

SENATE BILL No. 1124

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 section 49 (MCL 750.49), as amended by 2006 PA 129.

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.

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).

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), or be present at the
11 exhibition, knowing that an exhibition is taking place or about to
12 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), or breed, buy,
16 sell, offer to buy or sell, exchange, import, or export the
17 offspring of an animal the person knows has been trained or used
18 for fighting as described in subdivisions (a) to (d). This
19 subdivision does not prohibit owning, breeding, buying, selling,
20 offering to buy or sell, exchanging, importing, or exporting an
21 animal for agricultural or agricultural exposition purposes.

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

26 **(I) RECORD THE FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL AS**
27 **DESCRIBED IN SUBDIVISIONS (A) TO (D) OR OWN, POSSESS, USE, BUY,**

1 SELL, OFFER TO BUY OR SELL, TRANSPORT, OR DELIVER A RECORDING OF,
2 OR AN ITEM DEPICTING, THE FIGHTING, BAITING, OR SHOOTING OF AN
3 ANIMAL AS DESCRIBED IN SUBDIVISIONS (A) TO (D). THIS SUBDIVISION
4 DOES NOT APPLY TO A PEACE OFFICER ACTING IN THE COURSE OF HIS OR
5 HER DUTIES OR AN INDIVIDUAL ENGAGED IN LEGITIMATE EDUCATIONAL OR
6 SCIENTIFIC ACTIVITIES AND DOES NOT PROHIBIT SPEECH PROTECTED UNDER
7 AMENDMENT I OF THE CONSTITUTION OF THE UNITED STATES OR SECTION 5
8 OF ARTICLE I OF THE STATE CONSTITUTION OF 1963.

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

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

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

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

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

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

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

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

21 (5) The court ~~may~~-**SHALL** order a person convicted of violating
22 this section to pay the costs of prosecution.

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

27 (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 **NOT LESS THAN** 5 years after the date of sentencing - ~~Failure to comply with the~~ **FOR A FIRST VIOLATION, NOT LESS THAN 15 YEARS AFTER THE DATE OF SENTENCING FOR A SECOND VIOLATION, AND NOT LESS THAN 15 YEARS OR FOR THE LIFETIME OF THE DEFENDANT FOR A THIRD OR SUBSEQUENT VIOLATION. THE COURT SHALL CAUSE AN ORDER ISSUED UNDER THIS SUBSECTION TO BE ENTERED INTO THE LAW ENFORCEMENT INFORMATION NETWORK AS PROVIDED BY THE C.J.I.S. POLICY COUNCIL ACT, 1974 PA 163, MCL 28.211 TO 28.215. A PERSON WHO VIOLATES AN order of the court pursuant to** ~~ISSUED UNDER this subsection is punishable as contempt of court.~~ **GUILTY OF A CRIME AS FOLLOWS:**

(A) FOR A FIRST VIOLATION, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT LESS THAN \$1,000.00 OR MORE THAN \$50,000.00, OR BOTH IMPRISONMENT AND A FINE.

(B) FOR A SECOND OR SUBSEQUENT VIOLATION, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF NOT LESS THAN \$5,000.00 OR MORE THAN \$50,000.00, OR BOTH IMPRISONMENT AND A FINE.

(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 punishable by imprisonment for life or for a 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

1 animal trained or used for fighting to attack a person, but the
2 attack does not result in the death of the person, the owner is
3 guilty of a felony punishable by imprisonment for not more than 4
4 years or a fine of not more than \$2,000.00, or both.

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

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

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

20 (13) If an animal trained or used for fighting or an animal
21 that is the first or second generation offspring of a dog trained
22 or used for fighting goes beyond the property limits of its owner
23 without being securely restrained, the owner is guilty of a
24 misdemeanor punishable by imprisonment for not more than 90 days or
25 a fine of not less than \$50.00 nor more than \$500.00, or both.

26 (14) If an animal trained or used for fighting or an animal
27 that is the first or second generation offspring of a dog trained

1 or used for fighting is not securely enclosed or restrained on the
2 owner's property, the owner is guilty of a misdemeanor punishable
3 by imprisonment for not more than 90 days or a fine of not more
4 than \$500.00, or both.

5 (15) Subsections (8) to (14) do not apply to any of the
6 following:

7 (a) A dog trained or used for fighting, or the first or second
8 generation offspring of a dog trained or used for fighting, that is
9 used by a law enforcement agency of the state or a county, city,
10 village, or township.

11 (b) A certified leader dog recognized and trained by a
12 national guide dog association for the blind or for persons with
13 disabilities.

14 (c) A corporation licensed under the private security business
15 and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083, when
16 a dog trained or used for fighting, or the first or second
17 generation offspring of a dog trained or used for fighting, is used
18 in accordance with the private security business and security alarm
19 act, 1968 PA 330, MCL 338.1051 to 338.1083.

20 (16) An animal that has been used to fight in violation of
21 this section or that is involved in a violation of subsections (8)
22 to (14) shall be confiscated as contraband by a law enforcement
23 officer and shall not be returned to the owner, trainer, or
24 possessor of the animal. The animal shall be taken to a local
25 humane society or other animal welfare agency. If an animal owner,
26 trainer, or possessor is convicted of violating subsection (2) or
27 subsections (8) to (14), the court shall award the animal involved

1 in the violation to the local humane society or other animal
2 welfare agency.

3 (17) Upon receiving an animal confiscated under this section,
4 or at any time thereafter, an appointed veterinarian, the humane
5 society, or other animal welfare agency may humanely euthanize the
6 animal if, in the opinion of that veterinarian, humane society, or
7 other animal welfare agency, the animal is injured or diseased past
8 recovery or the animal's continued existence is inhumane so that
9 euthanasia is necessary to relieve pain and suffering.

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

25 (19) Subject to subsections (16) to (18), all animals being
26 used or to be used in fighting, equipment, devices and money
27 involved in a violation of subsection (2) shall be forfeited to the

1 state. All other instrumentalities, proceeds, and substituted
2 proceeds of a violation of subsection (2) are subject to forfeiture
3 under chapter 47 of the revised judicature act of 1961, 1961 PA
4 236, MCL 600.4701 to 600.4709.

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

14 (21) An attorney for a person who is charged with a violation
15 of subsection (2) involving or related to money seized under
16 subsection (19) shall be afforded a period of 60 days within which
17 to examine that money. This 60-day period shall begin to run after
18 notice of forfeiture is given but before the money is deposited
19 into a financial institution under subsection (20). If the attorney
20 general, prosecuting attorney, or city or township attorney fails
21 to sustain his or her burden of proof in forfeiture proceedings
22 under subsection (19), the court shall order the return of the
23 money, including any interest earned on money deposited into a
24 financial institution under subsection (20).

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

27 (a) Part 401 of the natural resources and environmental

1 protection act, 1994 PA 451, MCL 324.40101 to ~~324.40119~~ **324.40120**.

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

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

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

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