

STORAGE NAME: h1533s2.cp

DATE: April 2, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1533

RELATING TO: Cruelty to Animals

SPONSOR(S): Committee on Agriculture and Representative Jacobs

COMPANION BILL(S): SB 980 (s) by Senator Forman

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 7 NAYS 1
 - (2) CRIME AND PUNISHMENT YEAS 7 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The committee substitute creates a new offense by amending s. 828.12, F.S., (Cruelty to animals) to punish a person who conducts, finances, manages, or participates in a commercial animal exhibition in which horses, mules, or donkeys, without human riders are encouraged or required to fall or jump downward a distance of 10 feet or more.

The new offense would be punished as a 1st-degree misdemeanor which carries a maximum jail sentence of 1 year, and specifically authorizes a maximum fine of \$5,000.

The committee substitute amends s. 828.27, F.S., (Local animal control or cruelty ordinances; penalty) by authorizing local governing bodies to punish the violation of a county or municipal ordinance as a 2nd-degree misdemeanor.

The effective date is October 1 of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Animal Exhibitions

Several groups (People for the Ethical Treatment of Animals, North American Saddle Mule Association, Animal Rights Foundation of Florida, Inc., et al) have filed complaints in the past regarding the inhumane treatment of horses, mules, and donkeys who are used in "diving" shows.

According to Greg Sefton, President of the North American Saddle Mule Association, not only is the actual "dive" traumatic to the animal, but the "training" to get the animal to the point of diving is, also, abusive and traumatic. Mr. Sefton reports that cattle prods and stun guns, delivering a shock of 20 to 60 thousand volts, are used to spur the animal up the ramp and off the platform. According to Mr. Sefton, equines have a very unique digestive system which does not allow regurgitation or flatulence. Therefore, it is possible that a high speed belly flop could rupture the stomach or intestines causing a painful death from peritonitis.

Cruelty To Animals

Section 828.12, F.S., describes the offense of cruelty to animals, as unnecessarily overloading, tormenting, killing, transporting in a cruel or inhumane manner, or depriving an animal of necessary sustenance or shelter. The offense is punishable as a 1st-degree misdemeanor (maximum 1 year in jail) and specifically provides for a fine up to \$5,000.

An intentional act which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, is punished as a 3rd-degree felony (maximum 5 years in prison) and specifically provides for a fine up to \$10,000.

Other offenses in this chapter relate to animal fights, poisoning, and unlawful confinement of animals.

Local Ordinances

Section 828.27, F.S. (Local animal control or cruelty ordinances; penalty) gives local governing bodies the authority to pass ordinances relating to animal control or cruelty. The statute further authorizes violations of local ordinances to be punished as civil infractions (max., \$500 fine). Nonetheless, the statute provides that a person who willfully refuses to sign and accept a citation issued by an officer is guilty of a 2nd-degree misdemeanor (max., 60 days jail, and a \$500 fine).

B. EFFECT OF PROPOSED CHANGES:

New Offense

The committee substitute creates a new offense by amending s. 828.12, F.S., (Cruelty to animals) which punishes a person who unnecessarily conducts, finances, manages, or participates in a commercial animal exhibition in which riderless horses, mules, or donkeys are encouraged or required to fall or jump downward a distance of 10 feet or more.

Punishment

The offense is punishable as a 1st-degree misdemeanor which carries a maximum jail sentence of 1 year, and specifically authorizes a maximum fine of \$5,000.

New Authorization To Punish Ordinance As Misdemeanor

The committee substitute amends s. 828.27, F.S. (Local animal control or cruelty ordinances; penalty) to authorize local governing bodies to punish violations of county or municipal ordinances relating to animal control or cruelty as a 2nd-degree misdemeanor.

The maximum penalty allowed for a 2nd-degree misdemeanor is 60 days in jail and a fine of \$500.

Effective Date

The effective date is October 1 of the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. **Less Government:**

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The new law would need to be implemented and enforced.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not Applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment: **Not Applicable.**

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

- (2) Who makes the decisions?

- (3) Are private alternatives permitted?

- (4) Are families required to participate in a program?

- (5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 828.12, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates the offense of cruelty to animals by requiring equines to jump from heights of 10 feet or more; providing punishment.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS: **None.**

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE: **None.**

1. Non-recurring Effects:
2. Recurring Effects:
3. Long Run Effects Other Than Normal Growth:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: **None.**

1. Direct Private Sector Costs:
2. Direct Private Sector Benefits:
3. Effects on Competition, Private Enterprise and Employment Markets:

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to consider this bill, but offers a tentative estimate of **no fiscal impact.**

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 does not apply because the committee substitute pertains to a criminal statute.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the revenue raising authority of any county or municipality.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce any state tax revenues shared with counties and municipalities.

V. COMMENTS:

Prosecution Of Horse Diving Promoters Unsuccessful

Caselaw reveals no successful prosecution of a horse or mule diving promotor. An attempt to enjoin a horse diving exhibition in Manatee County accounts for one of the rare judicial, written opinions on the subject. In State v. Rivers, CA 95-239 (Fla. 12th Cir. Ct. January 25, 1995), the court explained a claim in nuisance was without merit. See, Kiper v. State, 310 So. 2d 42 (Fla. 1st DCA); cert. denied, 328 So. 2d 845 (Fla. 1975). The court further noted that injunctive relief to prevent cruelty to animals was an inappropriate remedy in the wake of unsuccessful criminal prosecutions.

[T]o grant the requested relief would counteract the constitutional principle of separation of powers. Enacting laws and setting public policy are the task of the Legislature, which is accountable to its constituents. Diving exhibits by equine animals have been performed in this country since the late 1800's and in this state since 1957. The Florida Legislature has met annually during that time and has amended Chapter 828 [cruelty to animals] numerous times. The court must assume that the Legislature has not yet seen fit to amend Chapter 828 to include diving exhibitions by equine animals. White v. Johnson, 59 So. 2d 532 (Fla. 1952).

Id., at p. 3.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill passed the Committee on Crime and Punishment on April 1, 1998, with two amendments. The first amendment further defined riderless horses as being those horses without human riders. The second amendment gave local governing bodies the authority to punish violations of ordinances relating to animal control and animal cruelty as a 2nd-degree misdemeanor.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Legislative Research Director:

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