

# Legislative Analysis

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## ANIMAL FIGHTING

### House Bill 5655-5656

Sponsor: Rep. John Espinoza

### House Bill 5668

Sponsor: Rep. Bert Johnson

Committee: Judiciary

Complete to 2-9-10

## A SUMMARY OF HOUSE BILLS 5655-5656 AS INTRODUCED 12-8-09 AND HOUSE BILL 5668 AS INTRODUCED 12-9-09

Each of the bills deals with animal fighting. House Bills 5655 and 5656 would subject the property of a person involved in animal fighting to forfeiture, include animal fighting as a predicate offense for racketeering, and eliminate provisions exempting the primary residence of the owner's spouse from forfeiture and a requirement that county prosecutors reimburse the owner for certain costs if the prosecutor fails to meet the burden of proof in the case. House Bill 5668 would declare a building, vehicle, boat, aircraft, or other place where animal fighting takes place to be a nuisance.

House Bill 5655 would amend the Revised Judicature Act (600.4702) to allow, in the case of a crime involving animal fighting, all real or personal property to be subject to forfeiture if it contributed directly and materially to the commission of the crime, was used to conceal the crime, was used to escape from the scene of the crime, or was used to conceal the identify of one or more of the individuals who committed the crime. Also subject to forfeiture would be real and personal property that are the proceeds of a crime.

House Bill 5656 would amend Chapter 25A of the Michigan Penal Code, entitled "Criminal Enterprises" (750.159g et al.). Under the code, racketeering is defined as committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain that includes any of the listed criminal acts. The bill would amend this list to include a violation of Section 49, concerning animal fighting.

The act allows all real, personal, or intangible property of a person convicted of racketeering that is the proceeds of racketeering activity to be subject to civil in rem forfeiture to a local unit of government or the state. However, this does not apply to real property that is the primary residence of the spouse of the owner unless the spouse had prior knowledge of, or had consented to and participated in commission of, the racketeering activity. The bill would delete this exemption and thus allow the forfeiture of the spouse's principal residences regardless of his or her prior knowledge of, participation in, or consent to the racketeering activities.

The act currently requires a prosecuting attorney to reimburse the owner of forfeited property for reasonable attorney fees and damages related to towing costs, storage fees and expenses, foreclosure costs, and other similar expenses if the prosecuting attorney fails to meet the required burden of proof or if the owner of the property meets his or her burden of proof. The bill would delete this provision.

The bill would also delete a reference to Section 17766a of the Public Health Code concerning androgenic anabolic steroids. The section was repealed by Public Act 236 of 2001 because departmental rules already include certain androgenic anabolic steroids as a Schedule 3 drug and exclude other ones. Further, the bill contains a provision regarding a violation of Section 508 of the Uniform Securities Act, which was added by Public Act 551 of 2008.

House Bill 5668 would amend the Revised Judicature Act. It amends the section that declares places to be a nuisance if certain conduct takes place on the premises. It would add to that list, violations of animal fighting under Section 49 of the Michigan Penal Code.

#### **FISCAL IMPACT:**

House Bill 5655. The bill will have an indeterminate, but likely positive, fiscal impact on state and local governments. The bill would include offenses under MCL 750.49 (animal fighting) as offenses that are subject to property seizure and forfeiture. Under MCL 600.4708, the unit of government that seized or filed a lien against the property may sell the property and dispose of the proceeds in the following order of priority: any security interest; satisfy order of restitution; any claims of victims; outstanding liens; and expenses. The balance remaining after the disposal of the proceeds in the aforementioned order shall be distributed in the following manner: 75% to enhance enforcement of the criminal laws and 25% of the money to implement the crime victim's rights act.

House Bill 5656. The provisions in Section 159g would have an indeterminate impact on state and local correctional systems which would depend on the number and severity of any resulting felony sentences. To the extent that more felons were sentenced to prison or were sentenced to prison for longer terms, the bills could increase state costs of prison incarceration; the average appropriated cost per prisoner is approximately \$33,000 per year, a figure that includes various fixed administrative and operational costs. To the extent that more offenders were sentenced to probation, the state could incur increased supervision costs, with the average annual cost of parole and probation supervision being around \$2,000 per supervised offender, exclusive of the cost of any electronic tether programs. Any increase in jail sentences would be borne by the affected counties; jail costs vary by county. Any increase in penal fine collections could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

In addition, provisions in Sections 159m and 159q would subject real property that is the primary residence of a spouse to forfeiture under the racketeering section and would eliminate the responsibility of county prosecutors to reimburse property owners for

certain costs when the prosecuting attorney fails to meet the burden of proof in a property forfeiture proceeding due to racketeering. These provisions could reduce local costs and increase local revenues to the extent they become applicable to actual cases.

House Bill 5668 would have an indeterminate fiscal impact on state, local units of government, and courts. Any fiscal impact would be the result of an increase in the number of nuisance actions due to the inclusion of conduct prohibited under MCL 750.49 (animal fighting).

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