

DISPOSITION OF ANIMALS USED IN FIGHTING: REVISE PROVISIONS

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House Bill 4765 (reported from committee as H-3)
Sponsor: Rep. Michael D. McCready
Committee: Criminal Justice
Complete to 4-4-16

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

BRIEF SUMMARY: The bill would revise provisions pertaining to the disposition of an animal seized for its involvement in animal fighting or of an animal trained or used for fighting that was seized after attacking a person. Briefly, the bill would do the following:

- ❖ Allow animal shelters or the seizing law enforcement agency to adopt out animals seized for a violation of the animal fighting law if fit for placement.
- ❖ Require a shelter or law enforcement agency that took custody of an animal to give written notice of the seizure within 72 hours.
- ❖ Allow an animal's owner or possessor to post a security deposit or bond to cover the animal's costs of care to prevent disposition of the animal during the pendency of the criminal action.
- ❖ Allow the shelter or law enforcement agency to draw on the security deposit or bond to cover the costs of the animal's seizure, care, and disposition.
- ❖ Allow any unspent money from the security deposit or bond to be returned to the owner or possessor and require the animal returned to the owner if the owner or possessor is found not guilty of a violation of the animal fighting law.
- ❖ Allow a shelter or law enforcement agency to humanely euthanize an animal or have the animal euthanized if the animal is injured or diseased past recovery whether or not a security deposit or bond had been posted.
- ❖ Allow disposition of an animal deemed by a court to be a dangerous animal or lacking any useful purpose even if a security deposit or bond had been posted, with unspent money being returned to the owner or possessor. ("Disposition" includes the transfer, euthanasia, or adoption of an animal.)

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.

THE APPARENT PROBLEM:

Michigan law makes it a crime to engage in dog fighting or to use any animal in a fight scheme. A person who violates the prohibition is subject to criminal fines, incarceration, and may be prosecuted under the state racketeering act. The animals used in fighting are confiscated as contraband and subject to forfeiture. While the criminal case against those

accused of conducting the fights wends its way through the criminal justice process, the animals (mostly dogs) sit in shelters. Animals that are very sick or have serious injuries are humanely euthanized. If the owner, trainer, or possessor of the animal used in fighting is convicted of violating the animal fighting laws, the animal is awarded to the shelter.

Some shelters say the current law is unclear about what they can do with the confiscated animals. If the animals are diseased or injured beyond recovery or are suffering, the shelter may humanely euthanize the animal. The shelter may also petition the court to humanely euthanize any animal that poses a threat to public safety or serves no useful purpose. What to do with the other confiscated animals is less clear. Once the criminal case is over, some shelters adopt out the ones suitable to be placed in homes.

However, the animal law currently prohibits breeding, buying, selling, or exchanging an animal known to have been trained or used for fighting. The prohibition includes not just the animal trained or used to fight, but also its offspring. Thus, some shelters feel that it is unlawful them to adopt out any animal confiscated from an animal fighting ring, even a litter of young puppies that had not yet been trained to fight or used in a fight.

The lack of clarity, coupled with the sheer length of time for the average criminal case to be resolved, means that animals are left in limbo in small cages in overcrowded shelters at great expense for the shelters for feed, veterinary care, kitty litter, etc. Animal advocates say this is extremely stressful for the animals, which do not do well being caged for so many months or years. Animals that may have been suitable for placement early on may no longer be adoptable after such a long time due to changes in personality brought on by living in the shelter for so long. Animals confiscated when young, such as puppies and kittens, may be unsuitable to be placed in loving homes when older because they never received proper socialization.

Animal owners, on the other hand, say that pets are confiscated even on suspicion of illegal activity. Some say it is a difficult and arduous process to even find out which agency confiscated the animals and where the animals are being held. Even if the owner is innocent of the animal fighting allegation, it is not uncommon for the animals to have been put down or adopted out before the owners are cleared of the charges.

In animal abuse and neglect cases, which is a civil matter, the owner may delay disposition of the animal by posting a bond to cover the shelter's cost of feeding and caring for the animal while the case is investigated. Some would like to see a similar mechanism in place for suspected animal fighting cases so that pet owners whose pets have been confiscated can contribute to the care of the animal and reclaim ownership once the criminal case has resolved. Further, it has been suggested that the animal fighting statute be amended to clarify the authority shelters have for the disposition of animals seized in animal fighting cases.

THE CONTENT OF THE BILL:

House Bill 4765 would amend Section 49 of the Michigan Penal Code (MCL 750.49), which prohibits animal fighting and establishes criminal penalties for violations. Under the animal fighting law, animals used to fight in a violation of the prohibitions must be

confiscated and not returned to the owner, trainer, or possessor of the animal. This applies also if an animal used or trained for fighting (or its offspring to the first- or second-generation) attacks a person, whether incited to do so or without provocation. Under the bill, and except as provided in the bill, a court could award an animal involved in a violation to an animal control shelter, animal protection shelter, or law enforcement agency for evaluation and disposition.

Current law and the proposed changes are described below.

Prohibitions on animal fighting. Subsection (2) of Section 49 prohibits a person from:

- Owning, possessing, using, buying or selling (or offering to buy or sell), importing, or exporting an animal for fighting or baiting, or as a target to be shot at as a test of skill in marksmanship.
- Being a party to or causing the fighting, baiting, or shooting of an animal.
- Renting or otherwise obtaining the use of a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal described above. **The bill** would also apply this provision to the use of a vehicle or any other venue.
- Permitting the use of a building, shed, room, yard, ground, or premises belonging to the person or under the person's control for any of the purposes described in Section 49. **The bill** would also apply this provision to the use of a vehicle or any other venue.
- Organizing, promoting, or collecting money for the fighting, baiting, or shooting of an animal as a target or for marksmanship.
- Being present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition as described above (e.g., animal fighting, baiting, or shooting) or being present at the exhibition knowing that an exhibition is taking or about to take place. **The bill** would also apply this provision to being present in a vehicle or any other venue where an exhibition is or is about to take place.
- Breeding, buying, selling, offering to buy or sell, exchanging, importing, or exporting an animal (or the offspring of such an animal) that the person knows has been trained or used for fighting. (The prohibition does not apply to an animal associated with agricultural or agricultural exposition purposes.) **The bill** would specify that the provision does not prohibit an animal control shelter, animal protection shelter, or law enforcement agency from owning, adopting, or transferring ownership of an animal for the purpose of adoption of an animal trained or used for fighting as described above or an animal that is the first- or second-generation offspring of such an animal. However, this exemption will only apply if the animal has passed a behavioral assessment and the animal control or protection shelter or law enforcement agency finds that the animal is fit for placement.
- Owning, possessing, using, buying, selling, offering to sell or buy, transporting, or delivering any device or equipment intended for use in the fighting, baiting, or shooting of an animal as described above.

A violation of the animal fighting provisions is punishable by up to four years in prison, community service, and/or a fine ranging from \$5,000 to \$50,000 (fighting) or \$1,000 to \$5,000 (being present at a fight or buying/breeding/selling an animal the person knows was

trained or used for fighting). In addition, the court must order the person convicted of a violation not to own or possess an animal of the same species for five years after the date of sentencing. The current penalties remain the same as the bill does not revise them.

Attacks by animals trained or used for fighting. Under subsections (8) to (14) of Section 49, a person inciting an animal to attack that had been trained or used for fighting, the owner of such an animal that attacks without provocation, or an owner who fails to securely restrain the animal on his or her property is guilty of a criminal offense punishable by a term of incarceration and/or fines that range from a 90-day misdemeanor for not securely restraining the animal on the owner's property to a prison term of 15 years-to-life for inciting the animal to attack if the victim dies. These penalties remain the same as the bill does not revise them.

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 an 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. **The bill** retains the requirement that the animal be confiscated and not returned to the owner, trainer, or possessor; however, it creates an exception to this provision for persons who post a security deposit or bond to cover the expenses of the animal while being held at a shelter (described below). **The bill** also requires the animal to be taken to a local animal control shelter, animal protection shelter (hereinafter "shelter"), or law enforcement agency instead of to a local humane society or other animal welfare agency.

Currently, if the person is convicted of the violation, the court must award the animal to that agency. Under **the bill**, 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 required to be given under the bill 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 date on the notice will result in forfeiture of the animal, and that a hearing may be requested—before expiration of the 14-day period—on whether the requirement to post a security deposit or bond is justified or 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).

Hearing to determine justification of securing deposit or bond. At a hearing on whether the requirement to post a security deposit or bond is justified, the prosecuting attorney has the burden to establish probable cause that a violation of Section 49 occurred. If this burden is met, the animal must be forfeited to the shelter or law enforcement agency that seized the animal unless the owner or possessor of the animal posted the required security deposit or bond within the 14-day period after the date on the notice. Failure to appear at a scheduled hearing will result in automatic forfeiture of the animal if the date of the scheduled hearing is more than 14 days after the date on the notice. (Presumably this means that failure to appear at a requested hearing would result in forfeiture of the animal even if the security deposit or bond had been paid. Further, should the hearing be scheduled within the 14-day-period, and a security deposit or bond has been posted, the bill is silent on what happens if the animal owner or possessor fails to appear.)

Duties of seizing entity/Forfeiture of animal. Under the bill, 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 of the animal 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 animal control 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) of Section 49 to the person to whom the animal is transferred or adopted. [The subsections referenced contain the penalties incurred when an animal trained to fight (or its offspring) attacks a person or is not securely restrained.]

Security deposit or bond. Under the bill, 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 of the date on 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 the amount of the bond 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 the date on the notice. (This new provision appears to imply that the owner or possessor may regain possession of the confiscated animal by preventing forfeiture and disposition of the animal if a bond or security deposit is secured in the required amount. 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 in some instances to ban the person from owning or possessing an animal of the same species for five years after the date of sentencing.)

The shelter or law enforcement agency holding or requiring to be held a 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 a security deposit or bond has been posted, and 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, as determined by the court, to cover the cost of the animal's care as anticipated to be incurred 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 or possessor 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 to prevent disposition of the animal may be returned at the court's discretion and the animal must be returned to the owner.

Dangerous animal. Posting a security deposit or bond will not prevent disposition by humane euthanasia of an animal determined by the court to be a dangerous animal or one that lacks any useful purpose. 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 injured animal. Section 49 allows an animal to be humanely euthanized if a licensed veterinarian determines it is injured or diseased past recovery or the animal's continued existence is inhumane so that euthanasia is necessary to relieve pain and suffering. **The bill** applies this provision whether or not a security deposit or bond has been posted.

Section 49 currently requires the shelter or other animal welfare 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 replace "and" with "or". Further, **the bill** would make this provision permissive, rather than a requirement and would give a court the discretion to assess expenses incurred in connection with the housing, care, upkeep, or euthanasia of the animal by a shelter or law enforcement agency against the animal's owner (rather than require it).

BACKGROUND INFORMATION:

The bill is similar to Senate Bill 990 of the 2013-2014 legislative session. That bill was reported by the Senate Judiciary Committee but failed to see Senate floor action.

ARGUMENTS:

For:

According to representatives of the Michigan Humane Society, the bill is needed to clarify the authority of animal control shelters and animal protection shelters when caring for an animal that was seized by law enforcement officers on allegations of being used in animal fighting. Under current provisions, they say, it isn't clear exactly when or how a shelter may dispose of an animal except in situations where the animal is suffering from disease or injury or poses a threat to public safety. Some provisions seem to imply that once a case is over and the owner found to be guilty of animal fighting, the shelter could dispose of the animal in any acceptable manner, including adoption. Yet other provisions prohibit the sale or exchange of any animal trained or used in fighting, as well as its offspring, leaving some shelters to believe that all animals confiscated for animal fighting must be euthanized, even a litter of puppies.

The bill would clarify that shelters and law enforcement agencies could own, transfer ownership, or adopt out animals seized for animal fighting as long as the animal passes a behavioral assessment and the animal is found fit for placement. This would apply not just to the adult animal, but also to its first- or second-generation offspring. Law enforcement was added because sometimes police officers or sheriff's deputies may take initial custody of an animal until a shelter can be contacted.

The bill also clarifies how soon an animal fit for placement may be adopted out. Reportedly, one local jurisdiction told a shelter it couldn't adopt out an animal seized in an animal fighting case until the defendant was arraigned. The problem is that when police arrive at the scene of an animal fight, people scatter. Or if a location is raided, there may not be anyone present. It can be a lengthy process for police to determine who the owners are, let alone find and arrest them. It can take months to years for a criminal case to be resolved, even when the defendants are apprehended quickly. Meanwhile, until such time as the shelter has clear authority to dispose of the animal, the animal is in limbo. This is extremely hard on the animal and extremely expensive for the shelter to house the animals. An animal that is poorly socialized to begin with could be unadoptable by time a case resolves, meaning that an animal suitable for placement in a loving home at one point in time must now be put down. Animal advocates believe that many of these animals can be safely rehabilitated.

The bill addresses the problem by requiring the entity taking custody of the animal to provide notice in a timely manner to the owner with information such as where the animal was taken and that posting a security deposit or bond to help provide for the animal's expenses can delay disposition of the animal until the case is resolved or until the owner no longer wishes to pay for the animal's upkeep. Thus, the bill shifts financial responsibility of caring for the animals from the shelters to the animal's owner, and provides time for owners to establish their innocence without having to lose their pets. If

no bond is posted, the shelter would take immediate control over the animal and dispose of the animal in an appropriate manner. Animals that are suitable for adoption will be able to be placed in loving homes quicker—a much more humane solution for animals that may already have suffered trauma or abuse.

For:

The bill expands the applicability of the animal fighting statute to animal fights that are conducted in the trunks of cars or in other types of venues. Known as "trunking", this latest, and horrific, trend in dog fighting involves locking two dogs in the trunk of a car and driving the vehicle for about 10-15 minutes while the dogs fight each other. When the fighting stops, the driver pulls over and discards the dead body of the dog that "lost". This amendment will not only allow prosecution of anyone engaging in such a heinous practice, but will also capture any other new trends in animal fighting that may pop up in the future.

Against:

In its current form, the bill contains several provisions that could be problematic.

- As written, the wording required to be on the notice to owners regarding the confiscation and bond information appears to conflict with current law in that it appears to allow even a person who is eventually convicted of a violation of the statute to reclaim the animal as long as he or she posted a bond sufficient to cover the cost of the animal's care during the pendency of the criminal case. Currently, an animal may not be returned to a person convicted of violating the animal fighting laws and the sentence must include a ban on owning or possessing an animal of the same species for five years after the date of sentencing.
- Currently, a shelter must apply to a court for permission to euthanize an animal deemed to have a lack of any useful purpose and because of the the public safety threat it poses. The bill would instead give a shelter discretion whether or not to apply to a court for a hearing to determine if it can euthanize an animal because of a lack of any purpose or because it poses a threat to public safety. It could be argued that the bill lessens the protections of law for animals and makes it easier for shelters, which may feel pressure due to overcrowding, to euthanize animals not quickly adopted or which the owners did not post a bond to help with the cost of the animal's care.
- The bill appears to contain technical errors that may complicate interpretation and implementation of the animal fighting statute. For example, a reference to a subsection in a provision pertaining to forfeiture was not updated to reflect the reordering of the subsections made to accommodate amendments added by the bill; thus, a provision originally linked by reference to a different provision is now linked to a new one added by the bill rather than to that original provision.

Against:

Advocates for animal owners say that the bill should be revised to require, not just allow, courts to return the amount of the security deposit or bond to the animal owner or possessor who posted the bond if the person is later found not to be guilty. In addition, the bill only allows the animal to be returned to the owner, even if it had been the possessor who had posted the bond.

Response:

This could put the burden on caring for the animals solely on the shelters. Many shelters already rely on donations and volunteer services and may not have the resources to return the amount of the bond that has already been spent to feed and care for the confiscated animal. As written, the bill grants the court authority to decide, on a case by case basis, whether to return the amount of the security deposit or bond to the owner or possessor.

POSITIONS:

Michigan Humane Society indicated support for the H-3 substitute. (11-10-15)

Humane Society of the United States indicated support for the bill. (10-27-15)

Best Friends Animals Society indicated support for the bill. (11-10-15)

Michigan Association for Pure Bred Dogs (MAPBD) submitted testimony supporting the bill. (11-10-15)

A representative of the Department of Agriculture and Rural Development testified that the agency has a neutral position on the bill. (11-10-15)

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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.