

SENATE No. 2332

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Friday, March 9, 2018

The committee on Rules to whom was referred the Senate to protect animal welfare and safety in cities and towns (Senate, No. 1159),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2332).

For the committee,
Mark C. Montigny

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(2017-2018)**

An Act to protect animal welfare and safety in cities and towns.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 178C of chapter 6 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the figure “272”, in line 96, the following
3 words:- ; engaging in sexual contact with an animal under section 77C of said chapter 272.

4 SECTION 2. Section 15 of chapter 19A of the General Laws, as so appearing, is hereby
5 amended by inserting after the word “technician”, in line 3, the following words :- , animal
6 control officer.

7 SECTION 3. Said chapter 19A is hereby further amended by adding the following
8 section:-

9 Section 42. (a) A person employed by the department or employed pursuant to a contract
10 with the department who, when acting in the person’s professional capacity or within the scope
11 of the person’s employment, has knowledge of or observes an animal that the person knows or
12 reasonably suspects has been the victim of animal cruelty, abuse or neglect shall report the
13 known or suspected animal cruelty, abuse or neglect to a police officer or a special state police

14 officer appointed pursuant to section 57 of chapter 22C. The report shall be made not more than
15 2 working days after the person receives the information concerning the animal. The report shall
16 be made by facsimile transmission, by a written report or by telephone. If an immediate response
17 is necessary to protect the health and safety of the animal, the report shall be made as soon as
18 possible.

19 (b) If 2 or more persons who are employed by the department or employed pursuant to a
20 contract with the department are present and jointly have knowledge of known or reasonably
21 suspected animal cruelty, abuse or neglect, those persons may agree to designate 1 person to
22 make the report required under subsection (a). If the designated person fails to report the
23 suspected animal cruelty, abuse or neglect as required under said subsection (a), a reporter who
24 has knowledge of the designated person's failure to report may thereafter make the report.

25 (c) No person who makes a report pursuant to this section shall be liable in a civil or
26 criminal action for the report if it was made in good faith. A privilege established by section
27 135A or 135B of chapter 112 or section 20B of chapter 233 that relates to confidential
28 communications shall not prohibit the filing of a report pursuant to this section.

29 (d) Nothing in this section shall impose a duty on the department to investigate known or
30 reasonably suspected animal cruelty, abuse or neglect.

31 (e) Nothing in this section shall prevent the department, area office or subdivision from
32 entering into an agreement, contract or memorandum of understanding with an entity that
33 investigates reports of animal cruelty, abuse or neglect that is listed in section 57 of chapter 22C
34 to require such reports or to engage in training for the identification and reporting of animal
35 abuse, cruelty and neglect.

36 SECTION 4. Section 1 of chapter 19C of the General Laws, as appearing in the 2016
37 Official Edition, is hereby amended by inserting after the word “officer”, in line 28, the first time
38 it appears, the following words:- , animal control officer.

39 SECTION 5. Said chapter 19C is hereby further amended by adding the following
40 section:-

41 Section 14. (a) Any investigator acting pursuant to section 5 of this chapter, who has
42 knowledge of or observes an animal that the person knows or reasonably suspects has been the
43 victim of animal cruelty, abuse or neglect shall report the known or suspected animal cruelty,
44 abuse or neglect to a police officer or a special state police officer appointed pursuant to section
45 57 of chapter 22C. The report shall be made not more than 2 working days after the person
46 receives the information concerning the animal. The report shall be made by facsimile
47 transmission, by a written report or by telephone. If an immediate response is necessary to
48 protect the health and safety of the animal, the report shall be made as soon as possible.

49 (b) If 2 or more investigators are present and jointly have knowledge of known or
50 reasonably suspected animal cruelty, abuse or neglect, those persons may agree to designate 1
51 person to make the report required under said subsection (a). If the designated person fails to
52 report the suspected animal cruelty, abuse or neglect as required under said subsection (a), a
53 reporter who has knowledge of the designated person’s failure to report may thereafter make the
54 report.

55 (c) No person who makes a report pursuant to this section shall be liable in a civil or
56 criminal action for the report if it was made in good faith. Any applicable privilege that relates to

57 confidential communications made to the commission shall not prohibit the filing of a report
58 pursuant to this section.

59 (d) Nothing in this section shall impose a duty on the commission to investigate known
60 or reasonably suspected animal cruelty, abuse or neglect.

61 (e) Nothing in this section shall prevent the commission, area office or subdivision from
62 entering into an agreement, contract or memorandum of understanding with an entity that
63 investigates reports of animal cruelty, abuse or neglect that is listed in section 57 of chapter 22C
64 to require such reports or to engage in training for the identification and reporting of animal
65 abuse, cruelty and neglect.

66 SECTION 6. Section 21 of chapter 119 of the General Laws, as appearing in the 2016
67 Official Edition, is hereby amended by inserting after the word “officer”, in line 64, the
68 following words:- or animal control officer.

69 SECTION 7. Section 54 of said chapter 119, as so appearing, is hereby amended by
70 inserting after the word “harm”, in line 25, the following words:- to a person or an animal.

71 SECTION 8. Section 85 of said chapter 119, as so appearing, is hereby amended by
72 striking out, in line 1, the words “During any investigation or evaluation reported under section
73 51A, any” and inserting in place thereof the following word:- An.

74 SECTION 9. Said section 85 of said chapter 119, as so appearing, is hereby further
75 amended by striking out, in line 7, the word “may” and inserting in place thereof the following
76 word:- shall.

77 SECTION 10. Said section 85 of said chapter 119, as so appearing, is hereby further
78 amended by striking out, in lines 8 to 10, inclusive, the words “the entities that investigate
79 reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any
80 local animal control authority” and inserting in place thereof the following words:- a police
81 officer or a special state police officer appointed pursuant to section 57 of chapter 22C.

82 SECTION 11. Said section 85 of said chapter 119, as so appearing, is hereby further
83 amended by striking out, in line 11, the word “may” and inserting in place thereof the following
84 word:- shall.

85 SECTION 12. Said section 85 of said chapter 119, as so appearing, is hereby further
86 amended by striking out, in line 15, the words “should be made by telephone” and inserting in
87 place thereof the following words:- shall be made.

88 SECTION 13. Section 19B of chapter 131 of the General Laws, as so appearing, is
89 hereby amended by adding the following paragraph:-

90 A person authorized under this chapter to take and possess birds, reptiles, amphibians or
91 mammals shall not put an animal to death by the use of drowning. Any such person who puts an
92 animal to death by the use of drowning shall, for a first offense, be punished by imprisonment in
93 the state prison for not more than 7 years or in a jail or house of correction for not more than 2½
94 years, by a fine of not more than \$5,000 or by both such fine and imprisonment and, for a second
95 or subsequent offense, by imprisonment in the state prison for not more than 10 years, by a fine
96 of not more than \$10,000 or by both such fine and imprisonment.

97 SECTION 14. Section 136A of chapter 140 of the General Laws, as so appearing, is
98 hereby amended by striking out, in lines 2 and 7, the figure “174E” and inserting in place
99 thereof, in each instance, the following figure:- 174F.

100 SECTION 15. Section 137A of said chapter 140, as so appearing, is hereby amended by
101 adding the following subsection:-

102 (d) A person who violates this section shall be assessed a penalty of \$500 for a first
103 offense and a fine of not more than \$1,000 for a second or subsequent offense.

104 SECTION 16. Section 137C of said chapter 140, as so appearing, is hereby amended by
105 striking out, in line 35, the figure “\$250” and inserting in place thereof the following:- \$500 for a
106 first offense and a fine of not more than \$1,000 for a second or subsequent offense

107 SECTION 17. Section 141 of said chapter 140, as so appearing, is hereby amended by
108 striking out, in line 1, the figure “, 137A”.

109 SECTION 18. Section 173 of said chapter 140, as so appearing, is hereby amended by
110 striking out, in line 3, the figure “174E” and inserting in place thereof the following figure:-
111 174F.

112 SECTION 19. The first paragraph of section 173A of said chapter 140, as so appearing, is
113 hereby amended by striking out the second to seventh sentences, inclusive, and inserting in place
114 thereof the following 6 sentences:-

115 The fine for the first offense committed by a person shall be \$50. The fine for a second
116 offense shall be \$100. The fine for a third offense shall be \$300. For a fourth or subsequent
117 offense, the fine shall be \$500 and the municipality may order the animal spayed or neutered.

118 Payment shall be made only by postal note, money order or check. Notwithstanding the
119 foregoing procedure and schedule of fines, but subject to all other provisions of this section, a
120 city or town may, by ordinance or by-law, provide for an alternative procedure and a different
121 schedule of fines; provided, however, that the fines shall not be lower than those stated in this
122 section. Notwithstanding this section, a municipality may seek a remedy under section 157 for a
123 nuisance dog.

124 SECTION 20. Section 174E of said chapter 140, as so appearing, is hereby amended by
125 adding the following subsection:-

126 (i) A city or town shall enforce this section through its animal control officers or police
127 officers in a manner consistent with the disposition provisions in section 21D of chapter 40.

128 SECTION 21. Section 174F of said chapter 140, as so appearing, is hereby amended by
129 adding the following subsection:-

130 (i) A city or town shall enforce this section through its animal control officers or police
131 officers in a manner consistent with the disposition provisions in section 21D of chapter 40.

132 SECTION 22. Chapter 175 of the General Laws is hereby amended by adding the
133 following section:-

134 Section 231. An insurance company offering homeowners insurance coverage or renters
135 insurance coverage that issues a policy or contract insuring against liability for injury to a person
136 or injury to or destruction of property arising out of the ownership or lease of residential property
137 shall not refuse to issue or renew, cancel or charge or impose an increased premium or rate of

138 such a policy or contract based in whole or in part upon the harboring of a specific breed of dog
139 upon the property.

140 Nothing in this section shall not prohibit an insurer from refusing to issue or renew or
141 from canceling a contract or policy or from imposing an increased premium or rate for a policy
142 or contract if any such dog being harbored on the property has been designated as a dangerous
143 dog pursuant to law.

144 SECTION 23. Chapter 186 of the General Laws is hereby amended by adding the
145 following section:-

146 Section 30. Not more than 3 days after a property owner or a lessor knew or should have
147 known that a property has been vacated through termination of tenancy, abandonment or other
148 removal or exclusion of a tenant from the premises under this chapter or chapter 186A, the
149 property owner, lessor or a designee shall inspect the property for the presence of abandoned
150 animals.

151 If the property owner, lessor or a designee encounters an abandoned animal, that person
152 shall immediately notify an animal control officer as defined in section 136A of chapter 140, a
153 police officer or other authorized agent of the presence and condition of the animal.

154 The property owner, lessor or a designee who encounters an abandoned animal under this
155 section shall not be considered the owner, possessor or person having charge or custody of the
156 animal under section 77 of chapter 272.

157 For the purposes of this section, an animal shall be considered abandoned if it is found on
158 or in a property vacated through termination of tenancy, abandonment or other removal or
159 exclusion of a tenant from the premises under this chapter or said chapter 186A.

160 If the property owner, lessor or designee fails to comply with this section, the lessor or
161 property owner shall be subject to a civil penalty of not more than \$500 for a first offense and
162 not more than \$1,000 for a second or subsequent offense. Funds collected under this section shall
163 be deposited into the Homeless Animal Prevention and Care Fund established in section 35WW
164 of chapter 10.

165 SECTION 24. Section 4 of chapter 239 of the General Laws is hereby amended by
166 inserting after the word “thereof”, in line 5, as appearing in the 2016 Official Edition, the
167 following words:- ; provided, however, that if an animal is found on the land or in the tenement,
168 the officer shall immediately notify an animal control officer as defined in section 136A of
169 chapter 140, a police officer or other authorized agent of the presence and condition of the
170 animal.

171 SECTION 25. Subsection (a) of said section 4 of said chapter 239, as so appearing, is
172 hereby amended by adding the following sentence:- This section shall not apply to an animal
173 removed under section 30 of chapter 186, section 14 of this chapter or section 41 of chapter 244.

174 SECTION 26. Said chapter 239 is hereby further amended by adding the following
175 section:-

176 Section 14. Not more than 3 days after a property owner or a lessor knew or should have
177 known that a property has been vacated as a result of summary process, the property owner,
178 lessor or a designee shall inspect the property for the presence of abandoned animals.

179 If the property owner, lessor or a designee encounters an abandoned animal under this
180 section or section 4, the property owner, lessor or a designee shall immediately notify an animal
181 control officer as defined in section 136A of chapter 140, a police officer or other authorized
182 agent of the presence and condition of the animal.

183 The property owner, lessor or designee who encounters an abandoned animal pursuant to
184 this section shall not be considered the owner, possessor or person having the charge or custody
185 of the animal under section 77 of chapter 272.

186 For the purposes of this section, an animal shall be considered abandoned if it is found on
187 or in a property vacated as a result of summary process.

188 If the property owner, lessor or a designee fails to comply with this section, the lessor or
189 property owner shall be subject to a civil penalty of not more than \$500 for a first offense and
190 not more than \$1,000 for a second or subsequent offense. Funds collected under this section shall
191 be deposited into the Homeless Animal Prevention and Care Fund established in section 35WW
192 of chapter 10.

193 SECTION 27. Chapter 244 of the General Laws is hereby amended by adding the
194 following section:-

195 Section 41. Not more than 3 days after the property owner knew or should have known
196 that a property was vacated through a mortgage foreclosure, the person in control of the property
197 or a designee shall inspect the property for the presence of abandoned animals. If the person in
198 control of the property or a designee encounters an abandoned animal under this section, such
199 person shall immediately notify an animal control officer as defined in section 136A of chapter
200 140, a police officer or other authorized agent of the presence and condition of the animal.

201 The person in control of the property or a designee who encounters an abandoned animal
202 pursuant to this section shall not be considered the owner, possessor or person having the charge
203 or custody of the animal under section 77 of chapter 272.

204 For the purposes of this section, an animal shall be considered abandoned if it is found in
205 a property vacated through mortgage foreclosure.

206 If the person in control of the property fails to comply with this section, such person shall
207 be subject to a civil penalty of not more than \$500 for a first offense and not more than \$1,000
208 for a second or subsequent offense. Funds collected under this section shall be deposited into the
209 Homeless Animal Prevention and Care Fund established in section 35WW of chapter 10.

210 SECTION 28. Section 77 of chapter 272 of the General Laws, as appearing in the 2016
211 Official Edition, is hereby amended by striking out, in lines 32 to 35, inclusive, the words
212 “seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A,
213 eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four” and
214 inserting in place thereof the following figures:- 77A, 77C, 78, 78A, 79A, 79B, 80A, 80B, 80C,
215 80D, 80E, 80F, 86, 86A, 86B or 94.

216 SECTION 29. Said chapter 272 is hereby further amended by inserting after section 77B
217 the following section:-

218 Section 77C. (a) For the purposes of this section, the following words shall have the
219 following meanings unless the context clearly requires otherwise:

220 “Animal”, a nonhuman mammal, bird, reptile, amphibian, fish or invertebrate, either
221 alive or dead.

222 “Sexual contact”, (i) any act between a person and an animal that involves contact
223 between the sex organs or anus of 1 and the mouth, anus or sex organs of the other; (ii) touching
224 or fondling by a person of the sex organs or anus of an animal, either directly or through
225 clothing, without a bona fide veterinary or animal husbandry purpose; (iii) any transfer or
226 transmission of semen by the person upon any part of the animal; or (iv) the insertion, however
227 slight, of any part of a person’s body or any object into the vaginal or anal opening of an animal
228 or the insertion of any part of the animal’s body into the vaginal or anal opening of the person.

229 (b) A person who: (i) engages in sexual contact with an animal or advertises, offers,
230 accepts an offer for, sells, transfers, purchases or otherwise obtains an animal with the intent that
231 the animal be used for sexual contact; (ii) organizes, promotes, conducts or knowingly
232 participates in as an observer an act involving sexual contact with an animal; (iii) causes, aids or
233 abets another person to engage in sexual contact with an animal; (iv) knowingly permits sexual
234 contact with an animal to be conducted on any premises under the person’s control; (v) forces,
235 induces or otherwise entices a child younger than 18 years of age to engage in sexual contact
236 with an animal or engages in sexual contact with an animal in the presence of a child younger
237 than 18 years of age; or (vi) disseminates photographs, videotapes or other depicts prohibited
238 sexual contact with an animal shall, for a first offense, be punished by imprisonment in the state
239 prison for not more than 7 years or by imprisonment in a jail or house of correction for not more
240 than 2½ years, by a fine of not more than \$5,000 or by both such fine and imprisonment and, for
241 a second or subsequent offense, by imprisonment in the state prison for not more than 10 years,
242 by a fine of not more than \$10,000 or by both such fine and imprisonment.

243 (c) Notwithstanding section 26 of chapter 218 or any other general or special law to the
244 contrary, the district courts and the divisions of the Boston municipal court department shall
245 have original jurisdiction, concurrent with the superior court, of a violation of this section.

246 (d) Upon a conviction for a violation of this section and in addition to any other penalties
247 as may be provided by law, the defendant shall forfeit the animal whose treatment was the basis
248 of the conviction to the custody of an entity incorporated under the laws of the commonwealth
249 for the prevention of cruelty to animals or for the care and protection of homeless or suffering
250 animals.

251 Upon a conviction for a violation of this section, the defendant shall not: (i) work in any
252 capacity that requires the person to be in contact with an animal, including a commercial
253 boarding or training establishment, shelter, animal control facility, pet shop, grooming facility,
254 commercial breeder service, veterinary hospital or clinic or animal welfare society or other
255 nonprofit organization incorporated for the purpose of providing for and promoting the welfare,
256 protection and humane treatment of animals; or (ii) harbor, own, possess or exercise control over
257 an animal, reside in a household where any animals are present or engage in an occupation,
258 whether paid or unpaid, or participate in a volunteer position at any establishment where animals
259 are present for any length of time that the court deems reasonable for the protection of all
260 animals; provided, however, that the length of time shall not be less than 5 years after the
261 person's release from custody. The defendant shall submit to a psychological assessment and
262 participate in appropriate counseling at the defendant's expense.

263 (e) This section shall not apply to lawful and accepted practices that relate to veterinary
264 medicine performed by a licensed veterinarian or a certified veterinary technician under the

265 guidance of a licensed veterinarian, artificial insemination of animals for the purpose of
266 procreation, accepted animal husbandry practices, including raising, breeding or assisting with
267 the birthing process of animals or any other practice that provides care for animals, or
268 conformation judging.

269 SECTION 30. Section 79 of said chapter 272, as appearing in the 2016 Official Edition,
270 is hereby amended by striking out, in lines 1 and 2, the words “corporation violating either of the
271 two preceding sections” and inserting in place thereof the following words:- for-profit
272 corporation, nonprofit corporation, business, professional corporation, partnership, limited
273 liability company, limited partnership, limited liability partnership or any other business entity
274 violating section 112 of chapter 266 or section 77, 77A, 77B, 78, 78A, 79A, 80½, 80A, 80B,
275 80C, 80D, 80E, 80F, 80G, 80H, 80I, 81, 85A, 85B, 87, 94 or 95 of this chapter.

276 SECTION 31. Section 80E of said chapter 272, as so appearing, is hereby amended by
277 adding the following paragraph:-

278 A person who puts an animal to death by the use of drowning shall, for a first offense, be
279 punished by imprisonment in the state prison for not more than 7 years in state prison or
280 imprisonment in a jail or house of correction for not more than 2½ years, by a fine of not more
281 than \$5,000 or by both such fine and imprisonment and, for a second or subsequent offense, by
282 imprisonment in the state prison for not more than 10 years, by a fine of not more than \$10,000
283 or by both such fine and imprisonment.

284 SECTION 32. Section 91 of said chapter 272, as so appearing, is hereby amended by
285 striking out, in line 3, the words “district court” and inserting in place thereof the following
286 words:- court having jurisdiction over the offense.

287 SECTION 33. Said section 91 of said chapter 272, as so appearing, is hereby further
288 amended by striking out the second to fourth sentences, inclusive, and inserting in place thereof
289 the following 2 sentences:- If after a hearing on the application, notice thereof having been
290 previously given as the court orders, it shall be found that the animals, at the time of seizure,
291 were engaged in or were intended to be engaged in fighting at an exhibition thereof or the
292 animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise
293 transferred in violation of section 94, such animals shall be adjudged forfeited. A forfeited
294 animal shall be individually assessed by the organization to which it is forfeited to determine the
295 animal's suitability for adoption or the organization shall transfer it to another organization or for
296 another disposition.

297 SECTION 34. Section 104 of said chapter 272, as so appearing, is hereby amended by
298 inserting after the figure "77", in line 6, the following figure:- , 77C.

299 SECTION 35. Section 58A of chapter 276 of the General Laws, as so appearing, is
300 hereby amended by inserting after the figure "269", in line 23, the following words:- , section
301 112 of chapter 266 or section 77 or 94 of chapter 272.