

STORAGE NAME: h0379s1.cj

DATE: April 19, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 379

RELATING TO: Sale of Dog and Cat Fur

SPONSOR(S): Committee on Crime & Punishment and Representative Russell

COMPANION BILL(S): SB 1262 (I)

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

- (1) AGRICULTURE YEAS 10 NAYS 0
 - (2) CRIME AND PUNISHMENT YEAS 5 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 379 prohibits the sale or purchase of dog and cat furs and pelts as follows:

- The committee substitute provides that it is a first degree misdemeanor for any person to knowingly sell any garment which contains dog or cat fur.
- The committee substitute provides that it is a first degree misdemeanor for any person to knowingly sell or give away the pelt of a dog or cat.
- The committee substitute provides that it is a third degree felony for any person to knowingly engage in the business of a dealer or buyer in the pelts or furs of any dog or cat or to purchase such pelts or furs within the state. Also, no common carrier shall knowingly ship any dog or cat furs or pelts.
- The committee substitute provides that it is a third degree misdemeanor for any person to kill a dog or cat with the sole intent of selling or giving away the pelt of the animal.
- The committee substitute provides that a person who possesses, imports, sells, buys, gives away, or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat commits a first degree misdemeanor.
- The committee substitute provides that a person who possesses, imports, sells, buys, gives away, or accepts any dog or cat with the sole intent of killing the dog or cat for the purpose of selling the pelt of the dog or cat commits a third degree felony.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Humane Society of the United States has reported that garments made from the fur of domesticated dogs and cats are being produced in Asia and marketed in the United States. These products consist of coats, jackets, fur-trimmed garments, and animal figurines.

Presently, Florida has no laws regarding the sale of garments containing dog or cat fur, the possession, sale or purchase of dog or cat pelts, or the killing of dogs or cats for the sole purpose of selling or giving away the pelt. California, Pennsylvania and Georgia currently have statutes which prohibit the trafficking of dog or cat furs or pelts.

Cruelty to Animals

Chapter 828 of the Florida Statutes deals generally with treatment of animals. Section 828.12 prohibits cruelty to animals as follows:

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or both.

Confinement of Animals

Section 828.13(2) prohibits the confinement of animals without sufficient food, water or exercise as follows:

(2) Whoever:

(a) Impounds or confines any animal in any place and fails to supply the animal during such confinement with a sufficient quantity of good and wholesome food and water,

(b) Keeps any animals in any enclosure without wholesome exercise and change of air, or

(c) Abandons to die any animal that is maimed, sick, infirm, or diseased,

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or by both imprisonment and a fine.

Fur and Hide Dealers

Section 372.66 provides that it is unlawful for any person to engage in the business of a dealer or buyer in alligator skins or green or dried furs until such person has been licensed as provided in the section.

B. EFFECT OF PROPOSED CHANGES:

Sale of Garments Containing Dog and Cat Fur

The committee substitute creates section 828.1231 which provides that it is unlawful for any person to knowingly sell or offer for sale in this state any garment containing dog or cat fur. The section also makes it unlawful for any person to knowingly sell or offer for sale or to give away the pelt of any dog or cat. Violations of these provisions constitute a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in jail. A second or subsequent conviction for a violation of these provisions constitutes a third degree felony. A third degree felony is punishable by a term of imprisonment not exceeding five years. The committee substitute also provides that any law enforcement agency, or humane officer as defined in s. 828.03 may institute proceedings in the appropriate circuit court to enforce compliance with the provisions of this section. The department may seek a civil penalty of up to \$5,000 for each violation.

Dealing in the Business of Buying Pelts or Furs

This committee substitute also creates section 828.123 which prohibits the killing of any dog or cat with the sole intent of selling or giving away the pelt. A violation of this provision is a third degree felony punishable by a fine of not more than \$10,000 or by both imprisonment and a fine.

This section also provides that a person who "possesses, imports into this state, sells, buys, gives away, or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat" commits a first degree misdemeanor. This provision is punishable by a definite term of imprisonment not exceeding one year or by a fine of \$5,000 or by both imprisonment and a fine.

The section also prohibits the possession, importation into the state, selling, buying, giving away, or accepting of any dog or cat with the sole intent of killing such dog or cat, or having such dog or cat killed, for the purpose of selling or giving away the pelt of such animal. A violation of this provision is punishable by a term of imprisonment not exceeding 5 years or by a fine of not more than \$10,000 or by both imprisonment and a fine.

This section further provides that it is unlawful for any person to engage in the business of a dealer or buyer in the pelts or furs of any dog or cat in the state or to purchase such pelts or furs within the state. The section also prohibits a common carrier from knowingly shipping or transporting any dog or cat pelts or furs within the state. Violations of these provisions constitute a third degree felony.

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. Once the law is in place, violations will create more work for law enforcement agencies and the circuit courts.

(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?

N/A

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?

- 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?

- (2) service providers?

- (3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Section 372.66, Chapter 501, and Chapter 828, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Prohibits killing a cat or dog with the sole purpose of selling or giving away the pelt. Prohibits person from engaging in the business of a dealer or buyer in the pelts or furs of any dog or cat in the state. Prohibits common carrier from knowingly shipping or transporting any dog or cat fur within the state.

Section 2: Prohibits sale of garments or items containing dog or cat fur. Prohibits the sale of a pelt of any dog or cat.

Section 3: Provides that bill should take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not yet met to determine the prison bed impact of this bill. The analysis provided by the Department of Corrections states: "This is a new crime, its anticipated frequency is unknown. However, given the nature of the offense it is likely to have insignificant impact, as do all other animal related felonies."

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

In Chicone v. State, 684 So.2d 736 (Fla. 1996), the defendant was charged with possession of cocaine and claimed that he had been unaware that the substance he possessed was cocaine. The possession statute provides that it is unlawful for any person to be in actual or constructive possession of a controlled substance. The Florida Supreme Court held that the State was required to prove that the defendant knew of the illicit nature of the items in his possession. Further, in Jenkins v. State, 694 So.2d 78 (Fla. 1st DCA 1997), the First District Court of Appeal ruled that guilty knowledge is an essential element of the offense of sale of cocaine. The committee substitute contains the word "knowing" in several sections. Thus, in order to convict a person under the sections created by this committee substitute, the State will have to prove that the person who bought or sold the dog or cat pelt or the garment containing dog or cat fur did so with knowledge that the fur or pelt was cat or dog and not another animal.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Agriculture

Five amendments were introduced at the meeting of the Committee on Agriculture on March 17, 1999. The first amendment amends the section of the bill which prohibits the sale of garments containing dog or cat fur to provide that any law enforcement officer or humane officer rather than the Department of Agriculture may institute proceedings to enforce compliance.

The second and third amendments removes the language providing that it is unlawful for any person to engage in the business of a dealer or a buyer in pelts or furs and the language providing that no common carrier shall knowingly ship or transport any dog or cat pelts from Chapter 372 and places it in Chapter 828.

Amendments 4 and 5 remove the section of the bill which prohibits the sale of garments or items of clothing containing dog or cat fur from Chapter 501 and places it in Chapter 828.

Committee on Crime and Punishment

Four amendments were introduced at the April 5, 1999 meeting of the Committee on Crime and Punishment. The amendments placed the word "knowingly" in four different sections of the bill. The amendments were intended to require the State to prove that the seller or buyer acted with intent to sell or buy cat or dog fur. The bill with the five traveling amendments and four amendments adopted by the Committee on Crime and Punishment was made a committee substitute.

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VII. SIGNATURES:

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