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BILL ANALYSIS



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Senate Bill 990 (as introduced 6-11-14)
Sponsor: Senator John Pappageorge
Committee: Judiciary

Date Completed: 9-30-14

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 shelter, animal protection shelter, or law enforcement agency that took custody of the animal to give notice of the seizure within 72 hours.
- Allow the shelter or agency to dispose of the animal by adoption, transfer, or euthanasia after 14 days, if the owner or possessor of the animal 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 shelter or agency to house and care for the animal.
- Allow the shelter or agency to draw on the security deposit or bond to cover the costs of the animal's seizure, care, and disposition.
- Allow the shelter or agency to euthanize the animal, despite the payment of a security deposit or bond, in certain cases.
- Require 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.

The bill also would do the following:

- 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 apply to the adoption of an animal as allowed under the bill.
- 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 of food, water, shelter, and disposition of the animal.

Prohibition regarding Fighting Animals

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 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 specifies that this provision would not prohibit an animal control shelter, animal protection shelter, or law enforcement agency from owning, adopting, or transferring ownership to a humane society, animal welfare agency, or person for the purpose of adoption of an animal trained or used for fighting or an animal that was the first- or second-generation offspring of an animal trained or used for fighting, if the shelter or agency found that the animal was fit for placement and did not pose a threat to the public safety.

(The Code defines "animal control shelter" as 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 that local unit. "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 cost of investigating the violation of Section 49 and the cost of food, water, shelter, and disposition of the animal. ("Disposition" would include the transfer, euthanasia, or adoption of an animal.)

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 as contraband 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, the animal instead would have to be taken to a local animal control shelter, animal protection shelter, or law enforcement agency and would have to be awarded to that shelter or agency after conviction for evaluation and adoption or humane disposition.

Within 72 hours after the animal was seized, the animal control shelter, animal protection shelter, or law enforcement agency taking custody of it under that provision would have to give notice 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 animal owner's last-known address, if the owner were known.
- Registered mail to the location of the seizure, if the animal's owner were not 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 disposition of the animal; that failure to do so within 14 days would result in disposition; and that the person could request a hearing on whether the amount of the security deposit or bond was fair and reasonable.

-- A statement that the animal's owner or possessor was responsible for all costs for the animal's housing and care, unless the court determined that the animal's seizure was not substantially justified by law.

The animal control shelter, animal protection shelter, or law enforcement agency would have to hold the seized animal for 14 consecutive days 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 shelter or agency could dispose of the animal by adoption, transfer to another shelter or agency, or humane euthanasia. An animal control shelter, animal protection shelter, or law enforcement agency that transferred or adopted an animal would have to provide a copy of the animal's history, including a description of why it was seized, veterinary records and behavioral assessments, and a copy of related provisions of Section 49 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 disposition 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 animal's housing and care during a 30-day period of boarding and veterinary treatment after examination by a licensed veterinarian. The animal control shelter, animal protection shelter, or law enforcement 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 provide proof of the security deposit or bond to the shelter or agency within 14 days after receiving the notice of seizure.

An animal control shelter, animal protection shelter, or law enforcement agency holding a seized animal could draw on a security deposit or bond 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.

If a security deposit or bond were posted, and the criminal trial were continued to a later date, the order of continuance would have to require the defendant to post an additional security deposit or bond in an amount determined sufficient by the court to cover the costs of the animal's housing and care as anticipated to be incurred by the shelter or agency caring for the animal. The additional amount would have to be calculated in 30-day increments and continue until the criminal action was resolved. 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 shelter or 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, minus the reasonable costs incurred by the shelter or agency for the animal's housing and care.

If the person who owned or possessed a seized animal posted a security deposit or bond and the court determined that the animal lacked any useful purpose and posed 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 would have to be returned to the owner or possessor, minus the reasonable costs incurred by the shelter or agency for the care and euthanasia of the animal.

FISCAL IMPACT

The bill would have a varying fiscal impact on county animal control facilities. In the handling of seized animals, facilities could be required to hold these animals for a shorter period of time than is currently required in certain instances prior to disposition; in instances when they would be required to hold an animal for a longer period (known ownership, court cases), there would be a process that would enable the facilities to recoup their holding and disposition costs from the animal's owner.

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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.