

HOUSE BILL NO. 4102

January 29, 2019, Introduced by Reps. Marino, Farrington, Berman, LaFave and Wittenberg and referred to the Committee on Financial Services.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 49 (MCL 750.49), as amended by 2018 PA 461.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 49. (1) As used in this section:
- 2 (a) "Animal" means a vertebrate other than a human being.
- 3 (b) "Animal control agency" means an animal control shelter,
- 4 an animal protection shelter, or a law enforcement agency. As used
- 5 in this subdivision, "animal control shelter" and "animal
- 6 protection shelter" mean those terms as defined in section 1 of

1 1969 PA 287, MCL 287.331.

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

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

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

8 (c) Rent or otherwise obtain the use of a building, shed,
9 room, yard, ground, premises, vehicle, or any other venue for
10 fighting, baiting, or shooting an animal as described in
11 subdivision (a).

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

16 (e) Organize, promote, or collect money, **property, or any**
17 **other thing of value** for the fighting, baiting, or shooting of an
18 animal as described in subdivisions (a) to (d).

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

24 (g) Breed, buy, sell, offer to buy or sell, exchange, import,
25 or export an animal the person knows has been trained or used for
26 fighting as described in subdivisions (a) to (d), or breed, buy,
27 sell, offer to buy or sell, exchange, import, or export the
28 offspring of an animal the person knows has been trained or used
29 for fighting as described in subdivisions (a) to (d). This

1 subdivision does not prohibit owning, breeding, buying, selling,
2 offering to buy or sell, exchanging, importing, or exporting an
3 animal for agricultural or agricultural exposition purposes. This
4 subdivision does not prohibit an animal control agency from owning,
5 adopting, or transferring ownership of an animal for the purpose of
6 adoption of an animal trained or used for fighting as described in
7 subdivisions (a) to (d) or an animal that is the first- or second-
8 generation offspring of an animal trained or used for fighting as
9 described in subdivisions (a) to (d). If an animal is found fit for
10 placement and is transferred or adopted, the animal control agency
11 that transfers or adopts the animal shall do all of the following:

12 (i) Sterilize the animal or collect a good-faith deposit for
13 sterilization as required under section 8a of 1969 PA 287, MCL
14 287.338a.

15 (ii) Provide a copy of the animal's history, including, but not
16 limited to, a description of why the animal was seized, veterinary
17 records, and a copy of subsections (8) to (14) to the person to
18 whom the animal is transferred or adopted.

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

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

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

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

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

29 (4) A person who violates subsection (2)(f) to (h) is guilty

1 of a felony punishable by 1 or more of the following:

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

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

4 (c) Not less than 250 or more than 500 hours of community
5 service.

6 (5) The court may order a person convicted of violating this
7 section to pay the costs of prosecution.

8 (6) The court may order a person convicted of violating this
9 section to pay the costs for investigating the violation of this
10 section, disposition of the animal, and housing and caring for the
11 animal, including, but not limited to, providing veterinary medical
12 treatment. As used in this subsection, "disposition" includes the
13 transfer, euthanasia, or adoption of an animal.

14 (7) As part of the sentence for a violation of subsection (2),
15 the court shall order the person convicted not to own or possess an
16 animal of the same species involved in the violation of this
17 section for 5 years after the date of sentencing. Failure to comply
18 with the order of the court pursuant to this subsection is
19 punishable as contempt of court.

20 (8) If a person incites an animal trained or used for fighting
21 or an animal that is the first- or second-generation offspring of
22 an animal trained or used for fighting to attack a person and the
23 attack causes the death of that person, the owner is guilty of a
24 felony punishable by imprisonment for life or for a term of years
25 greater than 15 years.

26 (9) If a person incites an animal trained or used for fighting
27 or an animal that is the first- or second-generation offspring of
28 an animal trained or used for fighting to attack a person, but the
29 attack does not result in the death of the person, the owner is

1 guilty of a felony punishable by imprisonment for not more than 4
2 years or a fine of not more than \$2,000.00, or both.

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

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

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

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

24 (14) If an animal trained or used for fighting or an animal
25 that is the first- or second-generation offspring of a dog trained
26 or used for fighting is not securely enclosed or restrained on the
27 owner's property, the owner is guilty of a misdemeanor punishable
28 by imprisonment for not more than 90 days or a fine of not more
29 than \$500.00, or both.

1 (15) Subsections (8) to (14) do not apply to any of the
2 following:

3 (a) A dog trained or used for fighting, or the first- or
4 second-generation offspring of a dog trained or used for fighting,
5 that is used by a law enforcement agency of this state or a county,
6 city, village, or township.

7 (b) A certified leader dog recognized and trained by a
8 national guide dog association for the blind or for persons with
9 disabilities.

10 (c) A corporation licensed under the private security business
11 and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1092, when
12 a dog trained or used for fighting, or the first- or second-
13 generation offspring of a dog trained or used for fighting, is used
14 in accordance with the private security business and security alarm
15 act, 1968 PA 330, MCL 338.1051 to 338.1092.

16 (16) Except as provided in subsection (20), an animal that has
17 been used to fight in violation of this section or that is involved
18 in a violation of subsections (8) to (14) must be confiscated by a
19 law enforcement officer and must not be returned to the owner,
20 trainer, or possessor of the animal. The animal must be taken to a
21 local animal control agency. If an animal owner, trainer, or
22 possessor is convicted of violating subsection (2) or subsections
23 (8) to (14), the court shall award the animal involved in the
24 violation to the animal control agency for evaluation and
25 disposition.

26 (17) An animal control agency taking custody of an animal
27 under subsection (16) shall give notice within 72 hours after
28 seizure of the animal by registered mail to the last known address
29 of the animal's owner, if the owner of the animal is known. If the

owner of the animal is unknown, an animal control agency taking custody of an animal under subsection (16) shall give notice within 72 hours after seizure of the animal by 1 of the following methods:

(a) Posting at the location of the seizure.

(b) Delivery to a person residing at the location of the seizure.

(c) Registered mail to the location of the seizure.

(18) The notice required under subsection (17) must include all of the following:

(a) A description of each animal seized.

(b) The time, date, location, and description of circumstances under which the animal was seized.

(c) The address and telephone number of the location where the animal is being held and contact information for the individual present at that location from whom security deposit or bond information may be obtained.

(d) A statement that the owner or possessor of the animal may post a security deposit or bond that may prevent the forfeiture of the animal for the duration of the criminal, forfeiture, or other court proceeding until the court makes a final determination regarding the animal's disposition, that failure to post a security deposit or bond within 14 days after the date on the notice will result in forfeiture of the animal, and that the owner or possessor of the animal may, before the expiration of the 14-day period described in this subdivision, request a hearing on whether the requirement to post a security deposit or bond is justified or whether the cost associated with the security deposit or bond is fair and reasonable for the care of and provision for the seized animal. Notice of a request for a hearing under this ~~subsection~~

1 ~~shall~~**subdivision must** be served on the animal control agency
2 holding the animal before the expiration of the 14-day period
3 described in this ~~subsection.~~**subdivision.** At a hearing on whether
4 the requirement to post a security deposit or bond is justified,
5 the prosecuting attorney has the burden to establish by a
6 preponderance of the evidence that a violation of this section
7 occurred. If the court finds that the prosecuting attorney has met
8 its burden, the animal will be forfeited to the animal control
9 agency that seized the animal unless the owner or possessor of the
10 animal posts the required security deposit or bond. An owner or
11 possessor's failure to appear at a scheduled hearing requested
12 under this subdivision will result in automatic forfeiture of the
13 animal if the date of the scheduled hearing is more than 14 days
14 after the date on the notice described in this
15 ~~subsection.~~**subdivision.**

16 (e) A statement that the owner or possessor of the animal is
17 responsible for all costs described in subsection (6), unless the
18 court determines that the seizure of the animal was not
19 substantially justified by law.

20 (19) An animal control agency that has custody of a seized
21 animal under subsection (16) shall hold the animal for a period of
22 14 consecutive days, including weekends and holidays, beginning on
23 the date notice was given under subsection (17). After the
24 expiration of the 14 days, if the owner or a possessor of the
25 animal has not posted a security deposit or bond as provided in
26 subsection (20), the animal is forfeited, and the animal control
27 agency may dispose of the animal by adoption, transfer to another
28 animal control agency, or humane euthanasia.

29 (20) The owner or possessor of an animal seized under

1 subsection (16) may prevent forfeiture and disposition of the
2 animal by an animal control agency for the duration of the
3 criminal, forfeiture, or other court proceeding until the court
4 makes a final determination regarding the animal's disposition by
5 posting a security deposit or bond with the court within 14 days
6 after the date on the notice described in subsection (18). The bond
7 must be in a sufficient amount to secure payment of all costs
8 described in subsection (6) during a 30-day period of boarding and
9 veterinary treatment of the animal after examination by a licensed
10 veterinarian. The animal control agency shall determine the amount
11 of the bond no later than 72 hours after the seizure of the animal,
12 and shall make the amount of the bond available to the owner or
13 possessor of the animal upon request. The owner or possessor of the
14 animal shall provide proof of the security deposit or bond to the
15 animal control agency no later than 14 days after the date on the
16 notice described in subsection (18).

17 (21) An animal control agency that is holding or requiring to
18 be held a seized animal as provided in this section may draw on a
19 security deposit or bond posted under subsection (20) or (22) to
20 cover the actual reasonable costs incurred in the seizure, care,
21 keeping, and disposition of the animal as described in subsection
22 (6) from the date of the seizure to the date of the official
23 disposition of the animal in the criminal action.

24 (22) If a security deposit or bond has been posted under
25 subsection (20), and trial in the criminal action does not occur
26 within the initial 30-day bond period or is continued to a later
27 date, the owner or possessor shall post an additional security
28 deposit or bond in an amount determined sufficient to cover the
29 costs described in subsection (6) as anticipated to be incurred by

1 the animal control agency caring for the animal. The additional
2 security deposit or bond must be calculated in 30-day increments
3 and continue until the criminal action is resolved. If the owner or
4 possessor of the animal fails to post a new security deposit or
5 bond with the court before the previous security deposit or bond
6 expires, the animal is forfeited to the animal control agency
7 caring for the animal.

8 (23) If the owner or possessor that posted a security deposit
9 or bond under subsection (20) or (22) is found not guilty in the
10 criminal action, the amount of the security deposit or bond posted
11 to prevent disposition of the animal may be returned to the owner
12 or possessor at the court's discretion, and, subject to subsections
13 (25) and (26), the animal must be returned to the owner.

14 (24) If a security deposit or bond is posted by an owner or
15 possessor of an animal under subsection (20) or (22) and the court
16 determines that the animal is a dangerous animal or lacks any
17 useful purpose under subsection (26), the posting of the security
18 deposit or bond must not prevent disposition of the animal.

19 (25) Upon receiving an animal seized under this section, or at
20 any time thereafter, an animal control agency may humanely
21 euthanize the animal or have the animal euthanized if, in the
22 opinion of a licensed veterinarian, the animal is injured or
23 diseased past recovery or the animal's continued existence is
24 inhumane so that euthanasia is necessary to relieve pain and
25 suffering. This subsection applies to an animal whether or not a
26 security deposit or bond has been posted under subsection (20) or
27 (22).

28 (26) An animal control agency that receives an animal under
29 this section may apply to the district court or municipal court for

1 a hearing to determine whether the animal must be humanely
2 euthanized because of its lack of any useful purpose or the public
3 safety threat it poses. The court shall hold a hearing not more
4 than 30 days after the filing of the application and shall give
5 notice of the hearing to the owner of the animal. Upon a finding by
6 the court that the animal lacks any useful purpose or poses a
7 threat to public safety, the animal control agency shall humanely
8 euthanize the animal or have the animal euthanized. Expenses
9 incurred in connection with the housing, care, upkeep, or
10 euthanasia of the animal by an animal control agency, or by a
11 person, firm, partnership, corporation, or other entity, may, in
12 the court's discretion, be assessed against the owner of the
13 animal.

14 (27) Subject to subsections (16), (25), and (26), all animals
15 being used or to be used in fighting, equipment, devices, and money
16 involved in a violation of subsection (2) must be forfeited to this
17 state. All other instrumentalities, proceeds, and substituted
18 proceeds of a violation of subsection (2) are subject to forfeiture
19 under chapter 47 of the revised judicature act of 1961, 1961 PA
20 236, MCL 600.4701 to 600.4710.

21 (28) The seizing agency may deposit money seized under
22 subsection (27) into an interest-bearing account in a financial
23 institution. As used in this subsection, "financial institution"
24 means a state or nationally chartered bank or a state or federally
25 chartered savings and loan association, savings bank, or credit
26 union whose deposits are insured by an agency of the United States
27 government and that maintains a principal office or branch office
28 located in this state under the laws of this state or the United
29 States.

1 (29) An attorney for a person who is charged with a violation
2 of subsection (2) involving or related to money seized under
3 subsection (27) must be afforded a period of 60 days within which
4 to examine that money. This 60-day period will begin to run after
5 notice of forfeiture is given but before the money is deposited
6 into a financial institution under subsection (28). If the attorney
7 general, prosecuting attorney, or city or township attorney fails
8 to sustain his or her burden of proof in forfeiture proceedings
9 under subsection (27), the court shall order the return of the
10 money, including any interest earned on money deposited into a
11 financial institution under subsection (28).

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

14 (a) Part 401 of the natural resources and environmental
15 protection act, 1994 PA 451, MCL 324.40101 to 324.40120.

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

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

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

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

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.