

STORAGE NAME: h3675a.leps

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3675

RELATING TO: Cruelty to Animals

SPONSOR(S): Representative Melvin

COMPANION BILL(S): SB 2104(s)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 5 NAYS 0
 - (2) AGRICULTURE
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill redefines the term "dangerous dog". Under the bill, the current requirement that a dangerous dog has "more than once" severely injured or killed a domestic animal while off the owner's property is amended to require that such dog has acted "without provocation".

Under the bill, a dog that has not been declared dangerous and attacks any human may be confiscated. The bill also provides that an owner that disregards a dog's dangerous propensities is guilty of a misdemeanor of the second degree.

The bill provides that a person who has been convicted of, or has adjudication withheld for, cruelty to animals shall immediately forfeit for adoption or euthanasia (as appropriate) all domestic animals in his or her possession which were the subject of the violation (as determined by the arresting officer or state attorney) to the municipal, county, or local humane society.

Under the bill, if a person previously convicted of, or had adjudication withheld for, cruelty to animals is found in possession of any domestic animal, he/she is guilty of a misdemeanor of the first degree unless: (1) the person shows proof that he or she has obtained a court order allowing possession of domestic animals. A court may issue an order allowing possession of domestic animals upon a showing that the domestic animals will be well treated or, (2) the person possesses domestic animals for sale or resale, or for the sale of a byproduct thereof, is properly licensed, and receives at least thirty percent of his or her annual gross income by these means. The bill provides that nothing in exception (2) prohibits a court from ordering a person not to possess a domestic animal as a condition of probation.

The bill also provides that all wildlife which were the subject of a violation for cruelty to animals be immediately forfeited for adoption or euthanasia to the Florida Game and Fresh Water Fish Commission. The authorization to possess wildlife shall be determined by said Commission.

The bill provides that this act shall take effect on July 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Definition of "Animal" vs "Domestic Animal"

Section 828.02, F.S., defines "animal" as any living dumb creature.

Section 585.01(10), F.S., defines "domestic animal" as:

Any equine or bovine animal, goat, sheep, swine, domestic cat, dog, poultry, ostrich, emu, rhea, or other domesticated beast or bird.

Definition of the Term "Dangerous Dog"

Section 767.11, F.S., currently defines a "dangerous dog" as a dog that, according to the records of the proper authority:

(a) Has aggressively bitten, attacked, or endangered or has inflicted severe injury on a human being on public or private property;

(b) Has more than once severely injured or killed a domestic animal while off the owner's property;

© Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting; or

(d) Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

Penalties For a Dog Owner That Disregards the Dog's Dangerous Propensities

Section 767.13(2), F.S., currently provides that: "If a dog that has not been declared dangerous attacks and causes severe injury to or death of a human, the dog shall be confiscated."

Section 767.13(2), F.S., also currently provides that: "... if the owner of the dog had prior knowledge of the dog's dangerous propensities, yet demonstrated a reckless disregard for such propensities under the circumstances, the owner of the dog is guilty of a misdemeanor of the second degree."

Cruelty To Animals

The statutes defining "cruelty to animals" have been challenged as being unconstitutionally vague. However, the court has upheld the statutes, holding that the relevant provisions "convey sufficiently definite warnings of the proscribed conduct when measured by common understanding and practice." State v. Wilson, 464 So.2d 667 (Fla.App 2 Dist. 1985). Cruelty to animals includes affirmative acts (beatings, whippings, etc..) as well as failures to act (neglect in feeding, exercise, etc..). 6 ALR 5th

s.733. There is no specific intent needed to commit the crime of cruelty to animals, only a general intent with malice. Id.

Forfeiture Of Animals

Section 828.073, F.S., already provides the basis for the forfeiture of animals in order to prevent cruelty to animals:

(2) Any law enforcement officer or any agent of any county or of any society or association for the prevention of the cruelty to animals appointed under s. 828.03, F.S. may:

(a) Lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location, or

(b) Order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location and shall forthwith petition the judge wherein the animal is found for a hearing...

If an individual has an animal seized from his possession, as authorized in s. 828.073, F.S., there are several listed considerations the court may consider in determining a person's fitness to have custody of an animal. If the court determines that the owner is unable or unfit to adequately provide for animals, the court may also order that other animals in the custody of the owner be seized.

Who Pays Costs Associated With Forfeiture?

The removal of an animal from the owner, merely takes from him or her the right to custody, and does not affect the ownership interest. Therefore, if an animal is seized and later resold, any proceeds from the sale, after covering the costs incurred by the agency, must be used to reimburse the owner for the price of his animal. Otherwise, the agency has been unjustly enriched. Standifer v. Metropolitan Dade County, 519 So.2d 53 (Fla.App. 3 Dist. 1988).

Section 828.073(4)(a)(3), F.S., provides that: "Upon proof of costs incurred by the agent or officer, the court may require that the owner pay for the care of the animal while in the care or custody of the agent or officer."

The "Possession" of Animals

The possession of an animal is usually defined as having personal charge of, or exercising the right of ownership, management, or control over the animal in question.

Euthanasia of Animals

Euthanasia of dogs and cats may only be performed by a licensed veterinarian or an employee or agent of a facility that is operated for the collection and care of stray, neglected, abandoned, or unwanted animals provided the individual has successfully completed a sixteen hour euthanasia certification course. Sodium pentobarbital is the

preferred agent used in the euthanasia of animals as it has been clinically proven to be humane. S. 828.058, F.S.

The rules for the performance of Euthanasia do not apply when the animal is suffering from an incurable or untreatable condition, or is imminently near death. In these instances, the animal may be destroyed without unconscionable delay in a humane and proficient manner. S. 828.05(1), F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill amends **s. 767.11, F.S.**, to redefine the term "dangerous dog". Under the bill, a dangerous dog does not have to severely injure or kill a domestic animal while off the owner's property on "more than one occasion". Instead, the bill provides that an attack must only occur "without provocation."

The bill amends **s. 767.13, F.S.**, to provide that a dog that has not been declared dangerous no longer has to cause severe injury or death to a human in order to be confiscated. Under the bill, an attack is all that is required. The bill also makes the confiscation of said dog optional by replacing "shall", with "may". The bill also provides that it is a second-degree felony for a person to disregard the dangerous propensities of a dog. Previously, a reckless disregard was required to be convicted.

The bill amends **s. 828.12, F.S.**, to provide that a person who has been convicted of, or has adjudication withheld for, cruelty to animals shall immediately forfeit for adoption or euthanasia (as appropriate) all domestic animals in his or her possession which were the subject of the violation (as determined by the arresting officer or state attorney) to the municipal, county, or local humane society.

Under the bill, if a person previously convicted of, or had adjudication withheld for, cruelty to animals is found in possession of any domestic animal, he/she is guilty of a misdemeanor of the first degree unless: (1) the person shows proof that he or she has obtained a court order allowing possession of domestic animals. A court may issue an order allowing possession of domestic animals upon a showing that the domestic animals will be well treated or, (2) the person possesses domestic animals for sale or resale, or for the sale of a byproduct thereof, is properly licensed, and receives at least thirty percent of his or her annual gross income by these means. The bill provides that nothing in exception (2) prohibits a court from ordering a person not to possess a domestic animal as a condition of probation.

The bill amends **s. 828.12, F.S.**, to provide that all wildlife which were the subject of a violation for cruelty to animals be immediately forfeited for adoption or euthanasia to the Florida Game and Fresh Water Fish Commission. The authorization to possess wildlife shall be determined by said Commission.

The bill provides that this act shall take effect July 1, 1998.

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?

No.

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

No.

b. If an agency or program is eliminated or reduced:

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

N/A

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

N/A

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

N/A

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:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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:

SS 767.11, 767.13, 828.12, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: The bill amends s. 767.11, F.S., to redefine the term "dangerous dog".

Section 2: The bill amends s. 767.13, F.S., provide penalties for a dog owner that disregards the dog's dangerous propensities.

Section 3: The bill amends s. 828.12, F.S., to provide for the mandatory forfeiture of animals by persons found guilty of (or having adjudication withheld for) cruelty to animals. The bill provides that it is a first degree misdemeanor penalty for unlawful possession of an animal in violation of this act unless the possession falls under one of the exceptions listed.

Section 4: The bill provides that this act shall take effect July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is not subject to the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

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

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was adopted on April 1, 1998, and the changes are reflected herein.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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