

ANIMAL FIGHTING: REVISE PROVISIONS REGARDING DISPOSITION OF ANIMALS

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House Bill 4765 as introduced
Sponsor: Rep. Michael D. McCready
Committee: Criminal Justice
Complete to 10-26-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would revise provisions pertaining to animal fighting and the disposition of an animal used for fighting. Current state law prohibits various activities relating to use of an animal for fighting or baiting, or as a shooting target. All animals being used or to be used in fighting, as well as equipment, devices, and money involved in a violation of the prohibited activities must be forfeited to the state. All other instrumentalities, proceeds, and substituted proceeds are subject to forfeiture under the Revised Judicature Act.

House Bill 4765 would amend Section 49 of the Michigan Penal Code. In general, Section 49 prohibits a person from breeding, buying, or selling an animal (or the offspring of such an animal) that the person knows has been trained or used for fighting, and establishes criminal penalties for violations. Animals used to fight in a violation of the prohibition must be confiscated and not returned to the owner, trainer, or possessor of the animal.

The bill would allow—for the purpose of adoption—an animal control shelter, animal protection shelter, or law enforcement agency to own, adopt, or transfer ownership of an animal trained or used for fighting (or the first- or second-generation offspring of that animal) *if* the shelter or agency finds the animal is fit for placement and does not pose a threat to the public safety.

Assignment of Costs: The bill would allow a court to order a person convicted of violating Section 49 to pay the costs for investigating the violation and for the disposition of the animal. This would be in addition to the court's current authority to order the person to pay the costs of prosecution and for housing and caring for the animal. "Disposition" includes the transfer, euthanasia, or adoption of an animal.

Confiscation of animal. Currently, an animal used to fight, in violation of Section 49, must be confiscated as contraband by a law enforcement officer and cannot be returned to the owner, trainer, or possessor of the animal. It is to be taken to a local humane society or other animal welfare agency. If the person is convicted of the violation, the court must award the animal to that agency. The bill retains the requirement that the animal be confiscated and not returned to the owner, trainer, or possessor, but would require the animal to be taken to a local animal control shelter, animal protection shelter (hereinafter "shelter"), or law enforcement agency. Upon a conviction, the shelter or law enforcement agency would be awarded the animal by the court for evaluation and disposition.

In addition, the bill would require the shelter or law enforcement agency taking possession of the animal under the above provision to give notice within 72 hours after seizure of the animal by:

- Posting at the location of the seizure.
- Delivery to a person residing at the location of the seizure.
- Registered mail to the animal's owner's last-known address, if the owner of the animal is known.
- Registered mail to the location of the seizure, if the owner of the animal is unknown.

Notice requirements. The notice must include a description of each animal seized; the time, date, location, and description of circumstances under which the animal was seized; and the address and telephone number of the location where the animal is being held as well as contact information for the individual at that location from whom security deposit or bond information may be obtained.

The notice must also include a statement that the animal's owner or possessor may post a bond or security deposit to prevent the forfeiture of the animal, that failure to do so within 14 days of the notice will result in forfeiture of the animal, and that a hearing may be requested on whether the cost associated with the security deposit or bond is fair and reasonable for the care of and provision for the seized animal.

A statement must also be included in the notice that the owner or possessor is responsible for all costs for housing and caring for the animal as described in subsection 6 unless the court determines that the seizure of the animal was not substantially justified by law. (Subsection 6 includes, but is not limited to, costs of providing veterinary medical treatment, investigation costs, and disposition of the animal).

Forfeiture. The shelter or law enforcement agency that seized the animal must hold it for 14 consecutive days beginning on the date notice was given. If at the expiration of the 14-day period the owner or possessor has not posted a security deposit or bond, the animal will be forfeited. The shelter or law enforcement agency may then dispose of the animal by adoption, transfer to another shelter or law enforcement agency, or humane euthanasia.

A shelter or law enforcement agency that transfers or adopts an animal must provide a copy of the animal's history, including why it was seized, veterinary records and behavioral assessments, and a copy of subsections (8) to (14) to the person to whom the animal is transferred or adopted. [The subsections referenced contain penalties incurred when an animal trained to fight (or its offspring) attacks a person or is not securely restrained.]

Forfeiture and disposition of the animal could be prevented by the owner or possessor by posting a security deposit or bond with the court within 14 days after receiving the notice. The bond must be in an amount sufficient to cover all costs relating to the care of the animal during a 30-day period of boarding and veterinary treatment after examination by a licensed veterinarian. The shelter or law enforcement agency must determine the amount of the bond no later than 72 hours after seizing the animal, and must make that amount available

to the owner or possessor upon request. Proof of the security deposit or bond must be provided to the shelter or law enforcement agency no later than 14 days after receiving the notice. (This new provision appears to imply that the owner or possessor may be able to regain possession by preventing forfeiture of the animal. However, the statute currently states that an animal used in fighting cannot be returned to the owner, possessor, or trainee if that person is convicted of the violation, and the court is required to ban the person from owning or possessing an animal of the same species for five years after the date of sentencing.)

Security deposit or bond. The shelter or law enforcement agency holding the seized animal could draw on the security deposit or bond posted to cover the actual reasonable costs incurred in the seizure, care, keeping, and disposition of the animal from the date of the seizure to the date of the official disposition of the animal in the criminal action.

If the trial in the criminal action is continued to a later date, the order of continuance must require the defendant to post an additional amount determined by the court to cover the animal's care as anticipated by the shelter or law enforcement agency caring for the animal. The additional security deposit or bond would be calculated in 30-day increments and continue until the criminal action is resolved. Failure to post a new security deposit or bond with the court before the previous one expires will result in the animal being forfeited to the shelter or law enforcement agency caring for the animal.

If owner not guilty. If the owner or possessor is found not guilty in the criminal action, the amount of the security deposit or bond that was posted may be returned at the court's discretion. (The bill does not specifically state what happens to the animal if the owner or possessor is found not guilty. Thus, it would appear that the animal would still be disposed of by the shelter or law enforcement agency caring for the animal as provided by the bill.)

Dangerous animal. Posting a security deposit or bond will not prevent disposition of an animal determined by the court to be a dangerous animal. The amount of the security deposit or bond posted to prevent disposition of the animal must be returned to the owner or possessor, minus the reasonable costs incurred by the shelter or law enforcement agency for the care and euthanasia of the animal.

Euthanasia of an animal. Section 49 allows an animal to be humanely euthanized if it is injured or diseased past recovery or to humanely relieve the animal's pain and suffering. The bill applies this provision whether or not a security deposit or bond has been posted.

Section 49 requires the shelter or agency receiving a seized animal to apply to the court for a hearing to determine whether the animal should be humanely euthanized because of its lack of any useful purpose and the public safety threat it poses. The bill would make this provision permissive, rather than a requirement and would allow, rather than require, a court to assess expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal against the animal's owner.

MCL 750.49

FISCAL IMPACT:

The fiscal impact of the bill appears to fall primarily on local law enforcement and animal shelters. However, under certain conditions, owners of the animals trained or used for fighting would be responsible for costs incurred in the seizure, care, keeping, and disposition of the animal. The bill does not appear to have any fiscal impact on the Michigan State Police (which defers to local units for seized animals), the Department of Agriculture and Rural Development, or the Department of Natural Resources. Additional fiscal information will be provided as it becomes available.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.