

HOUSE No. 4565

Text of an amendment, recommended by the committee on Ways and Means, to the Senate Bill to protect animal welfare and safety in cities and towns (Senate, No. 2347). June 6, 2018.

The Commonwealth of Massachusetts

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

By striking out all after the enacting clause and inserting in place thereof the following:–

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. Chapter 19A of the General Laws is hereby amended by adding the
5 following section:-

6 Section 42. (a) During any investigation or evaluation reported under section 18, any
7 employee of the department, its designated agency or any person employed pursuant to a
8 contract with the department or its designated agency, when acting in his or her professional
9 capacity or within the scope of his or her employment, who has knowledge of or observes an
10 animal whom he or she knows or reasonably suspects has been the victim of animal cruelty,
11 abuse or neglect, may report the known or suspected animal cruelty, abuse or neglect to the
12 entities that investigate reports of animal cruelty, abuse or neglect, as described in section 57 of
13 chapter 22C, or any local animal control authority.

14 (b) The report may be made within 2 working days of receiving the information
15 concerning the animal, by facsimile transmission or a written report or by telephone. In cases
16 where an immediate response may be necessary in order to protect the health and safety of the
17 animal, the report should be made by telephone as soon as possible.

18 (c) When 2 or more employees of the department or its designated agency, or persons
19 employed pursuant to a contract with the department or its designated agency, are present and
20 jointly have knowledge of known or reasonably suspected animal cruelty, abuse or neglect, and
21 where there is agreement among them, a report may be made by 1 person by mutual agreement.
22 Any reporter who has knowledge that the person designated to report has failed to do so may
23 thereafter make the report.

24 (d) No person making such report shall be liable in any civil or criminal action by reason
25 of such report if it was made in good faith. Any privilege established by sections 135A and 135B
26 of chapter 112 or by section 20B of chapter 233, relating to confidential communications, shall
27 not prohibit the filing of a report pursuant to this section.

28 (e) Nothing in this section shall impose a duty on the department or its designated agency
29 to investigate known or reasonably suspected animal cruelty, abuse or neglect.

30 (f) Nothing in this section shall prevent the department, area office or subdivision or its
31 designated agency from entering into an agreement, contract or memorandum of understanding
32 with the entities that investigate reports of animal cruelty, abuse or neglect as described in
33 section 57 of chapter 22C, to require such reports or to engage in training in identification and
34 reporting of animal abuse, cruelty and neglect.

35 SECTION 3. Chapter 19C of the General Laws is hereby amended by adding the
36 following section:-

37 Section 14. (a) During any investigation or evaluation reported under section 5, any
38 investigator designated by the commission, the general counsel, or a department within the
39 executive office of health and human services, when acting in his or her professional capacity or
40 within the scope of his or her employment, who has knowledge of or observes an animal whom
41 he or she knows or reasonably suspects has been the victim of animal cruelty, abuse or neglect,
42 may report the known or suspected animal cruelty, abuse or neglect to the entities that investigate
43 reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any
44 local animal control authority.

45 (b) The report may be made within 2 working days of receiving the information
46 concerning the animal, by facsimile transmission or a written report or by telephone. In cases
47 where an immediate response may be necessary in order to protect the health and safety of the
48 animal, the report should be made by telephone as soon as possible.

49 (c) When 2 or more investigators are present and jointly have knowledge of known or
50 reasonably suspected animal cruelty, abuse or neglect, and where there is agreement among
51 them, a report may be made by 1 person by mutual agreement. Any reporter who has knowledge
52 that the person designated to report has failed to do so may thereafter make the report.

53 (d) No person making such report shall be liable in any civil or criminal action by reason
54 of such report if it was made in good faith. Any applicable privilege that relates to confidential
55 communications made to the commission shall not prohibit the filing of a report pursuant to this
56 section.

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

59 (f) Nothing in this section shall prevent the commission from entering into an agreement,
60 contract or memorandum of understanding with the entities that investigate reports of animal
61 cruelty, abuse or neglect as described in section 57 of chapter 22C, to require such reports or to
62 engage in training in identification and reporting of animal abuse, cruelty and neglect.

63 SECTION 4. Chapter 131 of the General Laws is hereby amended by inserting after
64 section 43 the following section:-

65 Section 43A. Any person authorized under this chapter to take and possess birds, reptiles,
66 amphibians or mammals shall not put an animal to death by the use of drowning.

67 SECTION 5. Section 90 of said chapter 131 of the General Laws, as appearing in the
68 2016 Official Edition, is hereby amended by inserting after the sixth paragraph the following
69 paragraph:-

70 Whoever violates any provision of section 43A, or of any rule or regulation made under
71 authority thereof, shall be punished by imprisonment in the state prison for not more than 7 years
72 or in a jail or house of correction for not more than 2½ years, by a fine of not more than \$5,000
73 or by both such fine and imprisonment for a first offense and by imprisonment in the state prison
74 for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and
75 imprisonment for a second or any subsequent offense.

76 SECTION 6. Section 136A of chapter 140 of the General Laws, as so appearing, is
77 hereby amended by striking out, in lines 2 and 7, the figure “174E” and inserting in place
78 thereof, in each instance, the following figure:- 174F.

79 SECTION 7. Section 137A of said chapter 140, as so appearing, is hereby amended by
80 adding the following subsection:-

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

83 SECTION 8. Section 137C of said chapter 140, as so appearing, is hereby amended by
84 striking out, in line 35, the figure “\$250” and inserting in place thereof the following:- \$500 for a
85 first offense and a fine of not more than \$1,000 for a second or subsequent offense.

86 SECTION 9. Section 141 of said chapter 140, as so appearing, is hereby amended by
87 striking out, in line 1, the figure “, 137A”.

88 SECTION 10. Section 173 of said chapter 140, as so appearing, is hereby amended by
89 striking out, in line 3, the figure “174E” and inserting in place thereof the following figure:-
90 174F.

91 SECTION 11. The first paragraph of section 173A of said chapter 140, as so appearing, is
92 hereby amended by striking out the second to seventh sentences, inclusive, and inserting in place
93 thereof the following 6 sentences:-

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

97 Payment shall be made only by money order or check. Notwithstanding the foregoing procedure
98 and schedule of fines, but subject to all other provisions of this section, a city or town may, by
99 ordinance or by-law, provide for an alternative procedure and a different schedule of fines;
100 provided, however, that the fines shall not be lower than those stated in this section.

101 Notwithstanding this section, a municipality may seek a remedy under section 157 for a nuisance
102 dog.

103 SECTION 12. Section 174E of said chapter 140, as so appearing, is hereby amended by
104 adding the following subsection:-

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

107 SECTION 13. Section 174F of said chapter 140, as so appearing, is hereby amended by
108 adding the following subsection:-

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

111 SECTION 14. Chapter 175 of the General Laws is hereby amended by adding the
112 following section:-

113 Section 230. An insurance company offering homeowners insurance coverage or renters
114 insurance coverage that issues a policy or contract insuring against liability for injury to a person
115 or injury to or destruction of property arising out of the ownership or lease of residential property
116 shall not refuse to issue or renew, cancel or charge or impose an increased premium or rate of

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

119 Nothing in this section shall prohibit an insurer from refusing to issue or renew or from
120 canceling a contract or policy or from imposing an increased premium or rate for a policy or
121 contract if any such dog being harbored on the property has been designated as a dangerous dog
122 pursuant to law.

123 SECTION 15. Chapter 186 of the General Laws is hereby amended by adding the
124 following section:-

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

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

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

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

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

144 SECTION 16. Section 4 of chapter 239 of the General Laws is hereby amended by
145 inserting after the word “thereof”, in line 5, as appearing in the 2016 Official Edition, the
146 following words:- ; provided, however, that if an animal is found on the land or in the tenement,
147 the officer shall immediately notify an animal control officer as defined in section 136A of
148 chapter 140, a police officer or other authorized agent of the presence and condition of the
149 animal.

150 SECTION 17. Subsection (a) of said section 4 of said chapter 239, as so appearing, is
151 hereby amended by adding the following sentence:- This section shall not apply to an animal
152 removed under section 30 of chapter 186, section 14 of this chapter or section 41 of chapter 244.

153 SECTION 18. Said chapter 239 is hereby further amended by adding the following
154 section:-

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

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

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

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

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

172 SECTION 19. Chapter 244 of the General Laws is hereby amended by adding the
173 following section:-

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

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

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

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

189 SECTION 20. Section 77 of chapter 272 of the General Laws, as appearing in the 2016
190 Official Edition, is hereby amended by striking out, in lines 32 to 35, inclusive, the words
191 “seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A,
192 eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four” and
193 inserting in place thereof the following figures:- 77A, 77C, 78, 78A, 79A, 79B, 80A, 80B, 80C,
194 80D, 80E, 80E½, 80F, 86, 86A, 86B or 94.

195 SECTION 21. Said chapter 272 is hereby further amended by inserting after section 77B
196 the following section:-

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

199 “Animal”, a living nonhuman mammal, bird, reptile, amphibian, fish or invertebrate.

200 “Sexual contact”, (i) any act between a person and an animal that involves contact
201 between the sex organs or anus of one and the mouth, anus or sex organs of the other; (ii)
202 touching or fondling by a person of the sex organs or anus of an animal, either directly or
203 through clothing, without a bona fide veterinary or animal husbandry purpose; (iii) any transfer
204 or transmission of semen by the person upon any part of the animal; or (iv) the insertion,
205 however slight, of any part of a person’s body or any object into the vaginal or anal opening of
206 an animal or the insertion of any part of the animal’s body into the vaginal or anal opening of the
207 person.

208 (b) A person who willingly: (i) engages in sexual contact with an animal or advertises,
209 offers, accepts an offer for, sells, transfers, purchases or otherwise obtains an animal with the
210 intent that the animal be used for sexual contact; (ii) organizes, promotes, conducts or knowingly
211 participates in as an observer an act involving sexual contact with an animal; (iii) causes, aids or
212 abets another person to engage in sexual contact with an animal; (iv) knowingly permits sexual
213 contact with an animal to be conducted on any premises under the person’s control; (v) induces
214 or otherwise entices a child younger than 18 years of age or a person with a developmental or
215 intellectual disability, as defined in section 1 of chapter 123B, to engage in sexual contact with
216 an animal or engages in sexual contact with an animal in the presence of a child younger than 18
217 years of age or a person with a developmental or intellectual disability; (vi) forces another person
218 to engage in sexual contact with an animal; or (vii) disseminates photographs, videotapes or
219 other depictions prohibited sexual contact with an animal shall, for a first offense, be punished
220 by imprisonment in the state prison for not more than 7 years or by imprisonment in a jail or
221 house of correction for not more than 2½ years, by a fine of not more than \$5,000 or by both
222 such fine and imprisonment and, for a second or subsequent offense, by imprisonment in the

223 state prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine
224 and imprisonment.

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

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

233 Upon a conviction for a violation of this section, the defendant shall not: (i) work in any
234 capacity that requires the person to be in contact with an animal, including a commercial
235 boarding or training establishment, shelter, animal control facility, pet shop, grooming facility,
236 commercial breeder service, veterinary hospital or clinic or animal welfare society or other
237 nonprofit organization incorporated for the purpose of providing for and promoting the welfare,
238 protection and humane treatment of animals; or (ii) harbor, own, possess or exercise control over
239 an animal, reside in a household where any animals are present or engage in an occupation,
240 whether paid or unpaid, or participate in a volunteer position at any establishment where animals
241 are present for any length of time that the court deems reasonable for the protection of all
242 animals; provided, however, that the length of time shall not be less than 5 years after the
243 person's release from custody.

244 (e) This section shall not apply to lawful and accepted practices that relate to veterinary
245 medicine performed by a licensed veterinarian or a certified veterinary technician under the
246 guidance of a licensed veterinarian, artificial insemination of animals for the purpose of
247 procreation, accepted animal husbandry practices, including raising, breeding or assisting with
248 the birthing process of animals or any other practice that provides care for animals, or
249 conformation judging.

250 SECTION 22. Section 79 of said chapter 272, as appearing in the 2016 Official Edition,
251 is hereby amended by striking out, in lines 1 and 2, the words “corporation violating either of the
252 two preceding sections” and inserting in place thereof the following words:- for-profit
253 corporation, nonprofit corporation, business, professional corporation, partnership, limited
254 liability company, limited partnership, limited liability partnership or any other business entity
255 violating section 112 of chapter 266 or section 77, 77A, 77B, 78, 78A, 79A, 80½, 80A, 80B,
256 80C, 80D, 80E, 80E½, 80F, 80G, 80H, 80I, 81, 85A, 85B, 87, 94 or 95 of this chapter.

257 SECTION 23. Chapter 272 is hereby further amended by inserting after section 80E the
258 following section:-

259 Section 80E½. Whoever puts an animal to death by drowning shall be punished by
260 imprisonment in the state prison for not more than 7 years in state prison or imprisonment in a
261 jail or house of correction for not more than 2½ years, by a fine of not more than \$5,000 or by
262 both such fine and imprisonment for a first offense and punished by imprisonment in the state
263 prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and
264 imprisonment for a second or any subsequent offense.

265 SECTION 24. Section 80H of said chapter 272 of the General Laws, as so appearing, is
266 hereby amended by striking out, in line 5, the words “fifty dollars” and inserting in place thereof
267 the following words:- “\$100 for a first offense and the cost of medical expenses or and a fine of
268 \$500 and the cost of medical expenses for a second and subsequent offense.

269 SECTION 25. Section 91 of said chapter 272, as so appearing, is hereby amended by
270 striking out, in line 3, the words “district court” and inserting in place thereof the following
271 words:- court having jurisdiction over the offense.

272 SECTION 26. Said section 91 of said chapter 272, as so appearing, is hereby further
273 amended by striking out the second, third and fourth sentences and inserting in place thereof the
274 following 2 sentences:- If after a hearing on the application, notice thereof having been
275 previously given as the court orders, it shall be found that the animals, at the time of seizure,
276 were engaged in or were intended to be engaged in fighting at an exhibition thereof or the
277 animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise
278 transferred in violation of section 94, such animals shall be adjudged forfeited. A forfeited
279 animal shall be individually assessed by the organization to which it is forfeited to determine the
280 animal’s suitability for adoption or the organization shall transfer it to another organization or for
281 another disposition.

282 SECTION 27. Section 104 of said chapter 272, as so appearing, is hereby amended by
283 inserting after the figure “77”, in line 6, the following figure:- , 77C.

284 SECTION 28. Section 58A of chapter 276 of the General Laws is hereby amended by
285 inserting after the figure “269”, in line 23, as so appearing, the following words:- , section 112 of
286 chapter 266 or section 77 or 94 of chapter 272.

287 SECTION 29. There shall be a special commission established pursuant to section 2A of
288 chapter 4 of the General Laws to study and report on the feasibility and cost of mandating that
289 employees and contractors of the department of children and families, employees and contractors
290 of the department of elder affairs and investigators for the disabled persons protection
291 commission report known or suspected animal cruelty, abuse and neglect, and of mandating that
292 animal control officers appointed pursuant to section 151 of chapter 140 of the General Laws
293 report known or suspected abuse of children and elderly and disabled persons. The commission
294 shall consist of: the house and senate chairs of the joint committee on children, families and
295 persons with disabilities, who shall serve as co-chairs; the house and senate chairs of the joint
296 committee on elder affairs; the house and senate chairs of the joint committee on municipalities
297 and regional government; the house and senate chairs of the joint committee on environment,
298 natural resources and agriculture; the commissioner of the department of agricultural resources
299 or a designee; 1 commissioner of the disabled persons protection commission or a designee; the
300 secretary of health and human services or a designee; the attorney general or a designee; 1
301 member of the house who shall be appointed by the minority leader; 1 member of the senate who
302 shall be appointed by the minority leader; and 1 representative of each of the following: the
303 MSPCA-Angell, the Animal Rescue League of Boston, the Animal Control Officers Association
304 of Massachusetts and the Massachusetts Municipal Police Coalition.

305 The commission shall: (i) estimate the potential costs associated with training employees
306 and contractors of the department of children and families and the department of elder affairs and
307 investigators of the disabled persons protection commission to recognize and report animal
308 cruelty, abuse and neglect; (ii) estimate the potential costs associated with training animal control
309 officers to recognize and report the abuse of children and elderly and disabled persons; (iii)

310 estimate any anticipated increase in reporting of abuse of animals, children and elderly and
311 disabled persons; (iv) identify any potential challenges, conflicts of interest or interference with
312 primary job responsibilities agency and municipal personnel might encounter as a result of their
313 expanded reporting obligations; (v) identify any necessary modifications to existing rules,
314 regulations, by-laws or ordinances; and (vi) conduct a review of other states that have passed
315 comparable mandated reporting laws. The commission shall submit a report of its findings and
316 make recommendations, including any proposed legislation, with the clerks of the house of
317 representatives and the senate not later than March 1, 2019.