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ANIMAL FIGHTING

House Bill 4655 (Substitute H-2)
House Bill 4656 (Substitute H-1)

First Analysis (5-11-95)

Sponsor: Rep. Gerald Law
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Until 1988, the Michigan Penal Code made it a felony (punishable by imprisonment for up to 4 years and a fine of up to \$5,000) to own, possess, keep, or use bulls, bears, dogs, cocks, or other animals, "or fowl, or bird[s]" for the purpose of fighting, baiting, or as targets to be shot at as a test of skill in marksmanship. (Although not defined in the penal code, "baiting" is defined in the dictionary as "to set dogs upon a chained animal -- such as bears -- for sport.") It also was a felony to obtain or furnish premises for the purpose of "fighting, baiting, or shooting any animal, fowl, or bird," but a misdemeanor to be present at (or where preparations were being made for) such "exhibitions."

Public Act 381 of 1988 amended the Michigan Penal Code to increase the penalties for participating in animal fighting (notably, making it a felony, with lesser penalties, to participate in animal fighting), as well as to ban the breeding or sale of fighting dogs or their offspring. However, the 1988 amendments -- while keeping language referring to "a bull, bear, dog, or other animal" -- also deleted specific references to "cocks," "fowl," and "birds."

Despite the increased penalties added in 1988, not only have dog fighting and cock fighting "exhibitions" continued in the state, those arrested and charged for cock fighting apparently have been arguing that the 1988 amendments which deleted references to "cocks" ("fowl" and "birds") either mean that the legislature intended to legalize cock fighting or that the current language in the penal code is so vague as to effectively exempt them from the code's provisions.

Prior to passage of Public Act 381 of 1988, additional changes suggested by the Michigan Humane Society were not adopted. The changes proposed by the society included increasing the existing fines, adding community service work to the

penalty sections, and adding language prohibiting promoting fights and making, owning, or transporting equipment used in animal fights. House Bill 4909 of 1989 would have made some of these further changes, but the bill never passed the House. Reportedly, interested parties have been working on these issues for the past six years, and legislation has once again been introduced that would address these issues.

THE CONTENT OF THE BILLS:

House Bill 4655 would amend the Michigan Penal Code (MCL 750.49) to change the definition of "animal" and refer to "an animal" instead of to "dogs" or to "a bull, bear, dog, or other animal"; increase maximum fines and add minimum fines; add community service as a possible penalty; prohibit certain additional activities involved in animal fighting; allow forfeiture of additional property used in conjunction with animal fighting; and allow courts to order violators to pay both prosecution costs and the costs of housing and caring for the animals involved in violations.

Prohibited activities. Currently, the penal code defines "animal" as including "all brute creatures." The bill would define "animal" to mean "a vertebrate other than a human, and would specifically prohibit people from "knowingly" engaging in certain activities involving animal fighting, baiting, and shooting. The penal code currently makes it a felony to own (possess, keep, or use) a fighting animal, to be a party to animal fighting, or to obtain or provide a place for animal fighting. The bill would, in addition, prohibit (a) offering to buy or sell, import, or export animals for fighting, baiting, or shooting; (b) organizing, promoting, or collecting money for animal fighting, baiting, or shooting; and (c) owning, possessing, using, offering to buy or sell, transporting, or delivering "any device

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or equipment intended for use in the fighting, baiting, or shooting of an animal."

The bill also explicitly would not prohibit someone who committed other violations while violating the prohibitions against animal fighting from being charged with, convicted of, or punished for these other violations.

Criminal penalties. While the maximum prison term for both felonies would remain four years, the bill would increase fines for animal fighting and add possible community service. For organizing or conducting animal fights, the bill would set a minimum fine of \$5,000, increase the maximum fine from \$5,000 to \$50,000, and add possible community service of at least 500 hours and not more than 1,000 hours. For people who otherwise participated in animal fights (by attending a fight, by breeding or selling fighting animals, or by trafficking in fight equipment), the bill would set a minimum fine of \$1,000, increase the maximum fine from \$2,000 to \$5,000, and add possible community service of not less than 250 hours nor more than 500 hours.

In addition, the bill would allow the court to order convicted violators to pay the costs of prosecution and the costs for housing and caring for the animal (including, but not limited to, providing veterinary treatment).

Forfeiture. Currently, all animals, equipment, devices, and money involved in animal fighting are subject to forfeiture. The bill would add that all firearms and motor vehicles involved in violations also would be subject to forfeiture under Chapter 47 of the Revised Judicature Act.

Other provisions. The bill would specify that it wouldn't prohibit owning, breeding, selling, buying, exchanging, importing, or exporting animals for agricultural or agricultural exposition purposes.

The bill also would amend existing provisions regarding dogs trained or used for fighting, or their offspring, that attack and kill or injure people, to specify that these provisions would apply to "animals" trained or used for fighting or their "first or second generation" offspring.

Finally, currently this chapter of the penal code exempts from its provisions conduct that is permitted by, and in compliance with, the Game Law of 1929 (Public Act 286 of 1929), the game breeder's act (Public Act 191 of 1929), and the

Michigan State Parks System Act (Public Act 134 of 1957). The bill would delete the references to the Game Law and the Michigan State Parks System Act and add references to the Wildlife Conservation Act (Public Act 256 of 1988) and to the Hunting and Fishing License Act (Public Act 85 of 1980), and the game preserve act (Public Act 134 of 1957).

House Bill 4656 would amend the Revised Judicature Act (MCL 600.4701) to include property used in animal fights under the act's criminal forfeiture provisions.

Tie-bar. The bills are tie-barred to each other.

BACKGROUND INFORMATION:

On March 21 of this year, House Bill 4346, which also would amend this section of the Michigan Penal Code (750.49), passed the House and is now pending before the Senate Committee on Agriculture and Forestry.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Dog fighting, cock fighting, and related forms of "entertainment" are violent and inhumane exhibitions that generate large profits for those involved. What is more, dog fighting leads to the breeding and training of vicious dogs that pose a threat to human safety. With jails as crowded as they are, even when an investigation cracks a dog fighting ring, there is little likelihood that the principals will serve time in prison. And the maximum fines are pitifully small compared to the amount of money that can be netted by the illegal activity.

The bills would place the costs of these illegal, cruel "exhibitions" where they belong, namely, on the violators, and not on the taxpayers. By doing so, the bills would remove most, if not all, of the financial incentives for this thriving, lucrative underground business. In addition, by authorizing community service to be ordered at sentencing, the likelihood that violators will be punished by more than just fines, despite prison overcrowding, also are greatly enhanced.

Dog fighting and cock fighting are big underground businesses. For example, an animal control officer described a 1992 raid in Saginaw County on what was one of the largest dog fights discovered in the United States. Approximately 70 law enforcement officers were involved, 128 people were arrested, and ten pit bull terriers were seized, along with \$70,000 in cash, as well as drugs and guns. Bleachers had been built for the fight and concessions provided! The officer also described a letter found in one of the three residences that were searched following the fight (during which eleven more pit bull dogs were seized) in which the writer boasted of winning \$56,000 in a Texas dog fight (and in which letter, after describing in graphic detail the massive fatal injuries inflicted on the dead dog, the writer exclaims "Pretty good[,] Huh!?") If a dog owner can make \$56,000 tax free in one fight, even a \$5,000 fine can be written off simply as a cost of doing business. Increasing the maximum possible fines to \$50,000 would provide a real deterrent to such illegal "entrepreneurs," as would the imposition of the costs of prosecution and of housing and caring for fighting animals seized by law enforcement agencies. The animal control officer testified that the costs to his agency's facility alone for housing the dogs as evidence for two years came to \$46,000, and these costs didn't include the actual costs of prosecution, which (according to one estimate) ranged from \$20,000 to \$50,000.

The bills would have other positive effects on enforcement efforts and the facilities that currently house confiscated animals. Animal shelters, which usually are marginally funded anyway, are not built for long-term housing and care of animals involved in fighting "exhibitions." Defense attorneys know this, and use the expense and strain of housing these animals on a long term basis as "leverage" to plea bargain the charges down. It is to the defense's advantage to prolong the process as long as possible, as the expense to the shelter, the danger to the employees, and the strain on the animals themselves increases the longer the process can be dragged out. One of the direct results of the bill would be to expedite the disposition of seized animals and relieve the expense and strain on housing facilities.

For:

Besides attacking a major source of cruelty to animals, practiced under the pretense of "sport," the bills also would reduce the many hidden costs associated with animal fighting. Animal fighting is

morally debasing, and undermines the fabric of the community.

Not only do animal fights often involve illegal drug dealing and firearms, which themselves pose dangers to the neighborhoods in which the fights take place, dogs bred for fighting -- such as pit bull breeds -- also are used to guard drug and crack houses. But even aside from the issue of neighborhoods housing drug houses "protected" by pit bull dogs, the breeding and training of these fighting dogs in neighborhoods poses a significant public safety threat because of these dogs' behavioral characteristics, which include "gameness" and unpredictability. Even though many individual dogs (such as the pit bull breeds) who are bred for fighting often can be very affectionate (at least to their owners or trainers), as a breed they are unsafe because the very characteristics that make them "good" fighting dogs -- such as "gameness," the readiness and willingness to fight with no provocation and no warning and to the point of exhaustion and death -- makes these dogs unpredictable and dangerous. Thus, for example, pit bulls, unlike most dog breeds, are more likely to attack targets that do not flee or show other behaviors normally considered provocation for attack, nor do they typically exhibit a threatening display (bared teeth, growling, raised hackles or lowered ears) before attack. In addition, their enormous strength and refusal to release once they bite down on their victim makes them deadly to both humans and other animals. These characteristics also mean that when dogs are seized in dog fight raids, they cannot be disposed of safely short of killing them. They cannot be safely placed as pets because they can't be trained not to fight, and they pose a constant threat to the public safety as well as staff in animal shelters housing them.

For:

The bills would clear up some problems in the penal code concerning prohibitions against organizing or participating in animal fights (or being involved in related activities). Currently the act imposes the same prison penalties for people caught in animal fighting activities, regardless of their level of involvement, namely, imprisonment for up to four years. Prosecutors apparently have had difficulty seeking sentences consistent with the level of illegal activity involved, and in some cases such prosecutions have contributed to jail overcrowding. The bills would take a more nuanced approach by specifying that people caught merely participating in

animal fighting would be subject to a maximum of only two years imprisonment, while at the same time judges would be given more sentencing options with the addition of community service.

For:

House Bill 4655 would clear up a problem that has appeared since the 1988 amendments to the penal code. Some attorneys for people charged with cock fighting apparently have argued that the 1988 changes indicate that the legislature intended to legalize cock fighting. The bill would clarify that the penal code's prohibitions apply to all animal fights, not just those involving dogs.

For:

House Bill also would recognize that many people legitimately own dogs belonging to breeds that historically had been bred to fight, but which, after several generations of breeding for show and companionship rather than fighting, no longer retain their aggressive traits. (It would do this by applying the current prohibition against breeding and owning "the offspring" of dogs that have been trained or used for fighting to apply instead only to the first or second generation offspring of such dogs.)

Response:

As written testimony submitted by an animal control officer points out, "Over a century of breeding for bull-baiting and fighting has had a profound effect on the genetics of many of these breeds. These effects have, to some extent, been counteracted by a shorter history of selection for qualities that might make these animal suitable as household companions, [but] the extent to which the original temperaments of these breeds has been altered by breeding is often difficult to predict."

Against:

Cock fighting is legal in a number of states and part of the cultural heritage of various countries. But many people who don't enjoy watching two animals fight to the death, nevertheless are not bothered by such practices as the "factory farming" of "food" animals (that is, animals raised solely to be killed and eaten by humans). The lives of many fighting animals is no worse -- and some people would argue considerably better -- than "factory farmed" animals. The conditions under which many domestic chickens are raised, for example, result in lives that are nasty, brutish, and short: chickens are raised in wire cages, in such overcrowded conditions that their beaks must be cut off or they will peck

each other to death. In contrast, fighting cocks are often raised in pampered conditions, fed the best of grains, individually housed, and even allowed to range free at times. In addition to the inhumane conditions found in the worst of factory farming, however, many people see nothing wrong with hunting -- that is, killing animals for sport. Is it only humans that are allowed to kill animals for sport, often after subjecting them to exhausting and terrifying ordeals, such as in fox hunting? Why shouldn't animals (such as game fowl), whose natural instinct is to fight, be allowed to do what comes naturally to them? In a cock fight -- unlike in the case of "food" animals sent for slaughter -- there is a chance that the winner, at least, will live to fight again.

But even where cock fighting isn't enjoyed, game fowl are bred for show and export. The bill, however, would ban and attach heavy penalties to breeding, selling, or exporting animals (including game cocks) for fighting. In doing so, the bill would interfere with people's right to engage in acceptable commerce in game fowl, and undermine efforts to preserve valuable and beautiful breeds of poultry. The bill is overbroad, and should be narrowed at least to clearly allow game fowl breeding, sale, and export, if not to regulate dogs and game fowl entirely separately.

POSITIONS:

The Michigan Humane Society supports the bills. (5-10-95)

The Humane Society of the United States supports the bills. (5-10-95)

The Michigan Association of Animal Control Officers supports the bills. (5-11-95)

The United Kennel Club supports the bills. (5-11-95)

The Michigan Farm Bureau has no position on the bills. (5-10-95)

The Michigan Game Fowl Breeders Association opposes the bills. (5-10-95)