

DISPOSITION OF ANIMALS USED IN FIGHTING

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Senate Bill 416 as reported from House committee

Sponsor: Sen. Tory Rocca

House Committee: Law and Justice

Senate Committee: Judiciary

Complete to 12-18-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 461 of 2018)

SUMMARY:

Senate Bill 416 would amend Section 49 of the Michigan Penal Code, which prohibits animal fighting and establishes criminal penalties for violations. Under the animal fighting law, animals used to fight in a violation of the prohibitions must be confiscated and not returned to the owner, trainer, or possessor of the animal. This applies also if an animal used or trained for fighting (or its offspring to the first or second generation) attacks a person, whether incited to do so or without provocation. Under the bill, a court could award an animal involved in a violation to an **animal control agency** for evaluation and disposition. Current law and the proposed changes are described below.

Animal control agency would mean an animal control shelter, animal protection shelter, or law enforcement agency. (Animal control shelter and animal protection shelter would mean those terms as defined in Public Act 287 of 1969.)

Prohibitions on animal fighting

Section 49 prohibits a person from:

- Owning, possessing, using, buying or selling (or offering to buy or sell), importing, or exporting an animal for fighting or baiting or as a target to be shot at as a test of skill in marksmanship.
- Being a party to or causing the fighting, baiting, or shooting of an animal.
- Renting or otherwise obtaining the use of a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal described above. The bill would also apply this provision to the use of *a vehicle or any other venue*.
- Permitting the use of a building, shed, room, yard, ground, or premises belonging to the person or under the person's control for any of the purposes described in Section 49. The bill would also apply this provision to the use of *a vehicle or any other venue*.
- Organizing, promoting, or collecting money for the fighting, baiting, or shooting of an animal as a target or for marksmanship.
- Being present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition as described above (e.g., animal fighting, baiting, or shooting) or being present at the exhibition knowing that an exhibition is taking or about to take place. The bill would also apply this provision to being present *in a vehicle or any other venue* where an exhibition is or is about to take place.
- Breeding, buying, selling, offering to buy or sell, exchanging, importing, or exporting an animal, or the offspring of such an animal, that the person knows has been trained or used for fighting. (The prohibition does not apply to an animal associated with agricultural or agricultural exposition purposes.) Under the bill, 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 as described above or an animal that is the first- or second-generation offspring of such an animal. If the animal were found fit for placement and transferred or adopted, the animal control agency that transferred or adopted the animal would have to do both of the following:

- Sterilize the animal or collect a good-faith deposit for sterilization as required under Public Act 287 of 1969.
- Provide a copy of the animal's history, including at least a description of why the animal was seized, veterinary records, and a copy of the penalty provisions of Section 49 described under Attacks by animals trained or used for fighting, below.
- Owning, possessing, using, buying, selling, offering to sell or buy, transporting, or delivering any device or equipment intended for use in the fighting, baiting, or shooting of an animal as described above.

A violation of the animal fighting provisions is punishable by up to four years in prison, community service, and/or a fine ranging from \$5,000 to \$50,000 (fighting) or \$1,000 to \$5,000 (being present at a fight or buying/breeding/selling an animal the person knows was trained or used for fighting). In addition, the court must order the person convicted of a violation not to own or possess an animal of the same species for five years after the date of sentencing. The current penalties remain the same, as the bill does not revise them.

Attacks by animals trained or used for fighting

Under subsections (8) to (14) of Section 49, a person inciting an animal to attack that had been trained or used for fighting, the owner of such an animal that attacks without provocation, or an owner who fails to securely restrain the animal on his or her property is guilty of a criminal offense punishable by a term of imprisonment and/or fines that range from a 90-day misdemeanor for not securely restraining the animal on the owner's property to a prison term of 15 years to life for inciting the animal to attack if the victim dies. These penalties remain the same, as the bill does not revise them.

Assignment of costs

The bill would allow a court to order a person convicted of violating Section 49 to pay the costs for investigating the violation and for the disposition of the animal. This would be in addition to the court's current authority to order the person to pay the costs of prosecution and for housing and caring for the animal. "Disposition" includes the transfer, euthanasia, or adoption of an animal.

Confiscation of an animal

Currently, an animal used to fight in violation of Section 49 must be confiscated as contraband by a law enforcement officer and cannot be returned to the owner, trainer, or possessor of the animal. The bill retains the requirement that the animal be confiscated and not returned to the owner, trainer, or possessor if convicted; however, it creates an exception to this provision for persons who post a security deposit or bond to cover the expenses of the animal while being held at a shelter (described below).

Currently, if the person is convicted of a violation of Section 49, the court must award the animal to the local humane society or other animal welfare agency. Under the bill, upon a conviction, the animal control agency would be awarded the animal by the court *for evaluation and disposition*.

Notice requirements

In addition, the bill would require the animal control agency taking possession of the animal under the above provision to give notice within 72 hours after seizure of the animal by registered mail to the last known address of the animal's owner, if known. If the address were unknown, notice would have to be given 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 a description of each animal seized; the time, date, location, and description of circumstances under which the animal was seized; and the address and telephone number of the location where the animal is being held as well as contact information for the individual at that location from whom security deposit or bond information may be obtained.

The notice would also have to include a statement:

- That the animal's owner or possessor may post a bond or security deposit 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 do so within 14 days of the date on the notice will result in forfeiture of the animal.
- That a hearing may be requested—before expiration of the 14-day period—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.
- That the owner or possessor is responsible for all costs for housing and caring for the animal as described in subsection (6) unless the court determines that the seizure of the animal was not substantially justified by law. (Subsection (6) includes, but is not limited to, costs of providing veterinary medical treatment, investigation costs, and disposition of the animal.)

Hearing to determine justification of securing deposit or bond

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 on whether the requirement to post a security deposit or bond is justified, the prosecuting attorney would have the burden to establish by a preponderance of the evidence that a violation of Section 49 occurred. If this burden were met, the animal would be forfeited to the animal control agency that seized the animal unless the owner or possessor of the animal posted the required security deposit or bond within the required time period. Failure to appear at a scheduled hearing would result in automatic forfeiture of the animal if the date of the scheduled hearing were more than 14 days after the date on the notice. (Presumably, as worded, failure to appear at a requested hearing scheduled outside the 14-day period would result in forfeiture of the animal even if the security deposit or bond had been paid. However, the bill is silent on what would happen if a hearing is scheduled within the 14-day-period, a security deposit or bond is posted, and the animal owner or possessor fails to appear.)

Duties of seizing entity/forfeiture of animal

Under the bill, the animal control agency that seized the animal would have to hold it for 14 consecutive days, including weekends and holidays, beginning on the date notice was given. If at the expiration of the 14-day period the owner or possessor of the animal had not posted a security deposit or bond, the animal would be forfeited. The animal control agency could then dispose of the animal by adoption, transfer to another animal control agency, or humane euthanasia.

Security deposit or bond

Under the bill, forfeiture and disposition of the animal could be prevented for the duration of the criminal, forfeiture, or other court proceeding until a final determination on the animal's disposition if the owner or possessor posted a security deposit or bond with the court within 14 days of the date on the notice. The bond would have to be in an amount sufficient to cover all costs relating to the care of the animal 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 no later than 72 hours after seizing the animal and would have to make the amount of the bond available to the owner or possessor upon request. Proof of the security deposit or bond would have to be provided to the animal control agency no later than 14 days after the date on the notice.

The animal control agency holding or required to hold a seized animal could draw on the security deposit or bond posted to cover the actual reasonable costs incurred in the seizure, care, keeping, and disposition of the animal from the date of the seizure to the date of the official disposition of the animal in the criminal action.

If a security deposit or bond had been posted, and the trial in the criminal did not occur within the initial 30-day bond period or was continued to a later date, the owner or possessor would have to post an additional amount to cover the cost of the animal's care as anticipated to be incurred by the animal control agency caring for the animal. The additional security deposit or bond would be calculated in 30-day increments and continue until the criminal action was resolved. Failure to post a new security deposit or bond with the court before the previous one expired would result in the animal's being forfeited to the animal control agency caring for the animal.

If owner or possessor not guilty

If the owner or possessor who posted a security deposit or bond were found not guilty in the criminal action, the amount posted to prevent disposition of the animal could be returned at the court's discretion and, if the animal had not been euthanized, the animal would have to be returned to the owner.

Dangerous animal

Posting a security deposit or bond would not prevent disposition by humane euthanasia of an animal determined by the court to be a dangerous animal or one that lacks any useful purpose.

Euthanasia of injured animal, if lacking useful purpose, or posing public safety threat

Section 49 allows an animal to be humanely euthanized if a licensed veterinarian determines that it is injured or diseased past recovery or the animal's continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering. The bill would apply this provision regardless of whether a security deposit or bond had been posted.

Section 49 also currently requires the shelter or other animal welfare agency receiving a seized animal to apply to the court for a hearing to determine whether the animal should be humanely euthanized because of its lack of any useful purpose *and* the public safety threat it poses; the bill would replace “and” with “or”. Further, the bill would make this provision permissive, rather than a requirement, and would give the court the discretion to assess against the animal’s owner expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by a shelter or law enforcement agency (rather than require it, as is currently the case).

The bill would take effect 90 days after its enactment.

MCL 750.49

BRIEF DISCUSSION:

The bill is a reintroduction of similar legislation introduced in the 2013-2014 (SB 990) and 2015-2016 (HB 4765) legislative sessions.

Some animal control agencies say that the current law regarding animal fighting and animals confiscated for attacking people is unclear about what they can do with the confiscated animals. If the animals are diseased or injured beyond recovery or are suffering, the agency may humanely euthanize the animal. The agency may also petition the court to humanely euthanize any animal that poses a threat to public safety or serves no useful purpose. What to do with other confiscated animals is less clear. Current law not only prohibits an animal trained or used for fighting from being sold or given to another, the prohibition extends to the animal’s offspring. Thus, some agencies feel that even a litter of young puppies that had not yet been trained or used to fight must be destroyed.

The lack of clarity, coupled with the sheer length of time for the average criminal case to be resolved, means that animals are left in limbo in small cages in overcrowded shelters at great expense for the shelters for feed, veterinary care, etc. Animal advocates say that this is extremely stressful for the animals, which do not do well being caged for so many months or years. Animals that may have been suitable for placement early on may no longer be adoptable after such a long time due to changes in personality brought on by living in the shelter for so long. Animals confiscated when young may be unsuitable to be placed in loving homes when older because they never received proper socialization.

Animal owners, on the other hand, say that pets are confiscated even on suspicion of illegal activity. Some say that it is a difficult and arduous process even to find out which agency confiscated the animals and where the animals are being held. Even if the owner is innocent of the animal fighting allegation, it is not uncommon for the animals to have been put down before the owners are cleared of the charges.

The bill would address these and other concerns raised by animal advocates and pet owners by clarifying what may be done with confiscated animals and also by creating a notification requirement so that owners may know where the animals were taken and may post a bond or deposit for the care and maintenance of the animal while the legal matters are sorted out. The bill also would prohibit a heinous version of dog fighting known as “trunking,” in which two dogs are locked in a trunk in a moving vehicle until the fighting stops, at which time the body of the dog that “lost” is discarded at the side of the road.

However, although the bill allows the security deposit or bond to be returned to the owner or possessor who had posted it if he or she is found to be not guilty, the bill requires the animal to be returned to the owner, even if the possessor had been the one to post the deposit or bond.

FISCAL IMPACT:

Senate Bill 416 would have significant impacts on both expenditures and revenues for animal control agencies funded by local and county governments. The bill could increase expenditures by requiring animal control agencies transferring or adopting animals that have been trained to fight (or their progeny) to a) sterilize the animal or collect a good-faith deposit for sterilization and b) provide copies of the animal's history to the person taking possession of the animal. Animal control agencies would also be responsible for providing notice within 72 hours (via registered mail, a posting at the location of the seizure, or delivery to a person residing at the location of the seizure) of the seizure of an animal related to violation of provisions regarding animal fighting. The bill would defray expenses that animal control agencies currently experience by requiring persons convicted of animal fighting violations to pay for investigation costs and animal disposition costs. Owners would be required to post a security deposit or bond to prevent the forfeiture of seized animals during court proceedings; animal control agencies would be allowed to make disposition determinations after noticing owners and holding the animal for fourteen consecutive days if the owner failed to post the security deposit or bond. The net fiscal impact of the bills on animal control agencies would be indeterminate. The bill would not have a fiscal impact on state government.

POSITIONS:

A representative of the Michigan Human Society testified in support of the bill. (11-28-18)

The following entities indicated support for the bill (11-28-18):

- Humane Society of the United States
- Michigan Veterinary Medical Association
- Animal Law Section, State Bar of Michigan
- Attorneys for Animals

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.