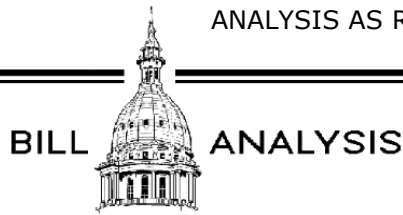




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Senate Bill 416 (as reported without amendment)
Sponsor: Senator Tory Rocca
Committee: Judiciary

Date Completed: 9-12-17

RATIONALE

The Michigan Penal Code includes a number of prohibitions with respect to animal fighting, and requires animals trained or used for fighting to be seized and taken to a local humane society or animal welfare agency. The Code specifies that expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal must be assessed against its owner. Apparently, however, animal owners who are arrested for these offenses seldom claim them, and the humane society or agency that has custody of the animal while the case is pending often must assume the expense of caring for it. If the owner is convicted of an animal fighting offense, the animal is forfeited to the State; however, there is no mechanism for forfeiting the animal if the expenses for its care are not paid. Some contend that waiting to dispose of an animal until the conclusion of an owner's criminal case when the owner has not paid the required expenses is prohibitively expensive and prolongs an animal's stay in the shelter, when it could be rehabilitated and placed in a new home.

Also, the Code prohibits the subsequent transfer or adoption of fighting animals, or their progeny, from shelters or animal welfare agencies. Some claim that this prohibition, especially as it pertains to a fighting animal's progeny, is overly broad and not supported by science. To address these issues, it has been suggested that the Penal Code allow the transfer of fighting animals or their offspring under certain circumstances, and that the process of seizing and forfeiting animals be modified.

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 agency (a shelter or law enforcement agency) that took custody of the animal to notify its owner of the seizure within 72 hours.**
- **Allow the 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 agency to house and care for the animal.**
- **Allow the agency to draw on the security deposit or bond to cover the costs of the animal's seizure, care, and disposition.**
- **Allow the agency to euthanize the animal, despite the payment of a security deposit or bond, in certain cases.**
- **Allow 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.**
- **Allow, instead of require, an animal control agency to apply to a court for a hearing to euthanize an animal.**

The bill also would do the following:

- **Prohibit a person from obtaining or permitting the use of, or being present at a vehicle or any other venue for the purpose of using an animal for fighting, baiting, or target shooting.**
- **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 prohibit the adoption of an animal.**
- **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 for disposition of the animal.**

The bill would take effect 90 days after its enactment.

Prohibition Regarding Fighting Animals; Adoption

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 renting or obtaining the use of, permitting the use of, or being present at, a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal. Under the bill, these prohibitions would include obtaining or permitting the use of, or being present at a vehicle or any other venue for the purpose of using an animal for fighting, baiting, or target shooting.

Section 49 also 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 such an animal. The bill specifies that this provision would not prohibit an animal control agency from owning, adopting, or transferring ownership of an animal 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 animal were found fit for placement and were transferred or adopted, the agency would have to do the following: a) sterilize the animal or collect a good-faith deposit for sterilization as required under Section 8a of Public Act 287 of 1969; and b) provide a copy of the animal's history, including a description of why the animal was seized, veterinary records, and a copy of related provisions of Section 49, to the person adopting the animal or to whom it was transferred.

(Public Act 287 regulates pet shops, animal control shelters, and animal protection shelters. Section 8a of the Act prohibits an animal control shelter or animal protection shelter from allowing a person to adopt an unaltered (capable of reproducing) dog, cat, or ferret unless he or she enters into a contract for the alteration of the animal. The contract must require the adopting person to leave a good-faith deposit of at least \$25 indicating his or her intent to have the animal altered.)

Where Section 49 of the Code refers to a humane society or other animal welfare agency, the bill would refer to an "animal control agency". "Animal control agency" would mean an animal control shelter, an animal protection shelter, or a law enforcement agency. ("Animal control shelter" and "animal protection shelter" would mean those terms as defined in Public Act 287. "Animal control shelter" means a facility operated by a municipality for the impoundment and care of animals that are found in the streets or at large, animals that are otherwise held due to the violation of a municipal ordinance or State law, or animals that are surrendered to the animal control shelter. "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 for the 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 agency and, if the owner, trainer, or possessor were convicted, would have to be awarded to that agency for evaluation and disposition.

Within 72 hours after the animal was seized, the animal control agency taking custody of it would have to give notice by registered mail to the animal owner's last-known address, if the owner were known. If the owner were unknown, the agency would have to give notice within 72 hours of the seizure 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 location of the seizure.

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 forfeiture of the animal for the duration of the criminal, forfeiture, or other proceedings until the court made a final determination regarding the animal's disposition; that failure to do so within 14 days would result in forfeiture of the animal; and that the person could request a hearing on whether the requirement to post a security deposit or bond was justified or 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 investigating the violation, the animal's housing and care, and its disposition, unless the court determined that the animal's seizure was not substantially justified by law.

Notice of a request for a hearing would have to be served on the animal control agency holding the animal before the 14-day period expired. At a hearing, the prosecuting attorney would have the burden to establish by a preponderance of the evidence that a violation of Section 49 occurred. If the court found that the prosecuting attorney had met this burden, the animal would be forfeited to the animal control agency that seized it unless the owner or possessor of the animal posted the required security deposit or bond. An owner's or possessor's failure to appear at a scheduled hearing would result in automatic forfeiture of the animal if the date of the hearing were more than 14 days after the date on the notice.

The animal control 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 animal would be forfeited and the agency could dispose of the animal by adoption, transfer to another agency, or humane euthanasia.

Security Deposit or Bond

The person who owned or possessed a seized animal could prevent forfeiture and disposition of

the animal for the duration of the criminal, forfeiture, or other proceedings 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 investigation and 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 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 agency within 14 days after receiving the notice of seizure.

An animal control 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 did not occur within the initial 30-day period or were continued to a later date, the owner or possessor would have to post an additional security deposit or bond in an amount determined sufficient to cover the costs of the animal's housing and care as anticipated to be incurred by the 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 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 at the court's discretion and the animal would have to be returned to the owner, unless the animal was injured or diseased past recovery, or it lacked any useful purpose and posed a public safety threat.

If the person who owned or possessed a seized animal posted a security deposit or bond and the court determined that the animal was a dangerous animal or lacked any useful purpose, the posting of the deposit or bond would not prevent disposition of the animal.

Euthanasia of Seized Animal

Currently, upon receiving an animal seized under Section 49, or at any time afterward, 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. Under the bill, an animal control agency could humanely euthanize the animal or have it euthanized, under the same circumstances. This provision would apply to an animal whether or not a security deposit or bond had been posted.

The Code requires a humane society or other animal welfare agency that receives an animal seized under Section 49 to apply to the district court or municipal court for a hearing to determine whether the animal must be humanely euthanized because of its lack of any useful purpose and the public safety threat it poses. The bill would allow, instead of require, an animal control agency to apply to the court for such a hearing.

MCL 750.49

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

The Code prohibits the breeding, buying, selling, exchanging, importing, or exporting an animal that has been trained or used for fighting, or that animal's progeny. This prohibition relies on incorrect assumptions about the temperament of an animal based on the animal's, or its parent's, having been trained or used for fighting. Instead, each animal's fitness for adoption should be evaluated based on an assessment of the animal's health and behavior. The bill would give individual animals the benefit of a case-by-case assessment or evaluation. At the same time, the bill would protect members of the public who adopt such animals, by requiring an agency to find a seized animal fit for adoption, sterilize the animal (or collect a good-faith deposit for that purpose), and provide certain information to the adopter.

The bill also would improve the forfeiture process for animals seized in connection with an animal fighting case. Generally, an owner who is being tried for such a crime is concerned with avoiding conviction and does not attempt to claim the animal. Without a bond to ensure that the criminal defendant remains responsible for the costs of caring for the animal while the case is pending, the organization that has custody of the animal assumes responsibility for paying for its housing, food, and veterinary care. Criminal cases can take months to resolve. Consequently, the high cost of caring for these animals creates an incentive for law enforcement not to investigate animal fighting crimes.

Under the bill, an animal would not be held for the duration of the proceeding unless its owner posted a cost-of-care bond. This would place the financial burden of caring for an animal on its owner and not on local animal control agency or nonprofit organization. If an owner failed to post the bond, an agency could dispose of the animal humanely through adoption, transfer, or euthanasia. This would spare animals from a protracted stay in a shelter. Also, in some cases, an agency could dispose of a seized animal even though a bond or security deposit had been posted, which could prevent an injured or ill animal from continuing to suffer and prevent an agency from continuing to incur costs to take care of it. Because the bill includes notice and hearing requirements for a security deposit or bond, it would protect the due process rights of the owner. The bill also would allow the bond to be refunded if the defendant were acquitted.

Legislative Analyst: Jeff Mann

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 before disposition; in cases in which they would be required to hold an animal for a longer period (e.g., known ownership, delayed prosecution), there would be a process that would enable the facilities to recoup their holding and disposition costs from the animal's owner.

Fiscal Analyst: Bruce Baker

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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.