

SENATE No. 2347

Senate March 15, 2018, – Text of the Senate Bill to protect animal welfare and safety in cities and towns (being the text of Senate document number 2332, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(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 85 of said chapter 119, as so appearing, is hereby amended by
70 striking out, in line 1, the words “During any investigation or evaluation reported under section
71 51A, any” and inserting in place thereof the following word:- An.

72 SECTION 8. Said section 85 of said chapter 119, as so appearing, is hereby further
73 amended by striking out, in line 7, the word “may” and inserting in place thereof the following
74 word:- shall.

75 SECTION 9. Said section 85 of said chapter 119, as so appearing, is hereby further
76 amended by striking out, in lines 8 to 10, inclusive, the words “the entities that investigate
77 reports of animal cruelty, abuse or neglect, as described in section 57 of chapter 22C, or any

78 local animal control authority” and inserting in place thereof the following words:- a police
79 officer or a special state police officer appointed pursuant to section 57 of chapter 22C.

80 SECTION 10. Said section 85 of said chapter 119, as so appearing, is hereby further
81 amended by striking out, in line 11, the word “may” and inserting in place thereof the following
82 word:- shall.

83 SECTION 11. Said section 85 of said chapter 119, as so appearing, is hereby further
84 amended by striking out, in line 15, the words “should be made by telephone” and inserting in
85 place thereof the following words:- shall be made.

86 SECTION 12. Section 19B of chapter 131 of the General Laws, as so appearing, is
87 hereby amended by adding the following paragraph:-

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

96 SECTION 13. Section 136A of chapter 140 of the General Laws, as so appearing, is
97 hereby amended by striking out, in lines 2 and 7, the figure “174E” and inserting in place
98 thereof, in each instance, the following figure:- 174F.

99 SECTION 14. Section 137A of said chapter 140, as so appearing, is hereby amended by
100 adding the following subsection:-

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

103 SECTION 15. Section 137C of said chapter 140, as so appearing, is hereby amended by
104 striking out, in line 35, the figure “\$250” and inserting in place thereof the following:- \$500 for a
105 first offense and a fine of not more than \$1,000 for a second or subsequent offense

106 SECTION 16. Section 141 of said chapter 140, as so appearing, is hereby amended by
107 striking out, in line 1, the figure “, 137A”.

108 SECTION 17. Section 173 of said chapter 140, as so appearing, is hereby amended by
109 striking out, in line 3, the figure “174E” and inserting in place thereof the following figure:-
110 174F.

111 SECTION 18. The first paragraph of section 173A of said chapter 140, as so appearing, is
112 hereby amended by striking out the second to seventh sentences, inclusive, and inserting in place
113 thereof the following 6 sentences:-

114 The fine for the first offense committed by a person shall be \$50. The fine for a second
115 offense shall be \$100. The fine for a third offense shall be \$300. For a fourth or subsequent
116 offense, the fine shall be \$500 and the municipality may order the animal spayed or neutered.
117 Payment shall be made only by postal note, money order or check. Notwithstanding the
118 foregoing procedure and schedule of fines, but subject to all other provisions of this section, a
119 city or town may, by ordinance or by-law, provide for an alternative procedure and a different

120 schedule of fines; provided, however, that the fines shall not be lower than those stated in this
121 section. Notwithstanding this section, a municipality may seek a remedy under section 157 for a
122 nuisance dog.

123 SECTION 19. Section 174E of said chapter 140, as so appearing, is hereby amended by
124 adding the following subsection:-

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

127 SECTION 20. Section 174F of said chapter 140, as so appearing, is hereby amended by
128 adding the following subsection:-

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

131 SECTION 21. Chapter 175 of the General Laws is hereby amended by adding the
132 following section:-

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

139 Nothing in this section shall prohibit an insurer from refusing to issue or renew or from
140 canceling a contract or policy or from imposing an increased premium or rate for a policy or

141 contract if any such dog being harbored on the property has been designated as a dangerous dog
142 pursuant to law.

143 SECTION 22. Chapter 186 of the General Laws is hereby amended by adding the
144 following section:-

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

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

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

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

159 If the property owner, lessor or designee fails to comply with this section, the lessor or
160 property owner shall be subject to a civil penalty of not more than \$500 for a first offense and
161 not more than \$1,000 for a second or subsequent offense. Funds collected under this section shall

162 be deposited into the Homeless Animal Prevention and Care Fund established in section 35WW
163 of chapter 10.

164 SECTION 23. Section 4 of chapter 239 of the General Laws is hereby amended by
165 inserting after the word “thereof”, in line 5, as appearing in the 2016 Official Edition, the
166 following words:- ; provided, however, that if an animal is found on the land or in the tenement,
167 the officer shall immediately notify an animal control officer as defined in section 136A of
168 chapter 140, a police officer or other authorized agent of the presence and condition of the
169 animal.

170 SECTION 24. Subsection (a) of said section 4 of said chapter 239, as so appearing, is
171 hereby amended by adding the following sentence:- This section shall not apply to an animal
172 removed under section 30 of chapter 186, section 14 of this chapter or section 41 of chapter 244.

173 SECTION 25. Said chapter 239 is hereby further amended by adding the following
174 section:-

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

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

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

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

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

192 SECTION 26. Chapter 244 of the General Laws is hereby amended by adding the
193 following section:-

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

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

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

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

209 SECTION 27. Section 77 of chapter 272 of the General Laws, as appearing in the 2016
210 Official Edition, is hereby amended by striking out, in lines 32 to 35, inclusive, the words
211 “seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A,
212 eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four” and
213 inserting in place thereof the following figures:- 77A, 77C, 78, 78A, 79A, 79B, 80A, 80B, 80C,
214 80D, 80E, 80F, 86, 86A, 86B or 94.

215 SECTION 28. Said chapter 272 is hereby further amended by inserting after section 77B
216 the following section:-

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

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

221 “Sexual contact”, (i) any act between a person and an animal that involves contact
222 between the sex organs or anus of 1 and the mouth, anus or sex organs of the other; (ii) touching
223 or fondling by a person of the sex organs or anus of an animal, either directly or through

224 clothing, without a bona fide veterinary or animal husbandry purpose; (iii) any transfer or
225 transmission of semen by the person upon any part of the animal; or (iv) the insertion, however
226 slight, of any part of a person's body or any object into the vaginal or anal opening of an animal
227 or the insertion of any part of the animal's body into the vaginal or anal opening of the person.

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

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

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

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

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

268 SECTION 29. Section 79 of said chapter 272, as appearing in the 2016 Official Edition,
269 is hereby amended by striking out, in lines 1 and 2, the words “corporation violating either of the
270 two preceding sections” and inserting in place thereof the following words:- for-profit
271 corporation, nonprofit corporation, business, professional corporation, partnership, limited
272 liability company, limited partnership, limited liability partnership or any other business entity
273 violating section 112 of chapter 266 or section 77, 77A, 77B, 78, 78A, 79A, 80½, 80A, 80B,
274 80C, 80D, 80E, 80F, 80G, 80H, 80I, 81, 85A, 85B, 87, 94 or 95 of this chapter.

275 SECTION 30. Section 80E of said chapter 272, as so appearing, is hereby amended by
276 adding the following paragraph:-

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

283 SECTION 31. Section 80H of chapter 272 of the General Laws, as so appearing, is
284 hereby amended by striking out, in line 5, the words “fifty dollars” and inserting in place thereof
285 the following words:- “\$100 for a first offense or not more 10 days in a house of corrections and
286 a fine of \$500 and the cost of medical expenses, imprisonment in a house of correction for not
287 more than 6 months or both such fine and cost and imprisonment for a second and subsequent
288 offense.

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

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

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

304 SECTION 35. Section 58A of chapter 276 of the General Laws, as so appearing, is
305 hereby amended by inserting after the figure “269”, in line 23, the following words:- , section
306 112 of chapter 266 or section 77 or 94 of chapter 272.