

Acts (2018)

Chapter 219

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Nothing in this section shall prevent the commission from entering into an agreement, contract or memorandum of understanding with the entities that investigate reports of animal cruelty, abuse or neglect as described in section

57 of chapter 22C, to require such reports or to engage in training in identification and reporting of animal abuse, cruelty and neglect.

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

SECTION 7. Section 85 of said chapter 119, as so appearing, is hereby amended by striking out, in lines 8 to 10, inclusive, the words “the entities that investigate reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any local animal control authority” and inserting in place thereof the following words:- a police officer or a special state police officer appointed pursuant to section 57 of chapter 22C.

SECTION 8. Section 19B of chapter 131 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

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

The paragraph above shall not take effect until the department of Fish and Game, in consultation with the Environmental Police; the division of Animal Health; and the department of Agricultural Resources, file a report with the clerks of the senate and house of representatives, the house and senate chairs of the joint committee on municipalities and regional government, and the house and senate committees on ways and means, identifying best practices related to trapping and pest control, to include alternatives to drowning. Such

report shall be filed on or before June 1, 2019. Provided that if said report is not filed on or before June 1, 2019, the above paragraph shall take effect on June 1, 2019.

SECTION 9. Section 136A of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out, in lines 2 and 7, the figure “174E” and inserting in place thereof, in each instance, the following figure:- 174F.

SECTION 10. Section 137A of said chapter 140, as so appearing, is hereby amended by adding the following subsection:-

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

SECTION 11. Section 137C of said chapter 140, as so appearing, is hereby amended by striking out, in line 35, the figure “\$250” and inserting in place thereof the following:- \$500 for a first offense and a fine of not more than \$1,000 for a second or subsequent offense.

SECTION 12. Section 141 of said chapter 140, as so appearing, is hereby amended by striking out, in line 1, the figure “, 137A”.

SECTION 13. Section 173 of said chapter 140, as so appearing, is hereby amended by striking out, in line 3, the figure “174E” and inserting in place thereof the following figure:- 174F.

SECTION 14. The first paragraph of section 173A of said chapter 140, as so appearing, is hereby amended by striking out the second to seventh sentences, inclusive, and inserting in place thereof the following 6 sentences:-

The fine for the first offense committed by a person shall be \$50. The fine for a second offense shall be \$100. The fine for a third offense shall be \$300. For a fourth or subsequent offense, the fine shall be \$500 and the municipality may order the animal spayed or neutered. Payment shall be made only by money order or check. Notwithstanding the foregoing procedure and schedule of

finer, but subject to all other provisions of this section, a city or town may, by ordinance or by-law, provide for an alternative procedure and a different schedule of fines; provided, however, that the fines shall not be lower than those stated in this section. Notwithstanding this section, a municipality may seek a remedy under section 157 for a nuisance dog.

SECTION 15. Section 174E of said chapter 140, as so appearing, is hereby amended by adding the following subsection:-

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

SECTION 16. Section 174F of said chapter 140, as so appearing, is hereby amended by adding the following subsection:-

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

SECTION 17. Chapter 186 of the General Laws is hereby amended by adding the following section:-

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

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

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

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

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

SECTION 18. Section 4 of chapter 239 of the General Laws is hereby amended by inserting after the word “thereof”, in line 5, as appearing in the 2016 Official Edition, the following words:- ; provided, however, that if an animal is found on the land or in the tenement, the officer shall immediately notify an animal control officer as defined in section 136A of chapter 140, a police officer or other authorized agent of the presence and condition of the animal.

SECTION 19. Subsection (a) of said section 4 of said chapter 239, as so appearing, is hereby amended by adding the following sentence:- This section shall not apply to an animal removed under section 30 of chapter 186, section 14 of this chapter or section 41 of chapter 244.

SECTION 20. Said chapter 239 is hereby further amended by adding the following section:-

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

If the property owner, lessor or a designee encounters an abandoned animal under this section or section 4, the property owner, lessor or a designee shall immediately notify an animal control officer as defined in section 136A of

chapter 140, a police officer or other authorized agent of the presence and condition of the animal.

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

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

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

SECTION 21. Chapter 244 of the General Laws is hereby amended by adding the following section:-

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

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

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

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

SECTION 22. Section 77 of chapter 272 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in lines 32 to 35, inclusive, the words “seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A, eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four” and inserting in place thereof the following figures:- 77A, 77C, 78, 78A, 79A, 79B, 80A, 80B, 80C, 80D, 80E, 80E½, 80F, 86, 86A, 86B or 94.

SECTION 23. Said chapter 272 is hereby further amended by inserting after section 77B the following section:-

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

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

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

(b) A person who willingly: (i) engages in sexual contact with an animal or advertises, offers, accepts an offer for, sells, transfers, purchases or otherwise obtains an animal with the intent that the animal be used for sexual contact; (ii)

organizes, promotes, conducts or knowingly participates in as an observer an act involving sexual contact with an animal; (iii) causes, aids or abets another person to engage in sexual contact with an animal; (iv) knowingly permits sexual contact with an animal to be conducted on any premises under the person's control; (v) induces or otherwise entices a child younger than 18 years of age or a person with a developmental or intellectual disability, as defined in section 1 of chapter 123B, to engage in sexual contact with an animal or engages in sexual contact with an animal in the presence of a child younger than 18 years of age or a person with a developmental or intellectual disability; (vi) forces another person to engage in sexual contact with an animal; or (vii) disseminates photographs, videotapes or other depictions prohibited sexual contact with an animal shall, for a first offense, be punished by imprisonment in the state prison for not more than 7 years or by imprisonment in a jail or house of correction for not more than 2½ years, by a fine of not more than \$5,000 or by both such fine and imprisonment and, for a second or subsequent offense, by imprisonment in the state prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and imprisonment.

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

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

Upon a conviction for a violation of this section, the defendant shall not: (i) work in any capacity that requires the person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service,

veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals; or (ii) harbor, own, possess or exercise control over an animal, reside in a household where any animals are present or engage in an occupation, whether paid or unpaid, or participate in a volunteer position at any establishment where animals are present for any length of time that the court deems reasonable for the protection of all animals; provided, however, that the length of time shall not be less than 5 years after the person's release from custody.

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

SECTION 24. Section 79 of said chapter 272, as appearing in the 2016 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words "corporation violating either of the two preceding sections" and inserting in place thereof the following words:- for-profit corporation, nonprofit corporation, business, professional corporation, partnership, limited liability company, limited partnership, limited liability partnership or any other business entity violating section 112 of chapter 266 or section 77, 77A, 77B, 78, 78A, 79A, 80½, 80A, 80B, 80C, 80D, 80E, 80E½, 80F, 80G, 80H, 80I, 81, 85A, 85B, 87, 94 or 95 of this chapter.

SECTION 25. Chapter 272 is hereby further amended by inserting after section 80E the following section:-

Section 80E½. Whoever puts an animal to death by drowning shall be punished by imprisonment in the state prison for not more than 7 years in state prison or imprisonment in a jail or house of correction for not more than 2½

years, by a fine of not more than \$5,000 or by both such fine and imprisonment for a first offense and punished by imprisonment in the state prison for not more than 10 years, by a fine of not more than \$10,000 or by both such fine and imprisonment for a second or any subsequent offense.

SECTION 26. Section 80H of chapter 272 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “fifty dollars” and inserting in place thereof the following words:- “\$100 for a first offense or not more 10 days in a house of corrections and a fine of \$500 and the cost of medical expenses, not to exceed \$2,500, imprisonment in a house of correction for not more than 6 months or both such fine and cost and imprisonment for a second and subsequent offense. Nothing in this section shall preclude a civil cause of action including, but not limited to medical expenses, by the aggrieved party.

SECTION 27. Section 91 of said chapter 272, as so appearing, is hereby amended by striking out, in line 3, the words “district court” and inserting in place thereof the following words:- court having jurisdiction over the offense.

SECTION 28. Said section 91 of said chapter 272, as so appearing, is hereby further amended by striking out the second, third and fourth sentences and inserting in place thereof the following 2 sentences:- If after a hearing on the application, notice thereof having been previously given as the court orders, it shall be found that the animals, at the time of seizure, were engaged in or were intended to be engaged in fighting at an exhibition thereof or the animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94, such animals shall be adjudged forfeited. A forfeited animal shall be individually assessed by the organization to which it is forfeited to determine the animal’s suitability for adoption or the organization shall transfer it to another organization or for another disposition.

SECTION 29. Section 104 of said chapter 272, as so appearing, is hereby amended by inserting after the figure “77”, in line 6, the following figure:- , 77C.

SECTION 30. Section 58A of chapter 276 of the General Laws is hereby amended by inserting after the figure “269”, in line 23, as so appearing, the following words:- , section 112 of chapter 266 or section 77 or 94 of chapter 272.

SECTION 31. There shall be a special commission established pursuant to section 2A of chapter 4 of the General Laws to study and report on the feasibility and cost of mandating that employees and contractors of the department of children and families, employees and contractors of the department of elder affairs and investigators for the disabled persons protection commission report known or suspected animal cruelty, abuse and neglect, and of mandating that animal control officers appointed pursuant to section 151 of chapter 140 of the General Laws report known or suspected abuse of children and elderly and disabled persons. The commission shall consist of: the house and senate chairs of the joint committee on children, families and persons with disabilities, who shall serve as co-chairs; the house and senate chairs of the joint committee on elder affairs; the house and senate chairs of the joint committee on municipalities and regional government; the house and senate chairs of the joint committee on environment, natural resources and agriculture; the commissioner of the department of agricultural resources or a designee; 1 commissioner of the disabled persons protection commission or a designee; the secretary of health and human services or a designee; the attorney general or a designee; 1 member of the house who shall be appointed by the minority leader; 1 member of the senate who shall be appointed by the minority leader; and 1 representative of each of the following: the MSPCA-Angell, the Animal Rescue League of Boston, the Animal Control Officers Association of Massachusetts and the Massachusetts Municipal Police Coalition.

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

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

SECTION 32. An insurance company offering homeowners insurance coverage or renters insurance coverage that issues a policy or contract insuring against liability for injury to a person or injury to or destruction of property arising out of the ownership or lease of residential property shall, for any claim involving a dog-related incident, record circumstances relating to the incident, including but not limited to:

- a) If the perceived breed is noted on the claim and whether the determination of breed was based on visual identification or other methods;
- b) The sex of the dog;
- c) Whether at the time of the incident, the person or animal who was injured attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked;
- d) For what purpose the person or animal who was injured attacked or threatened by the dog was on the property, including but not limited to, a resident, invitee, licensee, trespasser or other status;

- e) Whether the dog was on a leash at the time of the incident; whether the incident occurred indoors or outdoors;
- f) Whether the person injured by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog;
- g) The age and behavior of the victim when the incident occurred;
- h) The exact location of the dog and the victim prior to the incident;
- i) Whether the incident occurred on the owner's property or elsewhere;
- j) Any training or past behavior evaluations of the dog;
- k) Whether the dog was declared dangerous by any municipality in Massachusetts;
- l) Whether the person who was injured by the dog was committing a crime upon the person or property of the owner or keeper of the dog;
- m) Whether the dog was spayed or neutered;
- n) And whether the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault.

This information shall be collected commencing on January 1, 2019 and shall be reported annually to the Massachusetts Division of Insurance, the clerks of the senate and house of representatives, the house and senate chairs of the joint committee on financial services, and the house and senate committees on ways and means on or before January 1 each year thereafter for three years with the last report to be filed on or before January 1, 2022.

Approved, August 9, 2018.