

Act No. 405
Public Acts of 1998
Approved by the Governor
December 18, 1998
Filed with the Secretary of State
December 21, 1998
EFFECTIVE DATE: December 21, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. Law, Middleton and London

Reps. Anthony, Brewer, Byl, DeHart, Freeman, Gire, Gubow, Owen, Rocca, Schauer, Schermesser, Thomas, Vaughn and Voorhees named co-sponsors

ENROLLED HOUSE BILL No. 5057

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 50 (MCL 750.50), as amended by 1996 PA 458.

The People of the State of Michigan enact:

Sec. 50. (1) As used in this section and section 50b:

(a) "Adequate care" means the provision of sufficient food, water, shelter, sanitary conditions, exercise, and veterinary medical attention in order to maintain an animal in a state of good health.

(b) "Animal" means 1 or more vertebrates other than a human being.

(c) "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.

(d) "Animal control shelter" means 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 the county, city, village, or township or state law.

(e) "Licensed veterinarian" means a person licensed to practice veterinary medicine under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(f) "Livestock" means that term as defined in the animal industry act of 1987, 1988 PA 466, MCL 287.701 to 287.747.

(g) "Person" means an individual, partnership, limited liability company, corporation, association, governmental entity, or other legal entity.

(h) "Neglect" means to fail to sufficiently and properly care for an animal to the extent that the animal's health is jeopardized.

(i) "Sanitary conditions" means space free from health hazards including excessive animal waste, overcrowding of animals, or other conditions that endanger the animal's health. This definition does not include a condition resulting from a customary and reasonable practice pursuant to farming or animal husbandry.

(j) "Shelter" means adequate protection from the elements and weather conditions suitable for the age, species, and physical condition of the animal so as to maintain the animal in a state of good health. Shelter, for livestock, includes structures or natural features such as trees or topography. Shelter for a dog shall include 1 or more of the following:

(i) The residence of the dog's owner or other individual.

(ii) A doghouse that is an enclosed structure with a roof and of appropriate dimensions for the breed and size of the dog. The doghouse shall have dry bedding when the outdoor temperature is or is predicted to drop below freezing.

(iii) A structure, including, but not limited to, a garage, barn, or shed that is sufficiently insulated and ventilated to protect the dog from exposure to extreme temperatures or, if not sufficiently insulated and ventilated, contains a doghouse as provided under subparagraph (ii) that is accessible to the dog.

(k) "State of good health" means freedom from disease and illness, and in a condition of proper body weight and temperature for the age and species of the animal, unless the animal is undergoing appropriate treatment.

(l) "Tethering" means the restraint and confinement of a dog by use of a chain, rope, or similar device.

(m) "Water" means potable water that is suitable for the age and species of animal, made regularly available unless otherwise directed by a veterinarian licensed to practice veterinary medicine.

(2) An owner, possessor, or person having the charge or custody of an animal shall not do any of the following:

(a) Fail to provide an animal with adequate care.

(b) Cruelly drive, work, or beat an animal, or cause an animal to be cruelly driven, worked, or beaten.

(c) Carry or cause to be carried in or upon a vehicle or otherwise any live animal having the feet or legs tied together, other than an animal being transported for medical care, or a horse whose feet are hobbled to protect the horse during transport or in any other cruel and inhumane manner.

(d) Carry or cause to be carried a live animal in or upon a vehicle or otherwise without providing a secure space, rack, car, crate, or cage, in which livestock may stand, and in which all other animals may stand, turn around, and lie down during transportation, or while awaiting slaughter. As used in this subdivision, for purposes of transportation of sled dogs, "stand" means sufficient vertical distance to allow the animal to stand without its shoulders touching the top of the crate or transportation vehicle.

(e) Abandon an animal or cause an animal to be abandoned, in any place, without making provisions for the animal's adequate care, unless premises are temporarily vacated for the protection of human life during a disaster. An animal that is lost by an owner or custodian while traveling, walking, hiking or hunting shall not be regarded as abandoned under this section when the owner or custodian has made a reasonable effort to locate the animal.

(f) Willfully or negligently allow any animal, including one who is aged, diseased, maimed, hopelessly sick, disabled, or nonambulatory to suffer unnecessary neglect, torture, or pain.

(g) Tether a dog unless the tether is at least 3 times the length of the dog as measured from the tip of its nose to the base of its tail and is attached to a harness or nonchoke collar designed for tethering.

(3) If an animal is impounded and is being held by an animal control shelter or its designee or an animal protection shelter or its designee or a licensed veterinarian pending the outcome of a criminal action charging a violation of this section or section 50b, before final disposition of the criminal charge, the prosecuting attorney may file a civil action in the court that has jurisdiction of the criminal action, requesting that the court issue an order forfeiting the animal to the animal control shelter or animal protection shelter or to a licensed veterinarian before final disposition of the criminal charge. The prosecuting attorney shall serve a true copy of the summons and complaint upon the defendant and upon a person with a known ownership interest or known security interest in the animal or a person who has filed a lien with the secretary of state in an animal involved in the pending action. The forfeiture of an animal under this section encumbered by a security interest is subject to the interest of the holder of the security interest who did not have prior knowledge of, or consent to the commission of the crime. Upon the filing of the civil action, the court shall set a hearing on the complaint. The hearing shall be conducted within 14 days of the filing of the civil action, or as soon as practicable. The hearing shall be before a judge without a jury. At the hearing, the prosecuting attorney has the burden of establishing by a preponderance of the evidence that a violation of this section or section 50b occurred. If the court finds that the prosecuting attorney has met this burden, the court shall order immediate forfeiture of the animal to the animal control shelter or animal protection shelter or the licensed veterinarian unless the defendant, within 72 hours of the hearing, submits to the court clerk cash or other form of security in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of initial impoundment to the date of trial. If cash or other security has been submitted, and the trial in the action is continued at a later date, any order of continuance shall require the defendant to submit additional cash or security in an amount determined by the court to be sufficient to repay all additional reasonable costs anticipated to be incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal until the new date of trial. If the defendant submits cash or other security to the court under this subsection the court may enter an order authorizing the use of that money or other security before final disposition of the criminal charges to pay the reasonable costs incurred by the animal control shelter or animal protection shelter or the licensed veterinarian in caring for the animal from the date of impoundment to the date of final disposition of the criminal charges. The testimony of a person at a hearing held under this subsection is not admissible against him or her in any criminal proceeding except in a criminal prosecution for perjury. The testimony of a person at a hearing held under this subsection does not waive the person's constitutional right against self-incrimination. An animal seized under this section or section 50b is not subject to any other civil action pending the final judgment of the forfeiture action under this subsection.

(4) A person who violates subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00 or community service for not more than 200 hours, or any combination of these penalties and the cost of prosecution. A person who violates subsection (2) on a second occasion is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00 or community service for not more than 300 hours, or any combination of these penalties and the cost of prosecution. A person who violates subsection (2) on a third or subsequent occasion is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00 or community service for not more than 500 hours, or any combination of these penalties and the cost of prosecution.

(5) If forfeiture is not ordered pursuant to subsection (3), as a part of the sentence for a violation of subsection (2), the court may order the defendant to pay the costs of the care, housing, and veterinary medical care for the animal, as applicable. If the court does not order a defendant to pay all of the applicable costs listed in this subsection, or orders only partial payment of these costs, the court shall state on the record the reason for that action.

(6) As a part of the sentence for a violation of subsection (2), the court may, as a condition of probation, order the defendant not to own or possess an animal for a period of time not to exceed the period of probation. If a person is convicted of a second or subsequent violation of subsection (2), a court order under this subsection may order the defendant not to own or possess an animal for any period of time which may include permanent relinquishment of animal ownership.

(7) A person who owns or possesses an animal in violation of an order issued under subsection (6) is subject to revocation of probation if the order is issued as a condition of probation. A person who owns or possesses an animal in violation of an order issued under subsection (6) is also subject to the civil and criminal contempt power of the court, and if found guilty of criminal contempt, may be punished by imprisonment for not more than 90 days, or by a fine of not more than \$500.00, or both.

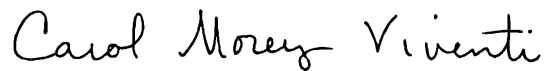
(8) This section does not prohibit the lawful killing or other use of an animal, including, but not limited to, the following:

- (a) Fishing.
- (b) Hunting, trapping, or wildlife control regulated pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.
- (c) Horse racing.
- (d) The operation of a zoological park or aquarium.
- (e) Pest or rodent control.
- (f) Farming or a generally accepted animal husbandry or farming practice involving livestock.
- (g) Activities authorized pursuant to rules promulgated under section 9 of the executive organization act of 1965, 1965 PA 380, MCL 16.109.
- (h) Scientific research pursuant to 1969 PA 224, MCL 287.381 to 287.395.
- (i) Scientific research pursuant to sections 2226, 2671, 2676, and 7333 of the public health code, 1978 PA 368, MCL 333.2226, 333.2671, 333.2676, and 333.7333.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.