

Act No. 38
Public Acts of 1998
Approved by the Governor
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**STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998**

Introduced by Senator V. Smith

ENROLLED SENATE BILL No. 368

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 49, 145m, 147a, 470, and 502c (MCL 750.49, 750.145m, 750.147a, 750.470, and 750.502c), section 49 as amended by 1995 PA 228, section 145m as added by 1994 PA 149, section 470 as added by 1992 PA 271, and section 502c as amended by 1995 PA 114.

The People of the State of Michigan enact:

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

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

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

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

(c) Rent or otherwise obtain the use of a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal as described in subdivision (a).

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

(e) Organize, promote, or collect money for the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

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

(g) Breed, buy, sell, offer to buy or sell, exchange, import, or export an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d), or breed, buy, sell, offer to buy or sell, exchange, import, or export the offspring of an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d). This subdivision does not prohibit owning, breeding, buying, selling, offering to buy or sell, exchanging, importing, or exporting an animal for agricultural or agricultural exposition purposes.

(h) Own, possess, use, buy, sell, offer to buy or sell, transport, or deliver any device or equipment intended for use 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) 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 this subsection is punishable as contempt of court.
- (8) If a person incites an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting to attack a person and thereby causes the death of that person, the owner is guilty of a felony and shall be punished by imprisonment for life or by imprisonment for a maximum term of any term of years greater than 15 years.
- (9) If a person incites an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting to attack a person, but the attack does not result in the death of the person, the owner is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.
- (10) If an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting attacks a person without provocation and causes the death of that person, the owner of the animal is guilty of a felony and shall be punished by imprisonment for a maximum term of not more than 15 years.
- (11) If an animal trained or used for fighting or an animal that is the first or second generation offspring of an animal trained or used for fighting attacks a person without provocation, but the attack does not cause the death of the person, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- (12) Subsections (8) to (11) do not apply if the person attacked was committing or attempting to commit an unlawful act on the property of the owner of the animal.
- (13) If an animal trained or used for fighting or an animal that is the first or second generation offspring of a dog trained or used for fighting goes beyond the property limits of its owner without being securely restrained, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$50.00 nor more than \$500.00, or both.
- (14) If an animal trained or used for fighting or an animal that is the first or second generation offspring of a dog trained or used for fighting is not securely enclosed or restrained on the owner's property, the owner is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.
- (15) Subsections (8) to (14) do not apply to any of the following:
- (a) A dog trained or used for fighting, or the first or second generation offspring of a dog trained or used for fighting, that is used by a law enforcement agency of the state or a county, city, village, or township.
 - (b) A certified leader dog recognized and trained by a national guide dog association for the blind or for persons with disabilities.
 - (c) A corporation licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, when a dog trained or used for fighting, or the first or second generation offspring of a dog trained or used for fighting, is used in accordance with the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085.
- (16) An animal that has been used to fight in violation of this section or that is involved in a violation of subsections (8) to (14) shall be confiscated as contraband by a law enforcement officer and shall not be returned to the owner, trainer, or possessor of the animal. The animal shall be taken to a local humane society or other animal welfare agency. If an animal owner, trainer, or possessor is convicted under subsection (2) or subsections (8) to (14), the court shall award the animal involved in the violation to the local humane society or other animal welfare agency.
- (17) Upon receiving an animal confiscated under this section, or at any time thereafter, 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.

(18) A humane society or other animal welfare agency that receives an animal pursuant to this section shall apply to the district court or municipal court for a hearing to determine whether the animal shall be humanely euthanized because of its lack of any useful purpose and the public safety threat it poses. The court shall hold a hearing not more than 30 days after the filing of the application and shall give notice of the hearing to the owner of the animal. Upon a finding by the court that the animal lacks any useful purpose and poses a threat to public safety, the humane society or other animal welfare agency shall humanely euthanize the animal. Expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by a humane society or other animal welfare agency, or by a person, firm, partnership, corporation, or other entity, shall be assessed against the owner of the animal.

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

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

(a) Part 401 (wildlife conservation) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to 324.40119.

(b) Part 435 (hunting and fishing licensing) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43501 to 324.44106.

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

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

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

Sec. 145m. As used in this chapter:

(a) "Adult foster care facility" means that term as defined in section 3 of the adult foster care facility licensing act, MCL 400.703.

(b) "Adult foster care facility licensing act" means 1979 PA 218, MCL 400.701 to 400.737.

(c) "Caregiver" means an individual who directly cares for or has physical custody of a vulnerable adult.

(d) "Developmental disability" means that term as defined in section 500 of the mental health code, MCL 330.1500.

(e) "Facility" means an adult foster care facility, a home for the aged, or a nursing home.

(f) "Home for the aged" means that term as defined in section 20106 of the public health code, MCL 333.20106.

(g) "Licensee" means that term as defined in section 5 of the adult foster care facility licensing act, MCL 400.705, or as defined in section 20108 of the public health code, MCL 333.20108. Licensee does not include a hospital, as that term is defined in section 20106 of the public health code, MCL 333.20106, except that part of a hospital that is a hospital long-term care unit, as that term is defined in section 20106 of the public health code, MCL 333.20106.

(h) "Mental health code" means 1974 PA 258, MCL 330.1001 to 330.2106.

(i) "Mental illness" means that term as defined in section 400 of the mental health code, MCL 330.1400.

(j) "Nursing home" means that term as defined in section 20109 of the public health code, MCL 333.20109 and a hospital long-term care unit as defined in section 20106 of the public health code, MCL 333.20106.

(k) "Other person with authority over a vulnerable adult" includes, but is not limited to, a person with authority over a vulnerable adult in that part of a hospital that is a hospital long-term care unit, but does not include a person with authority over a vulnerable adult in that part of a hospital that is not a hospital long-term care unit. As used in this subdivision, "hospital" and "hospital long-term care unit" mean those terms as defined in section 20106 of the public health code, MCL 333.20106.

(l) "Part 213, 215, or 217 of the public health code" means MCL 333.21301 to 333.21333, 333.21501 to 333.21568, and 333.21701 to 333.21799e.

(m) "Personal care" means assistance with eating, dressing, personal hygiene, grooming, or maintenance of a medication schedule as directed and supervised by a vulnerable adult's physician.

(n) "Physical harm" means any injury to a vulnerable adult's physical condition.

(o) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

(p) "Reckless act or reckless failure to act" means conduct that demonstrates a deliberate disregard of the likelihood that the natural tendency of the act or failure to act is to cause physical harm, serious physical harm, or serious mental harm.

(q) "Resident" means an individual who resides in a facility.

(r) "Serious physical harm" means a physical injury that threatens the life of a vulnerable adult, that causes substantial bodily disfigurement, or that seriously impairs the functioning or well-being of the vulnerable adult.

(s) "Serious mental harm" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner.

(t) "Social welfare act" means 1939 PA 280, MCL 400.1 to 400.119b.

(u) "Vulnerable adult" means 1 or more of the following:

(i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.

(ii) An adult as defined in section 3(1)(b) of the adult foster care facility licensing act, MCL 400.703.

(iii) An adult as defined in section 11(b) of the social welfare act, MCL 400.11.

Sec. 147a. (1) A person shall not discriminate in extending credit or granting a loan on the basis of race, color, religion, national origin, marital status, sex, or physical disability unless both the following apply:

(a) The person is a nonprofit corporation whose members share 1 of the following:

(i) The same racial, religious, ethnic, marital, or sexual characteristic.

(ii) The same physical disability.

(iii) A blend of the characteristics described in subparagraphs (i) and (ii).

(b) The person extends credit or grants a loan only to its members.

(2) A person shall not discriminate in the rating of a person's creditworthiness on the basis of race, color, religion, national origin, marital status, sex, or physical disability.

(3) A person who violates the provisions of subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.

(4) A person who violates the provisions of subsection (1) or (2) is liable in a civil action to the injured party for the amount of \$200.00 or for damages, whichever is greater. Actions brought pursuant to rule 3.501 of the Michigan court rules are limited to those damages provided in this subsection. The prevailing party in the civil action shall be entitled to recover court costs and reasonable attorney fees. The right of action under this subsection is unassignable.

Sec. 470. (1) Except as provided in subsection (2), a person, in a place of public accommodation to which access by minors is not prohibited by law, shall not sell or distribute cigarettes, cigars, or other tobacco products through the use of a vending machine, or install or maintain a vending machine with the intent of selling or distributing cigarettes, cigars, or other tobacco products. For purposes of this section, "place of public accommodation" has the same meaning as that term has in section 301(a) of the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1301.

(2) This section does not apply to a cigarette vending machine that meets either of the following criteria:

(a) The cigarette vending machine is located in an establishment that has a class C license as defined in section 2t of the Michigan liquor control act, 1933 (Ex Sess) PA 8, MCL 436.2t, and 1 of the following applies:

(i) If the establishment has a bar that is located in a room that is separated from the remainder of the establishment by a wall and a doorway, the cigarette vending machine is located entirely in that room.

(ii) If the establishment has a bar that is not located in a room that is separated from the remainder of the establishment by a wall and a doorway, the cigarette vending machine is located not more than 20 feet from the bar, is located clearly within the bar area and not in a hallway, coat room, rest room, or similar unrelated area, and is under the direct visual supervision of an adult.

(b) The cigarette vending machine is located entirely in an area, office, plant, factory, or private membership club that is not open to the public, and is located not less than 20 feet from all entrances and exits that are accessible to the general public.

(3) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, service to the community for a period of not more than 45 days, or a fine of not more than \$1,000.00, or any combination of imprisonment, community service, or fine. Each day that a person has a vending machine that dispenses cigarettes, cigars, or other tobacco products constitutes a separate offense.

(4) The provisions of this section shall be enforceable by a local health department to the same extent and by the same means as regulations adopted by that local health department.

Sec. 502c. (1) A person who is an owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public or private housing, accommodation, amusement, or recreation, including but not limited to any inn, hotel, motel, apartment building, trailer park, restaurant, barbershop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public or private educational institution, or elevator, who refuses to permit a

person with disabilities to enter or use the place when the place is available because the person with disabilities is being led or accompanied by a guide or leader dog, hearing dog, or service dog is guilty of a misdemeanor if the guide or leader dog is wearing a harness or if the hearing dog or service dog is wearing a blaze orange leash and collar, hearing dog cape, or service dog backpack, and the person with disabilities being led or accompanied has in his or her possession a pictured identification card certifying that the dog was trained by a qualified organization or trainer. The department of labor shall maintain a list of organizations or trainers that train guide or leader dogs, hearing dogs, and service dogs.

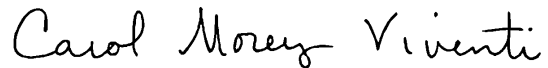
(2) A person who is an owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public or private housing, accommodation, amusement, or recreation, including, but not limited to, the places listed in subsection (1), who refuses to permit a trainer of guide or leader dogs, hearing dogs, or service dogs to enter or use the place when the place is available because the trainer is being led or accompanied by a guide or leader dog, hearing dog, or service dog is guilty of a misdemeanor if the guide or leader dog is wearing a harness or if the hearing dog or service dog is wearing a hearing dog cape or service dog backpack, if the trainer is being led or accompanied by an adult dog for the purpose of training the dog, and if the trainer has in his or her possession picture identification and identification stating that he or she is a representative or employee of an organization or trainer, or is a trainer, included on the department of labor list of organizations or trainers that train guide or leader dogs, hearing dogs, or service dogs.

(3) As used in this section:

- (a) "Adult dog" means a domestic dog of the species *canis familiaris* that is 12 months of age or older.
- (b) "Audibly impaired" means audibly impaired as defined in section 1 of 1981 PA 82, MCL 752.61.
- (c) "Blind person" means a blind person as defined in section 1 of 1978 PA 260, MCL 393.351.
- (d) "Deaf person" means a deaf person as defined in section 1 of 1981 PA 82, MCL 752.61.
- (e) "Person with disabilities" means a person who is audibly impaired, blind, deaf, or otherwise physically limited.
- (f) "Physically limited" means physically limited as defined in section 1 of 1966 PA 1, MCL 125.1351.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 352 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.