan Penal Code to specify penalties for misdemeanors relating to the care and transportation of animals, and to include in those offenses failure to provide an animal with "adequate care". As part of a sentence, the court may order the defendant to pay the costs of prosecution and the costs of the care, housing, and veterinary care for the animal. Also, as a condition of probation, the court may order the defendant not to own or possess an animal for a period of time, up to the period of probation. Under this law, however, a person cannot be

ordered to forfeit animal ownership, or to pay costs, until he or she has been convicted. To prevent the type of situation that occurred in Ottawa County, it has been suggested that the law should include a procedure under which animals could be forfeited while a cruelty prosecution was pending, and that repeat offenders should be subject to the permanent loss of animal ownership rights.

CONTENT

The bill would amend the Michigan Penal Code to do the following:

- **Allow a prosecuting attorney to file a petition for forfeiture of an animal to a dog pound, animal shelter, or veterinarian before the final disposition of a criminal action for certain animal cruelty violations.**
- **Make it a felony to commit a second or subsequent animal cruelty violation.**
- **Authorize a court to order temporary or permanent relinquishment of animal ownership as a condition of probation for a second or subsequent animal cruelty violation.**
- **Revise provisions that permit specific lawful uses of animals.**

Forfeiture Petition

If an animal were impounded and were being held by a dog pound or animal shelter or a licensed veterinarian pending outcome of criminal action charging a violation of the Code's animal cruelty provisions (described below), or the provisions concerning the willful and malicious killing or

injuring of animals (MCL 750.50b), before final disposition of the criminal charge, the prosecuting attorney could file a petition in the criminal action requesting that the court issue an order forfeiting the animal to the dog pound or animal shelter or a licensed veterinarian before final disposition of the criminal charge. ("Dog pound" would mean a facility operated by a county, city, village, or township to impound and care for animals found in streets or otherwise at large contrary to any ordinance of the county, city, village, or township or State law. "Animal shelter" would mean 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 petitioner would have to serve a true copy of the petition on the defendant and upon a person with a known ownership interest or known security interest in the animal or a person who had filed a lien with the Secretary of State in an animal involved in the pending action. The forfeiture of an animal encumbered by a security interest would be subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of, the crime.

Upon receiving a petition, the court would have to set a hearing on it, which would have to be conducted within 14 days of the petition's filing or as soon as practicable. At the hearing, the petitioner would have the burden of establishing by a preponderance of the evidence that a violation, as specified above, had occurred. If the court found that the petitioner had met this burden, it would have to order immediate forfeiture of the animal to the dog pound, animal shelter, or licensed veterinarian, unless the defendant, within 72 hours of the hearing, submitted to the court clerk cash or other form of security in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the pound, shelter, or veterinarian in caring for the animal from the date of initial impoundment to the trial date.

If cash or other security had been submitted, and the trial in the action were continued at a later date, any order of continuance would have to require the defendant to submit additional cash or security in an amount determined by the court that would be sufficient to repay all additional reasonable costs anticipated to be incurred by the pound, shelter, or veterinarian in caring for the animal until the new trial date. If the defendant submitted cash or other security to the court under

these provisions, the court could enter an order authorizing the use of that money or other security before final disposition of the criminal charges to pay the reasonable costs incurred by the dog pound, animal shelter, or veterinarian in caring for the animal from the date of impoundment to the date of final disposition of the criminal charges.

The testimony of a person at a hearing held under these provisions would not be admissible against him or her in any criminal proceeding except in a prosecution for perjury. The testimony would not waive the person's constitutional right against self-incrimination.

Criminal Penalty

The Code's animal cruelty provisions prohibit a person from failing to provide an animal with adequate care; cruelly driving, working, or beating an animal, or causing an animal to be cruelly driven, worked, or beaten; carrying in or upon a vehicle or otherwise any live animal whose feet or legs are tied together, or a horse whose feet are hobbled; carrying a live animal in or upon a vehicle or otherwise without providing a secure space or cage in which livestock may stand and other animals may turn around and lie down; abandoning an animal without making provisions for its adequate care; or willfully or negligently allowing any animal to suffer unnecessary neglect, torture, or pain. A person who violates these provisions is guilty of a misdemeanor, punishable by imprisonment for up to 93 days, a fine of up to \$1,000, community service for up to 200 hours, or any combination of these penalties. Under the bill, a violator also could be liable for the costs of prosecution.

A person who violated the animal cruelty provisions on a second occasion would be guilty of a felony punishable by imprisonment for up to two years, a fine of up to \$2,000, community service for up to 300 hours, or any combination of these penalties and the cost of prosecution. A person who violated the animal cruelty provisions on a third or subsequent occasion would be guilty of a felony punishable by imprisonment for up to four years, a fine of up to \$5,000, community service for up to 500 hours, or any combination of these penalties and the cost of prosecution.

The Code permits the court, as part of the sentence for an animal cruelty violation, to order the defendant, as a condition of probation, not to own or possess an animal for a period of time not to exceed the period of probation. Under the bill,

if a person were convicted of a second or subsequent violation, a court order under this provision could order the defendant not to own or possess an animal for any period of time, which could include permanent relinquishment of animal ownership.

Lawful Use

The Code specifies that the animal cruelty provisions do not prohibit the lawful use of an animal, including but not limited to the following: fishing; hunting, trapping, or wildlife control; horse racing; the operation of a zoological park or aquarium; pest or rodent control; scientific research; or farming or animal husbandry. The bill specifies that the Code would not prohibit the "lawful killing or other use" of an animal. The bill would retain the currently permitted activities but would refer to hunting, trapping, or wildlife control regulated pursuant to the Natural Resources and Environmental Protection Act; farming or a generally accepted animal husbandry or farming practice involving livestock; scientific research pursuant to Public Act 224 of 1969 (which regulates dealers in and research facilities using dogs and cats for research purposes); scientific research pursuant to sections of the Public Health Code governing the use of animals in research; and activities authorized pursuant to rules promulgated under Section 9 of the Executive Reorganization Act (which authorizes department heads to promulgate rules and regulations).

MCL 750.50

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

While Public Act 334 of 1994 addressed a number of shortcomings in the animal cruelty law, this bill would continue to strengthen provisions that protect animals and punish culpable owners. Moreover, the bill's forfeiture mechanism would prevent taxpayers from having to foot the bill for taking care of neglected or abused animals for lengthy periods of time, as occurred in Ottawa County. Under the bill, when an animal cruelty prosecution was pending, the prosecutor could file a petition for the forfeiture of the animal. The court would have to conduct a hearing within 14 days and, if the petitioner met the burden of proof, the court would have to order immediate forfeiture to

a dog pound, animal shelter, or licensed veterinarian unless the defendant, within 72 hours, submitted cash or other security sufficient to pay for all costs incurred, and expected to be incurred, by the pound, shelter, or veterinarian in caring for the animal. If an animal were forfeited, then the pound, shelter, or veterinarian could keep the animal or dispose of it through sale, adoption, or euthanasia. This would ensure that a local unit of government did not have to pay for feeding, housing, and providing veterinary care for the animal until the criminal case was resolved, and that ownership of the animal did not remain in legal limbo during this time. The bill also would protect the interests of innocent parties who had a security interest in an animal.

In addition, by providing for felony penalties and allowing the permanent relinquishment of animal ownership rights for second or subsequent violations, the bill would ensure that repeat offenders were adequately punished and could be prevented from endangering animals in the future.

Opposing Argument

If a forfeiture petition were brought under the bill, the defendant basically would have two options: either allow the animal to be forfeited, or deposit security for the animal's care. A defendant who could not afford a sizable amount ultimately could be acquitted but still would have lost his or her animal. The bill does not address what recourse an individual would have in this situation.

Response: The bill attempts to balance the right of suspected animal abusers to own animals, against the right of defenseless animals to be treated humanely. The size of the potential security would be determined in large part by the attitude and activity of the defendant; if he or she cooperated, instead of dragging out the proceedings or running away, the security no doubt would be smaller. In the unlikely event that an innocent defendant did lose his or her animal, the individual could bring an action for damages against the pound, shelter, or veterinarian to whom the animal had been forfeited.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government.

The enhanced penalties for repeat offenders as proposed by the bill, could result in additional prison commitments to the Department of

Corrections. While the bill would allow up to four years in prison, the judge also could sentence these individuals to jail or other local sanctions that would not result in increased State costs. There are currently no available data that might indicate the potential number of repeat offenders.

The bill would have no fiscal impact on the courts.

Fiscal Analyst: M. Hansen

A9596\S837B

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.