

SENATE BILL No. 1123

February 9, 2010, Introduced by Senators KAHN, BASHAM and PAPPAGEORGE and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 50 and 50b (MCL 750.50 and 750.50b), section
50 as amended by 2007 PA 152 and section 50b as amended by 2008 PA
339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 50. (1) As used in this section and section 50b:

2 (a) "Adequate care" means the provision of sufficient food,
3 water, shelter, sanitary conditions, exercise, and veterinary
4 medical attention in order to maintain an animal in a state of good
5 health.

6 (b) "Animal" means any vertebrate other than a human being.

7 (c) "Animal protection shelter" means a facility operated by a

1 person, humane society, society for the prevention of cruelty to
2 animals, or any other nonprofit organization, for the care of
3 homeless animals.

4 (d) "Animal control shelter" means a facility operated by a
5 county, city, village, or township to impound and care for animals
6 found in streets or otherwise at large contrary to any ordinance of
7 the county, city, village, or township or state law.

8 (e) "Licensed veterinarian" means a person licensed to
9 practice veterinary medicine under article 15 of the public health
10 code, 1978 PA 368, MCL 333.16101 to 333.18838.

11 (f) "Livestock" means that term as defined in the animal
12 industry act, ~~of 1987,~~ 1988 PA 466, MCL 287.701 to ~~287.747~~ **287.745**.

13 (g) "Person" means an individual, partnership, limited
14 liability company, corporation, association, governmental entity,
15 or other legal entity.

16 (h) "Neglect" means to fail to sufficiently and properly care
17 for an animal to the extent that the animal's health is
18 jeopardized.

19 (i) "Sanitary conditions" means space free from health hazards
20 including excessive animal waste, overcrowding of animals, or other
21 conditions that endanger the animal's health. ~~This definition~~
22 **SANITARY CONDITIONS** does not include any condition resulting from a
23 customary and reasonable practice ~~pursuant to~~ **OF** farming or animal
24 husbandry.

25 (j) "Shelter" means adequate protection from the elements and
26 weather conditions suitable for the age, species, and physical
27 condition of the animal so as to maintain the animal in a state of

1 good health. Shelter, for livestock, includes structures or natural
2 features such as trees or topography. Shelter ~~for a dog~~ **IS NOT**
3 **ADEQUATE UNLESS IT** includes 1 or more of the following:

4 (i) The residence of the dog's owner or other individual.

5 (ii) A doghouse that is an enclosed structure with a roof and
6 of appropriate dimensions for the breed and size of the dog. The
7 doghouse shall have dry bedding when the outdoor temperature is or
8 is predicted to drop below freezing.

9 (iii) A structure, including a garage, barn, or shed, that is
10 sufficiently insulated and ventilated to protect the dog from
11 exposure to extreme temperatures or, if not sufficiently insulated
12 and ventilated, contains a doghouse as provided under subparagraph
13 (ii) that is accessible to the dog.

14 (k) "State of good health" means freedom from disease and
15 illness, and in a condition of proper body weight and temperature
16 for the age and species of the animal, unless the animal is
17 undergoing appropriate treatment.

18 (l) "Tethering" means the restraint and confinement of a dog by
19 use of a chain, rope, or similar device.

20 (m) "Water" means potable water that is suitable for the age
21 and species of animal that is made regularly available unless
22 otherwise directed by a licensed veterinarian.

23 (2) An owner, possessor, or person having the charge or
24 custody of an animal shall not do any of the following:

25 (a) Fail to provide an animal with adequate care.

26 (b) Cruelly drive, work, or beat an animal, or cause an animal
27 to be cruelly driven, worked, or beaten.

1 (c) Carry or cause to be carried in or upon a vehicle or
2 otherwise any live animal having the feet or legs tied together,
3 other than an animal being transported for medical care, or a horse
4 whose feet are hobbled to protect the horse during transport or
5 **TRANSPORT AN ANIMAL** in any other cruel and inhumane manner.

6 (d) Carry or cause to be carried a live animal in or upon a
7 vehicle or otherwise without providing a secure space, rack, car,
8 crate, or cage, in which livestock may stand, ~~and in which all~~ **OR**
9 other animals may stand, turn around, and lie down during
10 transportation, or while awaiting slaughter. As used in this
11 subdivision, for purposes of transportation of sled dogs, "stand"
12 means sufficient vertical distance to allow the animal to stand
13 without its shoulders touching the top of the crate or
14 transportation vehicle.

15 (e) Abandon an animal or cause an animal to be abandoned, in
16 any place, without making provisions for the animal's adequate
17 care, unless premises are vacated for the protection of human life
18 or the prevention of injury to a human. An animal that is lost by
19 an owner or custodian while traveling, walking, hiking, or hunting
20 is not abandoned under this ~~section when~~ **SUBDIVISION IF** the owner
21 or custodian has made a reasonable effort to locate the animal.

22 (f) Negligently allow any animal, including one ~~who~~ **THAT** is
23 aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory
24 to suffer unnecessary neglect, torture, or pain.

25 (g) Tether a dog unless the tether is at least 3 times the
26 length of the dog as measured from the tip of its nose to the base
27 of its tail and is attached to a harness or nonchoke collar

1 designed for tethering.

2 (3) If an animal is impounded and is being held by an animal
3 control shelter or its designee or an animal protection shelter or
4 its designee or a licensed veterinarian pending the outcome of a
5 criminal action charging a violation of this section or section
6 50b, before final disposition of the criminal charge, the
7 prosecuting attorney may file a civil action in the court that has
8 jurisdiction of the criminal action, requesting that the court
9 issue an order forfeiting the animal to the animal control shelter
10 or animal protection shelter or to a licensed veterinarian before
11 final disposition of the criminal charge. The prosecuting attorney
12 shall serve a true copy of the summons and complaint upon the
13 defendant and upon a person with a known ownership interest or
14 known security interest in the animal or a person who has filed a
15 lien with the secretary of state ~~in~~ **AGAINST** an animal involved in
16 the pending action. The forfeiture of an animal under this section
17 encumbered by a security interest is subject to the interest of the
18 holder of the security interest who did not have prior knowledge
19 of, or consent to the commission of the crime. Upon the filing of
20 the civil action, the court shall set a hearing on the complaint.
21 The hearing shall be conducted within 14 days of the filing of the
22 civil action, or as soon as practicable. The hearing shall be
23 before a judge without a jury. At the hearing, the prosecuting
24 attorney has the burden of establishing by a preponderance of the
25 evidence that a violation of this section or section 50b occurred.
26 If the court finds that the prosecuting attorney has met this
27 burden, the court shall order immediate forfeiture of the animal to

1 the animal control shelter or animal protection shelter or the
2 licensed veterinarian unless the defendant, within 72 hours of the
3 hearing, submits to the court clerk cash or other form of security
4 in an amount determined by the court to be sufficient to repay all
5 reasonable costs incurred, and anticipated to be incurred, by the
6 animal control shelter or animal protection shelter or the licensed
7 veterinarian in caring for the animal from the date of initial
8 impoundment to the date of trial. If cash or other security has
9 been submitted, and the trial in the action is continued at a later
10 date, any order of continuance shall require the defendant to
11 submit additional cash or security in an amount determined by the
12 court to be sufficient to repay all additional reasonable costs
13 anticipated to be incurred by the animal control shelter or animal
14 protection shelter or the licensed veterinarian in caring for the
15 animal until the new date of trial. If the defendant submits cash
16 or other security to the court under this subsection the court may
17 enter an order authorizing the use of that money or other security
18 before final disposition of the criminal charges to pay the
19 reasonable costs incurred by the animal control shelter or animal
20 protection shelter or the licensed veterinarian in caring for the
21 animal from the date of impoundment to the date of final
22 disposition of the criminal charges. The testimony of a person at a
23 hearing held under this subsection is not admissible against him or
24 her in any criminal proceeding except in a criminal prosecution for
25 perjury. The testimony of a person at a hearing held under this
26 subsection does not waive the person's constitutional right against
27 self-incrimination. An animal seized under this section or section

1 50b is not subject to any other civil action pending the final
2 judgment of the forfeiture action under this subsection.

3 (4) A person who violates subsection (2) is guilty of a crime
4 as follows:

5 (a) Except as otherwise provided in subdivisions (c) and (d),
6 if the violation involved 1 animal, the person is guilty of a
7 misdemeanor punishable by 1 or more of the following and may be
8 ordered to pay the costs of prosecution:

9 (i) Imprisonment for not more than 93 days.

10 (ii) A fine of not more than \$1,000.00.

11 (iii) Community service for not more than 200 hours.

12 (b) Except as otherwise provided in subdivisions (c) and (d),
13 if the violation involved 2 or 3 animals or the death of any
14 animal, the person is guilty of a misdemeanor punishable by 1 or
15 more of the following and may be ordered to pay the costs of
16 prosecution:

17 (i) Imprisonment for not more than 1 year.

18 (ii) A fine of not more than \$2,000.00.

19 (iii) Community service for not more than 300 hours.

20 (c) If the violation involved 4 or more animals but fewer than
21 10 animals or the person had 1 prior conviction under subsection
22 (2), the person is guilty of a felony punishable by 1 or more of
23 the following and may be ordered to pay the costs of prosecution:

24 (i) Imprisonment for not more than 2 years.

25 (ii) A fine of not more than \$2,000.00.

26 (iii) Community service for not more than 300 hours.

27 (d) If the violation involved 10 or more animals or the person

1 had 2 or more prior convictions for violating subsection (2), the
2 person is guilty of a felony punishable by 1 or more of the
3 following and may be ordered to pay the costs of prosecution:

4 (i) Imprisonment for not more than 4 years.

5 (ii) A fine of not more than \$5,000.00.

6 (iii) Community service for not more than 500 hours.

7 (5) IN ADDITION TO THE PENALTIES PRESCRIBED IN SUBSECTION (4),
8 IF A PERSON WHO VIOLATES SUBSECTION (2) OWNS THE ANIMAL THAT IS THE
9 SUBJECT OF THE VIOLATION AND THE ANIMAL HAS NOT ALREADY BEEN
10 FORFEITED UNDER SUBSECTION (3), THE ORDER OF CONVICTION SHALL
11 REQUIRE THE PERSON TO FORFEIT THE ANIMAL TO AN ANIMAL CONTROL
12 SHELTER, ANIMAL PROTECTION SHELTER, OR LICENSED VETERINARIAN.

13 (6) ~~(5)~~—The court may order a person convicted of violating
14 subsection (2) to be evaluated to determine the need for
15 psychiatric or psychological counseling and, if determined
16 appropriate by the court, to receive psychiatric or psychological
17 counseling. The evaluation and counseling shall be at the
18 defendant's own expense.

19 (7) ~~(6)~~—This section does not prohibit a person from being
20 charged with, convicted of, or punished for any other violation of
21 law arising out of the same transaction as the violation of this
22 section.

23 (8) ~~(7)~~—The court may order a term of imprisonment imposed for
24 a violation of this section to be served consecutively to a term of
25 imprisonment imposed for any other crime including any other
26 violation of law arising out of the same transaction as the
27 violation of this section.

1 (9) ~~(8)~~—As a part of the sentence for a violation of
2 subsection (2), the court may order the defendant to pay the costs
3 of the care, housing, and veterinary medical care for the animal,
4 as applicable. If the court does not order a defendant to pay all
5 of the applicable costs listed in this subsection, or orders only
6 partial payment of these costs, the court shall state on the record
7 the reason for that action.

8 (10) ~~(9)~~—As a part of the sentence for a violation of
9 subsection (2), the court may, as a condition of probation, order
10 the defendant not to own or possess an animal for a period of time
11 not to exceed the period of probation. If a person is convicted of
12 a second or subsequent violation of subsection (2), the court may
13 order the defendant not to own or possess an animal for any period
14 of time, including permanent relinquishment of animal ownership.

15 (11) ~~(10)~~—A person who owns or possesses an animal in
16 violation of an order issued under subsection ~~(9)~~ (10) is subject
17 to revocation of probation if the order is issued as a condition of
18 probation. A person who owns or possesses an animal in violation of
19 an order issued under subsection ~~(9)~~ (10) is also subject to the
20 civil and criminal contempt power of the court, and if found guilty
21 of criminal contempt, may be punished by imprisonment for not more
22 than 90 days, or by a fine of not more than \$500.00, or both.

23 (12) ~~(11)~~—This section does not prohibit the lawful killing or
24 other use of an animal, including the following:

25 (a) Fishing.

26 (b) Hunting, trapping, or wildlife control regulated under the
27 natural resources and environmental protection act, 1994 PA 451,

1 MCL 324.101 to 324.90106.

2 (c) Horse racing.

3 (d) The operation of a zoological park or aquarium.

4 (e) Pest or rodent control regulated under part 83 of the
5 natural resources and environmental protection act, 1994 PA 451,
6 MCL 324.8301 to 324.8336.

7 (f) Farming or a generally accepted animal husbandry or
8 farming practice involving livestock.

9 (g) Activities authorized under rules promulgated under
10 ~~section 9 of the executive organization act of 1965, 1965 PA 380,~~
11 ~~MCL 16.109~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,**
12 **MCL 24.201 TO 24.328.**

13 (h) Scientific research under 1969 PA 224, MCL 287.381 to
14 287.395.

15 (i) Scientific research under sections 2226, 2671, 2676, and
16 7333 of the public health code, 1978 PA 368, MCL 333.2226,
17 333.2671, 333.2676, and 333.7333.

18 **(13)** ~~(12)~~ This section does not apply to a veterinarian or a
19 veterinary technician lawfully engaging in the practice of
20 veterinary medicine under part 188 of the public health code, 1978
21 PA 368, MCL 333.18801 to 333.18838.

22 Sec. 50b. (1) As used in this section, "animal" means ~~any~~ **A**
23 vertebrate other than a human being.

24 (2) Except as otherwise provided in this section, a person
25 shall not do any of the following without just cause:

26 (a) Knowingly kill, torture, mutilate, maim, or disfigure an
27 animal.

1 (b) Commit a reckless act knowing or having reason to know
2 that the act will cause an animal to be killed, tortured,
3 mutilated, maimed, or disfigured.

4 (c) Knowingly administer poison to an animal, or knowingly
5 expose an animal to any poisonous substance, with the intent that
6 the substance be taken or swallowed by the animal.

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

9 (a) Imprisonment for not more than 4 years.

10 (b) A fine of not more than \$5,000.00 for a single animal and
11 \$2,500.00 for each additional animal involved in the violation, but
12 not to exceed a total of \$20,000.00.

13 (c) Community service for not more than 500 hours.

14 **(4) IN ADDITION TO THE PENALTIES PRESCRIBED UNDER SUBSECTION**
15 **(2), IF A PERSON WHO VIOLATES THIS SECTION OWNS THE ANIMAL THAT IS**
16 **THE SUBJECT OF THE VIOLATION AND THE ANIMAL HAS NOT ALREADY BEEN**
17 **FORFEITED UNDER THIS ACT, THE ORDER OF CONVICTION SHALL REQUIRE THE**
18 **PERSON TO FORFEIT THE ANIMAL TO AN ANIMAL CONTROL SHELTER, ANIMAL**
19 **PROTECTION SHELTER, OR LICENSED VETERINARIAN.**

20 (5) ~~(4)~~As a part of the sentence for a violation of
21 subsection (2), the court may order the defendant to pay the costs
22 of the prosecution and the costs of the care, housing, and
23 veterinary medical care for the impacted animal victim, as
24 applicable. If the court does not order a defendant to pay all of
25 the applicable costs listed in this subsection, or orders only
26 partial payment of these costs, the court shall state on the record
27 the reasons for that action.

1 (6) ~~(5)~~—If a term of probation is ordered for a violation of
2 subsection (2), the court may include as a condition of that
3 probation that the defendant be evaluated to determine the need for
4 psychiatric or psychological counseling and, if determined
5 appropriate by the court, to receive psychiatric or psychological
6 counseling at his or her own expense.

7 (7) ~~(6)~~—As a part of the sentence for a violation of
8 subsection (2), the court may order the defendant not to own or
9 possess an animal for any period of time determined by the court,
10 which may include permanent relinquishment.

11 (8) ~~(7)~~—A person who owns or possesses an animal in violation
12 of an order issued under subsection ~~(6)~~—(7) is subject to
13 revocation of probation if the order is issued as a condition of
14 probation. A person who owns or possesses an animal in violation of
15 an order issued under subsection ~~(6)~~—(7) is also subject to the
16 civil and criminal contempt power of the court and, if found guilty
17 of criminal contempt, may be punished by imprisonment for not more
18 than 90 days or a fine of not more than \$500.00, or both.

19 (9) ~~(8)~~—This section does not prohibit the lawful killing of
20 livestock or a customary animal husbandry or farming practice
21 involving livestock. As used in this subsection, "livestock" means
22 that term as defined in section 5 of the animal industry act, 1988
23 PA 466, MCL 287.705.

24 (10) ~~(9)~~—This section does not prohibit the lawful killing of
25 an animal pursuant to any of the following:

26 (a) Fishing.

27 (b) Hunting, trapping, or wildlife control regulated under the

1 natural resources and environmental protection act, 1994 PA 451,
2 MCL 324.101 to 324.90106, and orders issued under that act.

3 (c) Pest or rodent control regulated under part 83 of the
4 natural resources and environmental protection act, 1994 PA 451,
5 MCL 324.8301 to 324.8336.

6 (d) Activities authorized under rules promulgated under
7 ~~section 9 of the executive organization act of 1965, 1965 PA 380,~~
8 ~~MCL 16.109~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,**
9 **MCL 24.201 TO 24.328.**

10 (e) Section 19 of the dog law of 1919, 1919 PA 339, MCL
11 287.279.

12 **(11)** ~~(10)~~ This section does not prohibit the lawful killing or
13 use of an animal for scientific research under any of the following
14 or a rule promulgated under any of the following:

15 (a) 1969 PA 224, MCL 287.381 to 287.395.

16 (b) Sections 2226, 2671, 2676, 7109, and 7333 of the public
17 health code, 1978 PA 368, MCL 333.2226, 333.2671, 333.2676,
18 333.7109, and 333.7333.

19 **(12)** ~~(11)~~ This section does not apply to a veterinarian or a
20 veterinary technician lawfully engaging in the practice of
21 veterinary medicine under part 188 of the public health code, 1978
22 PA 368, MCL 333.18801 to 333.18838.