

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4239 (Substitute S-1 as reported)
Sponsor: Representative Gerald Law
House Committee: Health Policy
Senate Committee: Agriculture and Forestry

Date Completed: 4-28-97

RATIONALE

Reportedly, over 200,000 dogs and cats are euthanized each year in public animal shelters in Michigan, and many more lost and abandoned animals die from sickness, hunger, or injury. With the recent legalization of ferrets as pets, the incidence of homeless animals can be expected to increase. Millions of dollars in private donations and public taxes may be spent each year for picking up, housing, and euthanizing these animals. For both economic and humanitarian reasons, many people believe that State law should require individuals adopting pets to have their animals sterilized. According to a representative of the Humane Society of the United States (HSUS), 20 states currently mandate that shelter animals be sterilized at the time of adoption. While some individual shelters in Michigan already may have such a requirement, many advocate a Statewide sterilization policy.

CONTENT

The bill would amend Public Act 287 of 1969, which regulates pet shops, dog pounds, and animal shelters, to prohibit an animal control shelter or animal protection shelter from permitting the adoption of an unaltered dog, cat, or ferret by a person, unless that person had entered into a contract for the alteration of the dog, cat, or ferret, and left a good faith, refundable deposit of at least \$25 with the shelter. Someone who breached a contract would be subject to damages of at least \$100 or actual reasonable costs incurred by the shelter, whichever was greater. The bill specifies that it would not require the alteration of a dog, cat, or ferret being reclaimed from a shelter by its owner, unless required by local ordinance.

The bill also would establish penalties for violations of the Act or a rule promulgated under it, including the suspension or revocation of a license or registration and/or imposition of an administrative fine of up to \$1,000 for each violation.

The bill would take effect on January 1, 1998.

Definitions

“Animal control shelter” would mean a facility operated by a municipality for the impoundment and care of animals that were found in the streets or at large, animals that were otherwise held due to the violation of a municipal ordinance or State law, or animals that were surrendered to the animal control shelter. An “animal protection shelter” is 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. “Pet shop” currently means a place where animals are sold or offered for sale, exchange, or transfer.

“Adoption” would mean a transfer of ownership, with or without remuneration, of a dog, cat, or ferret from an animal control shelter or animal protection shelter to an individual for the purpose of being a companion animal for that individual; a companion animal would include, but would not be limited to, a dog that was used for hunting or as a guard dog. “Alteration” would mean a professional sterilization procedure, performed by a veterinarian, that rendered a dog, cat, or ferret incapable of reproducing.

Alteration Contract

Agreement. Except as otherwise provided in the

bill, an animal control shelter or animal protection shelter could not permit a person to adopt an unaltered dog, cat, or ferret, unless that person entered into a contract with the shelter for the alteration of the animal. The contract would have to state that the adopting person agreed to have an alteration performed on the dog, cat, or ferret and otherwise would comply with the bill. The bill specifies that it would not require the alteration of a dog, cat, or ferret being reclaimed by its owner from an animal control shelter or animal protection shelter, unless a local governmental ordinance required the alteration.

A contract would have to require the adopting person to have an alteration performed on the dog, cat, or ferret within four weeks after the adoption, if the animal were at least six months old at the time of adoption. If the dog, cat, or ferret to be adopted were under six months of age, the contract would have to contain the date on which the animal would be six months old and require that the person adopting the animal have an alteration performed within four weeks after that date. These requirements would not prohibit a veterinarian from altering a dog, cat, or ferret that was under six months of age.

Upon written certification by a veterinarian that a dog, cat, or ferret had a serious, permanent medical or health problem that prevented alteration, the adopted animal would not have to be altered. Upon a veterinarian's written certification that an alteration posed a serious, temporary medical or health problem, the alteration could be postponed. The person adopting the dog, cat, or ferret would have to have it reevaluated by a veterinarian at not more than 14-day intervals and would have to have the alteration performed not more than seven days after a veterinarian determined that the temporary problem was resolved.

Deposit. A contract entered into under the bill would have to require the adopting person to leave with the animal control shelter or animal protection shelter, or a designee of a shelter, a good faith deposit of at least \$25 that indicated the person's intention to have the adopted dog, cat, or ferret altered within the time required by the contract.

If an adopting person failed to comply with an alteration contract's terms, the deposit would be forfeited. The good faith deposit would have to be returned to an adopting person who submitted written proof from a veterinarian that an animal that was the subject of a contract under the bill had died

within the time period in which alteration was required, or the animal had a serious, permanent medical or health problem that prevented alteration. Money forfeited under the bill would have to be used by the animal control shelter or animal protection shelter to finance alterations, for public education regarding the value of having dogs, cats, and ferrets altered, or otherwise to ensure compliance with the bill.

If an adopting person complied with the terms of a contract entered into under the bill, the good faith deposit would have to be refunded upon the person's submission of written certification by a veterinarian that the adopted dog, cat, or ferret had been altered. The certificate would have to include the date of alteration, the name of the animal's owner, a description of the animal, and the signature of the veterinarian who performed the procedure.

A good faith deposit would not be required if one or more of the following applied:

- A dog was transferred to a local, State, or Federal law enforcement agency.
- A dog was transferred to an organization or trainer that trained guide or leader dogs for blind persons, hearing dogs for deaf or audibly impaired persons, or service dogs for physically limited persons.
- A dog, cat, or ferret was transferred to another animal control shelter or animal protection shelter or was transferred to a person who would transfer the animal to another animal control or protection shelter. Before the first animal shelter released the animal, it would have to obtain from the person to whom the animal was to be released a written statement by the second animal shelter that it was willing to accept the animal for purposes of adoption or humane euthanasia. Promptly after the animal control or protection shelter received the animal, the person to whom the animal had been released would have to give the first shelter a written statement by the second shelter containing a description of the dog, cat, or ferret and acknowledging its receipt on a date specified in the statement.

Damages. A contract entered into under the bill would have to include a statement that, if the terms were breached because a person adopting a dog, cat, or ferret failed to have the animal altered as required in the contract, the person would agree to pay \$100 or the actual reasonable costs incurred

by the animal control shelter or animal protection shelter to enforce the contract, whichever was greater. Immediately before a person signed the contract, a representative of the animal control or protection shelter verbally would have to direct the person's attention to the liquidated damages agreement in the contract.

Records

An animal control shelter and an animal protection shelter would have to maintain written records on all of the following:

- The total number of dogs, cats, and ferrets under six months old, the total number of dogs, cats, and ferrets six months of age and older, and all other animals received, returned to owners, adopted to new owners, sold, or transferred, with or without remuneration.
- The number of adopted dogs, cats, and ferrets that were altered.
- The number of adopted dogs, cats, and ferrets that were not altered.
- The number of dogs, cats, and ferrets euthanized annually.

Shelters annually would have to provide a copy of the statistics listed above to the MDA, by March 31 of the year following the year for which the statistics were compiled.

Exceptions

The Act does not apply to a person who breeds his or her own animals, or to a person who is subject to Public Act 224 of 1969, which provides for the licensure and regulation of dealers in and research facilities using dogs and cats for research purposes.

The bill provides that these exceptions could not be construed to mean that the animals in question were exempt from vaccination and licensing requirements pursuant to the Dog Law, or from vaccination and handling requirements pursuant to Public Act 358 of 1994, which regulates the possession, breeding, and importing of domestic ferrets.

Penalties

If a person violated the Act or a rule promulgated under it, the Director of the Department of Agriculture, or his or her authorized representative, after notice and an opportunity for an evidentiary

hearing under the Administrative Procedures Act could do one or both of the following:

- Suspend or revoke a license or registration issued to a person under the Act.
- Impose an administrative fine of up to \$1,000 for each violation. The Director would have to advise the Attorney General of person's failure to pay an administrative fine. The Attorney General would be required to bring a civil action to recover the administrative fine as well as costs and fees. The administrative fine would have to be deposited in the General Fund of the State Treasury.

In addition to any other action authorized by the Act, the Director could bring an action to do one or more of the following:

- Obtain a declaratory judgment that a method, act, or practice violated the Act.
- Obtain an injunction against a person who was engaging, or was about to engage, in a method, act, or practice that violated the Act.

If a person failed to comply with a contract for the alteration of a dog, cat, or ferret as required in the bill, a court with appropriate jurisdiction could order transfer of ownership of the adopted animal only to one of the following: the facility from which the animal was adopted; or, a veterinarian, animal control shelter, or animal protection shelter willing to accept the animal and either humanely euthanize the animal or adopt the animal to an owner who agreed to have the animal altered.

MCL 287.331 et al.

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

As a representative of the HSUS pointed out, pet overpopulation costs Michigan more than money: It costs in terms of the quality of life for people and animals; it costs in terms of public health and safety (e.g., dog bites and rabies); it costs in terms of the toll it takes on animal control and protection agencies and their employees; and it costs in terms of needless animal suffering. Numerous agencies cope with the overpopulation of pets every day, euthanizing thousands of pets simply because they are "surplus". In addition, many animals are

subject to abuse and neglect, and irresponsible pet owners who allow unaltered pets to run loose fail to fulfill their obligation not only to the animals, but also to the community.

Sterilization is one significant method of preventing an overabundance of animals from being born in the first place. According to the Humane Society of the United States, of the 20 states that currently mandate shelter animal sterilization at adoption, 13 make it a violation of law to fail to comply with the sterilization requirement, and most of the 20 states have enacted the use of a good faith deposit from the adopters. Further, according to the HSUS, many humane societies around the country have been using the good faith deposit for many years, and report that it serves as an educational tool, a way to add value to the animal's life, and a means of funding efforts necessary for compliance or spay/neuter assistance programs. In Michigan, according to the executive director of the Humane Society of Kent County, as of 1995 that shelter had mandatory sterilization policies in place for the last 20 years; during that time, the number of animals accepted at the shelter decreased from about 12,700 to 7,500 per year, while the human population of the area steadily increased.

Michigan should become the 21st state to adopt a shelter animal sterilization policy. By preventing the release of fertile animals back into a community already overpopulated with homeless animals, this bill would save public tax dollars and private donations, increase the responsibility of pet ownership, reduce the risk of disease and injury to animals and humans, and prevent avoidable animal suffering.

Supporting Argument

The Senate substitute specifies that an animal's rightful owner who reclaimed his or her pet from a shelter would not be obligated to enter into a sterilization contract. This would preclude situations in which someone's lost pet was picked up, for example, and the owner then was denied the opportunity to regain possession of the animal without agreeing to sterilization.

Opposing Argument

The imposition of a good faith deposit and the threat of penalties for noncompliance could deny many people the chance to adopt a pet based on their low income and the high cost of sterilization. In many cases, it would be months before someone got his or her deposit back. In addition, shelters with a low budget do not need the additional burden of keeping track of deposits and

maintaining records for the State. Furthermore, the bill would set no controls on those people who give away their own pet's puppies or kittens.

Opposing Argument

The bill's definition of "pet shop", which is the same as the current definition, is too vague and overly broad. By including any place where animals are exchanged or transferred, the definition could be interpreted to include situations in which animals are traded among owners. Apparently, dog sled owners commonly trade dogs to keep their packs healthy and strong, and would not necessarily be covered by the exception for breeders. Although the Department of Agriculture reportedly has never attempted to regulate these individuals as pet shops, and does not plan to do so, there is no statutory assurance that the Department would not revise its policy.

Opposing Argument

There should not be a statutory exception for breeders. These people earn money from what they do, and should not be allowed to receive cheap breeding stock from a shelter.

Response: An exemption for breeders already exists in the law.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have a minimal fiscal impact on the State for administration and assessment of fines.

Fiscal Analyst: A. Rich

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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.