

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

***** 750.49.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 19, 2020 *****

750.49.amended Animal; animal control agency; definition; fighting, baiting, or shooting; prohibited conduct; violation as felony; costs; dog trained or used for fighting or offspring of dog trained or used for fighting; prohibited conduct; exceptions; confiscation of dog; award of dog to animal control agency; notice required; holding period; security deposit or bond; euthanasia; expenses; forfeiture of animals, equipment, devices, and money; disposition of money seized; additional exceptions.

Sec. 49. (1) As used in this section:

(a) "Animal" means a vertebrate other than a human being.

(b) "Animal control agency" means an animal control shelter, an animal protection shelter, or a law enforcement agency. As used in this subdivision, "animal control shelter" and "animal protection shelter" mean those terms as defined in section 1 of 1969 PA 287, MCL 287.331.

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

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

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

(c) Rent or otherwise obtain the use of a building, shed, room, yard, ground, premises, vehicle, or any other venue for fighting, baiting, or shooting an animal as described in subdivision (a).

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

(e) Organize, promote, or collect money, property, or any other thing of value for the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

(f) Be present at a building, shed, room, yard, ground, premises, vehicle, or any other venue where preparations are being made for an exhibition described in subdivisions (a) to (d), or be present at the exhibition, knowing that an exhibition is taking place or about to take place.

(g) Breed, buy, sell, offer to buy or sell, exchange, import, or export an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d), or breed, buy, sell, offer to buy or sell, exchange, import, or export the offspring of an animal the person knows has been trained or used for fighting as described in subdivisions (a) to (d). This subdivision does not prohibit owning, breeding, buying, selling, offering to buy or sell, exchanging, importing, or exporting an animal for agricultural or agricultural exposition purposes. This subdivision does 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 in subdivisions (a) to (d) or an animal that is the first- or second-generation offspring of an animal trained or used for fighting as described in subdivisions (a) to (d). If an animal is found fit for placement and is transferred or adopted, the animal control agency that transfers or adopts the animal shall do all of the following:

(i) Sterilize the animal or collect a good-faith deposit for sterilization as required under section 8a of 1969 PA 287, MCL 287.338a.

(ii) Provide a copy of the animal's history, including, but not limited to, a description of why the animal was seized, veterinary records, and a copy of subsections (8) to (14) to the person to whom the animal is transferred or adopted.

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

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

(a) Imprisonment for not more than 4 years.

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

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

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

(a) Imprisonment for not more than 4 years.

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

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

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

(6) The court may order a person convicted of violating this section to pay the costs for investigating the violation of this section, disposition of the animal, and housing and caring for the animal, including, but not limited to, providing veterinary medical treatment. As used in this subsection, "disposition" includes the transfer, euthanasia, or adoption of an animal.

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

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

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

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

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

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

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

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

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

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

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

(c) A corporation licensed under the private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1092, when a dog trained or used for fighting, or the first- or second-generation offspring of a dog trained or used for fighting, is used in accordance with the private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1092.

(16) Except as provided in subsection (20), an animal that has been used to fight in violation of this section or that is involved in a violation of subsections (8) to (14) must be confiscated by a law enforcement officer and must not be returned to the owner, trainer, or possessor of the animal. The animal must be taken to a local animal control agency. If an animal owner, trainer, or possessor is convicted of violating subsection (2) or subsections (8) to (14), the court shall award the animal involved in the violation to the animal control agency for evaluation and disposition.

(17) An animal control agency taking custody of an animal under subsection (16) shall give notice within 72 hours after seizure of the animal by registered mail to the last known address of the animal's owner, if the owner of the animal is known. If the owner of the animal is unknown, an animal control agency taking custody of an animal under subsection (16) shall give notice within 72 hours after seizure of the animal by 1 of the following methods:

(a) Posting at the location of the seizure.

(b) Delivery to a person residing at the location of the seizure.

(c) Registered mail to the location of the seizure.

(18) The notice required under subsection (17) must include all of the following:

(a) A description of each animal seized.

(b) The time, date, location, and description of circumstances under which the animal was seized.

(c) The address and telephone number of the location where the animal is being held and contact information for the individual present at that location from whom security deposit or bond information may be obtained.

(d) A statement that the owner or possessor of the animal may post a security deposit or bond 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 post a security deposit or bond within 14 days after the date on the notice will result in forfeiture of the animal, and that the owner or possessor of the animal may, before the expiration of the 14-day period described in this subdivision, request a hearing 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. Notice of a request for a hearing under this subdivision must be served on the animal control agency holding the animal before the expiration of the 14-day period described in this subdivision. At a hearing on whether the requirement to post a security deposit or bond is justified, the prosecuting attorney has the burden to establish by a preponderance of the evidence that a violation of this section occurred. If the court finds that the prosecuting attorney has met its burden, the animal will be forfeited to the animal control agency that seized the animal unless the owner or possessor of the animal posts the required security deposit or bond. An owner or possessor's failure to appear at a scheduled hearing requested under this subdivision will result in automatic forfeiture of the animal if the date of the scheduled hearing is more than 14 days after the date on the notice described in this subdivision.

(e) A statement that the owner or possessor of the animal is responsible for all costs described in subsection (6), unless the court determines that the seizure of the animal was not substantially justified by law.

(19) An animal control agency that has custody of a seized animal under subsection (16) shall hold the animal for a period of 14 consecutive days, including weekends and holidays, beginning on the date notice was given under subsection (17). After the expiration of the 14 days, if the owner or a possessor of the animal has not posted a security deposit or bond as provided in subsection (20), the animal is forfeited, and the animal control agency may dispose of the animal by adoption, transfer to another animal control agency, or humane euthanasia.

(20) The owner or possessor of an animal seized under subsection (16) may prevent forfeiture and disposition of the animal by an animal control agency for the duration of the criminal, forfeiture, or other court proceeding until the court makes a final determination regarding the animal's disposition by posting a security deposit or bond with the court within 14 days after the date on the notice described in subsection (18). The bond must be in a sufficient amount to secure payment of all costs described in subsection (6) during a 30-day period of boarding and veterinary treatment of the animal after examination by a licensed veterinarian. The animal control agency shall determine the amount of the bond no later than 72 hours after the seizure of the animal, and shall make the amount of the bond available to the owner or possessor of the animal upon request. The owner or possessor of the animal shall provide proof of the security deposit or bond to the animal control agency no later than 14 days after the date on the notice described in subsection (18).

(21) An animal control agency that is holding or requiring to be held a seized animal as provided in this section may draw on a security deposit or bond posted under subsection (20) or (22) to cover the actual reasonable costs incurred in the seizure, care, keeping, and disposition of the animal as described in subsection (6) from the date of the seizure to the date of the official disposition of the animal in the criminal action.

(22) If a security deposit or bond has been posted under subsection (20), and trial in the criminal action does not occur within the initial 30-day bond period or is continued to a later date, the owner or possessor shall post an additional security deposit or bond in an amount determined sufficient to cover the costs described in subsection (6) as anticipated to be incurred by the animal control agency caring for the animal. The additional security deposit or bond must be calculated in 30-day increments and continue until the criminal action is resolved. If the owner or possessor of the animal fails to post a new security deposit or bond with the court before the previous security deposit or bond expires, the animal is forfeited to the animal control agency caring for the animal.

(23) If the owner or possessor that posted a security deposit or bond under subsection (20) or (22) is found not guilty in the criminal action, the amount of the security deposit or bond posted to prevent disposition of the animal may be returned to the owner or possessor at the court's discretion, and, subject to subsections (25) and (26), the animal must be returned to the owner.

(24) If a security deposit or bond is posted by an owner or possessor of an animal under subsection (20) or (22) and the court determines that the animal is a dangerous animal or lacks any useful purpose under

subsection (26), the posting of the security deposit or bond must not prevent disposition of the animal.

(25) Upon receiving an animal seized under this section, or at any time thereafter, an animal control agency may humanely euthanize the animal or have the animal euthanized if, in the opinion of a licensed veterinarian, the animal is injured or diseased past recovery or the animal's continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering. This subsection applies to an animal whether or not a security deposit or bond has been posted under subsection (20) or (22).

(26) An animal control agency that receives an animal under this section may apply to the district court or municipal court for a hearing to determine whether the animal must be humanely euthanized because of its lack of any useful purpose or the public safety threat it poses. The court shall hold a hearing not more than 30 days after the filing of the application and shall give notice of the hearing to the owner of the animal. Upon a finding by the court that the animal lacks any useful purpose or poses a threat to public safety, the animal control agency shall humanely euthanize the animal or have the animal euthanized. Expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by an animal control agency, or by a person, firm, partnership, corporation, or other entity, may, in the court's discretion, be assessed against the owner of the animal.

(27) Subject to subsections (16), (25), and (26), all animals being used or to be used in fighting, equipment, devices, and money involved in a violation of subsection (2) must be forfeited to this state. All other instrumentalities, proceeds, and substituted proceeds of a violation of subsection (2) are subject to forfeiture under chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4710.

(28) The seizing agency may deposit money seized under subsection (27) into an interest-bearing account in a financial institution. As used in this subsection, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(29) An attorney for a person who is charged with a violation of subsection (2) involving or related to money seized under subsection (27) must be afforded a period of 60 days within which to examine that money. This 60-day period will begin to run after notice of forfeiture is given but before the money is deposited into a financial institution under subsection (28). If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in forfeiture proceedings under subsection (27), the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (28).

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

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

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

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

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

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

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.49;—Am. 1976, Act 392, Eff. Mar. 31, 1977;—Am. 1988, Act 381, Eff. Mar. 30, 1989;—Am. 1995, Act 228, Eff. Jan. 1, 1996;—Am. 1998, Act 38, Imd. Eff. Mar. 18, 1998;—Am. 2006, Act 129, Imd. Eff. May 5, 2006;—Am. 2018, Act 461, Eff. Mar. 29, 2019;—Am. 2019, Act 176, Eff. Mar. 19, 2020.

Former law: See section 2 of Act 70 of 1877; How., § 9392; Act 48 of 1893; CL 1897, § 11740; Act 234 of 1899; CL 1915, § 15536; and CL 1929, § 17067.