

SENATE BILL No. 1405

June 24, 2008, Introduced by Senator THOMAS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 49 (MCL 750.49), as amended by 2006 PA 129, and
by adding section 49a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 49. (1) As used in this section, "animal" means a
2 vertebrate other than a human.

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

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

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

9 (c) Rent or otherwise obtain the use of a building, shed,

1 room, yard, ground, or premises for fighting, baiting, or shooting
2 an animal as described in subdivision (a).

3 (d) Permit the use of a building, shed, room, yard, ground, or
4 premises belonging to him or her or under his or her control for
5 any of the purposes described in this section.

6 (e) Organize, promote, or collect money for the fighting,
7 baiting, or shooting of an animal as described in ~~subdivisions (a)~~
8 ~~to (d)~~ **SUBDIVISION (A)**.

9 (f) Be present at a building, shed, room, yard, ground, or
10 premises where preparations are being made for an exhibition
11 described in ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**, or be present
12 at the exhibition, knowing that an exhibition is taking place or
13 about to take place.

14 (g) Breed, buy, sell, offer to buy or sell, exchange, import,
15 or export an animal the person knows has been trained or used for
16 fighting as described in ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**,
17 or breed, buy, sell, offer to buy or sell, exchange, import, or
18 export the offspring of an animal the person knows has been trained
19 or used for fighting as described in ~~subdivisions (a) to (d)~~
20 **SUBDIVISION (A)**. This subdivision does not prohibit owning,
21 breeding, buying, selling, offering to buy or sell, exchanging,
22 importing, or exporting an animal for agricultural or agricultural
23 exposition purposes.

24 (h) Own, possess, use, buy, sell, offer to buy or sell,
25 transport, or deliver any device or equipment intended for use in
26 the fighting, baiting, or shooting of an animal as described in
27 ~~subdivisions (a) to (d)~~ **SUBDIVISION (A)**.

1 (I) SOLICIT OR INVITE ANOTHER PERSON TO ENGAGE IN THE
2 FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL AS DESCRIBED IN
3 SUBDIVISIONS (A) TO (D).

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

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

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

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

10 (4) A person who violates subsection (2)(f) to ~~(h)~~ (I) is
11 guilty of a felony punishable by 1 or more of the following:

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

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

14 (c) Not less than 250 or more than 500 hours of community
15 service.

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

18 (6) The court may order a person convicted of violating this
19 section to pay the costs for housing and caring for the animal,
20 including, but not limited to, providing veterinary medical
21 treatment.

22 (7) As part of the sentence for a violation of subsection (2),
23 the court shall order the person convicted not to own or possess an
24 animal of the same species involved in the violation of this
25 section for 5 years after the date of sentencing. Failure to comply
26 with the order of the court ~~pursuant to~~ **ISSUED UNDER** this
27 subsection is punishable as contempt of court.

1 (8) If a person incites an animal trained or used for fighting
2 or an animal that is the first or second generation offspring of an
3 animal trained or used for fighting to attack a person and thereby
4 causes the death of that person, the owner is guilty of a felony
5 punishable by imprisonment for life or for a term of years greater
6 than 15 years.

7 (9) If a person incites an animal trained or used for fighting
8 or an animal that is the first or second generation offspring of an
9 animal trained or used for fighting to attack a person, but the
10 attack does not result in the death of the person, the owner is
11 guilty of a felony punishable by imprisonment for not more than 4
12 years or a fine of not more than \$2,000.00, or both.

13 (10) If an animal trained or used for fighting or an animal
14 that is the first or second generation offspring of an animal
15 trained or used for fighting attacks a person without provocation
16 and causes the death of that person, the owner of the animal is
17 guilty of a felony punishable by imprisonment for not more than 15
18 years.

19 (11) If an animal trained or used for fighting or an animal
20 that is the first or second generation offspring of an animal
21 trained or used for fighting attacks a person without provocation,
22 but the attack does not cause the death of the person, the owner is
23 guilty of a misdemeanor punishable by imprisonment for not more
24 than 1 year or a fine of not more than \$1,000.00, or both.

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

1 (13) If an animal trained or used for fighting or an animal
2 that is the first or second generation offspring of a dog trained
3 or used for fighting goes beyond the property limits of its owner
4 without being securely restrained, the owner is guilty of a
5 misdemeanor punishable by imprisonment for not more than 90 days or
6 a fine of not less than \$50.00 nor more than \$500.00, or both.

7 (14) If an animal trained or used for fighting or an animal
8 that is the first or second generation offspring of a dog trained
9 or used for fighting is not securely enclosed or restrained on the
10 owner's property, the owner is guilty of a misdemeanor punishable
11 by imprisonment for not more than 90 days or a fine of not more
12 than \$500.00, or both.

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

15 (a) A dog trained or used for fighting, or the first or second
16 generation offspring of a dog trained or used for fighting, that is
17 used by a law enforcement agency of the state or a county, city,
18 village, or township.

19 (b) A certified leader dog recognized and trained by a
20 national guide dog association for the blind or for persons with
21 disabilities.

22 (c) A corporation licensed under the private security business
23 and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1083, when
24 a dog trained or used for fighting, or the first or second
25 generation offspring of a dog trained or used for fighting, is used
26 in accordance with the private security business and security alarm
27 act, 1968 PA 330, MCL 338.1051 to 338.1083.

1 (16) An animal that has been used to fight in violation of
2 this section or that is involved in a violation of subsections (8)
3 to (14) shall be confiscated as contraband by a law enforcement
4 officer and shall not be returned to the owner, trainer, or
5 possessor of the animal. The animal shall be taken to a local
6 humane society or other animal welfare agency. If an animal owner,
7 trainer, or possessor is convicted of violating subsection (2) or
8 subsections (8) to (14), the court shall award the animal involved
9 in the violation to the local humane society or other animal
10 welfare agency.

11 (17) Upon receiving an animal confiscated under this section,
12 or at any time thereafter, an appointed veterinarian, the humane
13 society, or other animal welfare agency may humanely euthanize the
14 animal if, in the opinion of that veterinarian, humane society, or
15 other animal welfare agency, the animal is injured or diseased past
16 recovery or the animal's continued existence is inhumane so that
17 euthanasia is necessary to relieve pain and suffering.

18 (18) A humane society or other animal welfare agency that
19 receives an animal under this section shall apply to the district
20 court or municipal court for a hearing to determine whether the
21 animal shall be humanely euthanized because of its lack of any
22 useful purpose and the public safety threat it poses. The court
23 shall hold a hearing not more than 30 days after the filing of the
24 application and shall give notice of the hearing to the owner of
25 the animal. Upon a finding by the court that the animal lacks any
26 useful purpose and poses a threat to public safety, the humane
27 society or other animal welfare agency shall humanely euthanize the

1 animal. Expenses incurred in connection with the housing, care,
2 upkeep, or euthanasia of the animal by a humane society or other
3 animal welfare agency, or by a person, firm, partnership,
4 corporation, or other entity, shall be assessed against the owner
5 of the animal.

6 (19) Subject to subsections (16) to (18), all animals being
7 used or to be used in fighting, equipment, devices and money
8 involved in a violation of subsection (2) shall be forfeited to the
9 state. All other instrumentalities, proceeds, and substituted
10 proceeds of a violation of subsection (2) are subject to forfeiture
11 under chapter 47 of the revised judicature act of 1961, 1961 PA
12 236, MCL 600.4701 to 600.4709.

13 (20) The seizing agency may deposit money seized under
14 subsection (19) into an interest-bearing account in a financial
15 institution. As used in this subsection, "financial institution"
16 means a state or nationally chartered bank or a state or federally
17 chartered savings and loan association, savings bank, or credit
18 union whose deposits are insured by an agency of the United States
19 government and that maintains a principal office or branch office
20 located in this state under the laws of this state or the United
21 States.

22 (21) An attorney for a person who is charged with a violation
23 of subsection (2) involving or related to money seized under
24 subsection (19) shall be afforded a period of 60 days within which
25 to examine that money. This 60-day period shall begin to run after
26 notice of forfeiture is given but before the money is deposited
27 into a financial institution under subsection (20). If the attorney

1 general, prosecuting attorney, or city or township attorney fails
 2 to sustain his or her burden of proof in forfeiture proceedings
 3 under subsection (19), the court shall order the return of the
 4 money, including any interest earned on money deposited into a
 5 financial institution under subsection (20).

6 (22) This section does not apply to conduct that is permitted
 7 by and is in compliance with any of the following:

8 (a) Part 401 of the natural resources and environmental
 9 protection act, 1994 PA 451, MCL 324.40101 to ~~324.40119~~ **324.40120**.

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

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

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

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

19 **SEC. 49A. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A**
 20 **PERSON SHALL NOT DO ANY OF THE FOLLOWING:**

21 **(A) RECORD THE FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL.**

22 **(B) OWN, POSSESS, USE, BUY, SELL, OFFER TO BUY OR SELL,**
 23 **TRANSPORT, OR DELIVER A RECORDING OF, OR AN ITEM DEPICTING, THE**
 24 **FIGHTING, BAITING, OR SHOOTING OF AN ANIMAL.**

25 **(2) SUBSECTION (1) DOES NOT APPLY TO A PEACE OFFICER ACTING IN**
 26 **THE COURSE OF HIS OR HER DUTIES OR AN INDIVIDUAL ENGAGED IN**
 27 **LEGITIMATE EDUCATIONAL OR SCIENTIFIC ACTIVITIES AND DOES NOT**

1 PROHIBIT SPEECH PROTECTED UNDER AMENDMENT I OF THE CONSTITUTION OF
2 THE UNITED STATES OR SECTION 5 OF ARTICLE I OF THE STATE
3 CONSTITUTION OF 1963.

4 (3) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A FELONY
5 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF
6 NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00, OR BOTH.

7 (4) AS USED IN THIS SECTION, "ANIMAL" MEANS A VERTEBRATE OTHER
8 THAN A HUMAN.