



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1328 (as passed by the Senate)
Sponsor: Senator Ron Jelinek
Committee: Agriculture, Forestry and Tourism

Date Completed: 11-3-06

RATIONALE

Under Michigan law, animal protection shelters are facilities operated by municipalities for the impoundment and care of animals found in the street or at large, animals surrendered to the shelter, or other animals that are in violation of ordinances or State law. Animal protection shelters are operated by nonprofit organizations for the care of homeless animals. Both animal control shelters and animal protection shelters continually deal with a large number of unwanted animals that must be euthanized.

Under 1981 amendments to the Public Health Code, animal control shelters and animal protection shelters may handle and administer commercially prepared solutions of sodium pentobarbital, a euthanizing agent. Only authorized personnel who have undergone specific training may handle the drug, which is a Schedule 2 controlled substance. Since the amendments were enacted, the use of sodium pentobarbital has become more widespread, but some have suggested that a "pre-tranquilizer" used in conjunction with the drug could help to ease the death of an animal, relaxing it and reducing the risk of injury to itself or the technician. It has been pointed out that tranquilizers also could be useful for sedating a wild or feral animal, or an animal that otherwise poses a risk of injury to itself or those around it. Currently, only veterinarians are authorized to handle or administer animal tranquilizers. Some people believe that with proper training, animal control shelter and protection shelter employees also should be allowed to administer tranquilizers under limited circumstances.

CONTENT

The bill would amend Part 73 of the Public Health Code (dealing with the manufacture, distribution, and dispensing of controlled substances) to permit an animal control shelter or an animal protection shelter to purchase, possess, and administer a commercially prepared solution of animal tranquilizer under certain conditions.

The bill specifies that an animal control shelter or an animal protection shelter registered by the Michigan Department of Agriculture (MDA) under Public Act 287 of 1969 (which deals with pet shops, dog pounds, and animal shelters) could acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared solution of an animal tranquilizer to sedate a feral, wild, difficult to handle, or other animal for euthanasia. An animal control shelter also would be permitted to tranquilize an animal running at large that was dangerous or difficult to capture.

The animal control shelter or animal protection shelter would have to apply to the administrator (the Michigan Board of Pharmacy or its designated authority) for the permit, in accordance with rules promulgated under Part 73. (Under that part, the Board or its designee may promulgate rules related to the licensure and control of the manufacture, distribution, and prescribing of Schedule 2 controlled substances, and the dispensing of controlled substances in the State.)

The shelter also would have to comply with the rules promulgated by the administrator for the storage, handling, and use of a

commercially prepared solution of an animal tranquilizer. A record of use would have to be maintained and available for inspection by the MDA.

In addition, the shelter would have to certify that at least one of its employees had received and could document completion of a minimum of 16 hours of training, including at least three hours of practical training, in the use of animal tranquilizers on animals from a training program approved by the State Veterinarian, in consultation with the Michigan Board of Veterinary Medicine, and given by a licensed veterinarian pursuant to rules promulgated by the administrator, in consultation with the Board of Veterinary Medicine as those rules related to this training. The shelter also would have to certify that only an individual who had received such training or an individual otherwise permitted to use a controlled substance under Article 7 (Controlled Substances) of the Code would administer the commercially prepared solution of an animal tranquilizer according to written procedures established by the shelter.

The application would have to contain the name of the individual in charge of the day-to-day operations of the shelter and the name of the individual responsible for designating employees who would be administering a commercially prepared solution of an animal tranquilizer. The application also would have to include the names and business addresses of all individuals employed by the animal control shelter or animal protection shelter who had been trained to administer commercially prepared animal tranquilizers as described above, and would have to include documented proof of their training. The list of names and business addresses would have to be updated every six months.

If an animal control shelter or animal protection shelter that was issued a permit under the bill did not employ an individual trained to administer commercially prepared animal tranquilizers as described above, the shelter would have to notify the administrator immediately and cease to administer any commercially prepared solution of an animal tranquilizer until either a trained individual had been hired by the shelter, or an employee of the shelter had been trained.

A veterinarian, including a veterinarian who trained individuals under the bill, would not be civilly or criminally liable for the use of an animal tranquilizer by an animal control shelter or animal protection shelter unless the veterinarian were employed by or under contract with the shelter and the terms of the veterinarian's employment required him or her to be responsible for the use or administration of the commercially prepared solution of an animal tranquilizer.

The bill would prohibit a person from knowingly using or permitting the use of an animal tranquilizer in violation of Section 7333 (the section the bill would amend).

The bill specifies that Section 7333 would not require that a veterinarian be employed by or under contract with an animal control shelter or animal protection shelter to obtain, possess, or administer a commercially prepared solution of an animal tranquilizer under that section.

Under the bill, "animal tranquilizer" would mean xylazine hydrochloride or other animal tranquilizing drug as approved by the U.S. Food and Drug Administration and by the MDA for use as described in the bill.

Currently, a dog pound or animal shelter may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the dog pound or animal shelter applies to the administrator for a permit, complies with rules, and certifies that an employee has received and can document completion at least eight hours of training in the use of sodium pentobarbital to practice euthanasia on animals. The bill would refer to an animal control shelter or animal protection shelter, rather than a dog pound or animal shelter, in these provisions.

MCL 333.7333

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 bill would give animal control shelters and animal protection shelters a tool necessary to carry out their functions in a humane and efficient manner. Most shelters do not have a vet on staff, although a typical shelter may put down thousands of animals a year. According to Senate testimony, some shelters may use tranquilizers illegally to soothe the animals before death, but most shelters inject euthanizing drugs without the benefit of a tranquilizer, which can be stressful for both the animals and the technician if the animal becomes distressed or agitated. If something goes wrong with the injection, the animal may undergo a long, difficult death. Permitting shelters to administer a pre-tranquilizer would relax the animal, allowing the procedure to proceed more smoothly. Shelter technicians have shown that they are able to handle commercially prepared solutions of sodium pentobarbital in a responsible and competent manner, and there is no reason to doubt that these individuals would be capable of handling and administering animal tranquilizers as well. The tranquilizers in question are Schedule 4 controlled substances, meaning that they have relatively little potential for abuse, and according to the MDA, the commercially prepared solutions would have little or no street value as illegal drugs.

In addition, the bill would allow animal control officers to administer a tranquilizer to an animal that was running at large or was difficult to handle. Because those situations involve public safety, that authority would be restricted to animal control officers, and not extended to employees of nonprofit animal protection shelters. In some cases, the option of using of a tranquilizer could save lives or defuse dangerous situations. An animal running loose on the freeway, for example, might cause an accident if it is not quickly removed from the flow of traffic. Currently, an officer is not permitted to tranquilize the animal, but must call a vet to the scene to administer the drug, which rarely is practical in a critical situation. The animal control officer often must act quickly, and the only option the officer may have under current law is to shoot the animal. Under the bill, officers would be authorized to use a tranquilizer instead, potentially sparing the animal's life.

Supporting Argument

The bill would help to professionalize the field by offering higher training and certifications for animal control shelter employees, creating greater opportunities and responsibilities for those individuals.

Opposing Argument

The bill would loosen restrictions on a controlled substance, which would become more widely available and vulnerable to abuse. Individual animal control shelters could become targets of theft by individuals hoping to convert the tranquilizers into illegal drugs.

The bill also fails to provide adequate controls to prevent internal fraud or theft. As a practical matter, allowing shelters throughout the State to purchase and store these tranquilizers would make it difficult to track the drugs and account for their use. The bill should include more stringent record keeping requirements, measuring the amount of anesthetic used against the number of animals euthanized, to detect any possible discrepancy. In addition, the bill should require criminal background checks for all individuals who would be authorized to handle the substances. If an individual had a criminal record of drug abuse, he or she should not be given access to such substances. Also, the bill does not require any training for supervisors who oversee a facility. Technicians would be on their own, with a minimum amount of training and no expert support in case of unexpected complications. At the least, the bill should require additional training for supervisors as well as the certified individuals.

Response: Many of these concerns were raised when shelters first were permitted to administer sodium pentobarbital in 1981. In the 25 years since, those concerns have proved to be unfounded. Animal shelters have shown that they are able to handle controlled substances responsibly, and theft has not been a significant problem. There is no reason to expect that this bill would have any different result. As noted above, the tranquilizers that would be approved under the bill have very little potential for abuse. As added protection, the bill includes safeguards, requiring shelters to keep thorough records of tranquilizer usage, and providing for oversight by the MDA. These provisions would help to prevent the possibility of fraud, theft, or abuse.

Opposing Argument

The bill would not adequately protect the rights of animal owners or restrict the use of tranquilizers to subdue animals. Poor judgment by an animal control officer could lead to the loss of a valuable animal. Hunting dogs, for example, could be mistaken for wild animals or feral dogs and tranquilized while pursuing game. Purebred hunting dogs can be extremely expensive, and it is not clear who would be liable for the loss of such an animal if it were tranquilized by mistake.

Response: Although the chances of a hunting dog being mistaken for a wild or dangerous animal are slight, in such an instance the provisions of the bill could save the dog's life. As noted above, under current law animal control officers could be forced to shoot an animal that posed a risk to public safety. Under the bill, the officer could sedate the dog, which could then be returned to its owner.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill could create a mild, indeterminate increase in administrative cost for the Department of Agriculture associated with the administration and processing of permits for animal protection and animal control shelters.

Fiscal Analyst: David Fosdick

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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.