

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 200

INTRODUCER: Senator Hukill

SUBJECT: Animals Confined in Unattended Motor Vehicles

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 200 creates a new misdemeanor offense applicable when a person intentionally, knowingly, or recklessly confines an animal in an unattended motor vehicle under conditions that endanger the health or well-being of the animal due to:

- Heat;
- Cold;
- Lack of adequate ventilation;
- Lack of food or water; or
- Other circumstances that could reasonably be expected to cause suffering, disability, or death of the animal.

The bill provides that an authorized individual, defined in the bill, may not be held criminally or civilly liable for actions taken under the provisions of the bill.

The term “authorized individual” is defined as a law enforcement officer, an animal control officer, a firefighter, a first responder, or any individual who has contacted the local law enforcement agency, fire department, or 911 operator and has been instructed by such entity to use reasonable force to remove an animal from a motor vehicle.

The authorized individual may use whatever means are reasonably necessary to remove an animal that appears to be in immediate danger under the circumstances described above, after making a reasonable effort to locate the responsible party.

If the authorized individual extracts the animal from the vehicle, he or she must leave written notice on or in the vehicle and must take the animal to an animal shelter, place of safekeeping, or to a veterinary hospital.

The bill does not apply to the transportation of horses, cattle, pigs, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

The act is called the “Protecting Animal Welfare and Safety Act” or “P.A.W.S. Act.” It becomes effective on July 1, 2016.

II. Present Situation:

Data shows that the temperature in an unattended vehicle can rise sharply, even when the weather is relatively cool.¹ In a study conducted when the outdoor temperature was ninety degrees Fahrenheit or more, 75 percent of the internal temperature rise occurred in an unattended vehicle within *five minutes* of closing the vehicle doors, and the temperature rise was maximized (between 124-153 degrees Fahrenheit) within fifteen minutes.² In a study conducted when the outside air temperature was seventy-two degrees Fahrenheit, the internal vehicle temperature reached 117 degrees Fahrenheit within sixty minutes, with 80 percent of that temperature rise occurring within the first thirty minutes of shutting the vehicle doors.³

There are nineteen states throughout the nation that prohibit leaving an animal unattended and confined in a vehicle under circumstances that pose a risk to the animal’s welfare.⁴ Florida law generally prohibits behavior that is cruel to animals;⁵ however, there is no prohibition against leaving an animal unattended and confined in a motor vehicle, even under dangerous conditions.

Good Samaritan Act

The “Good Samaritan Act” (GSA), codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.⁶
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.⁷

¹ Jan Null, *Heatstroke Deaths of Children in Vehicles*, DEPARTMENT OF METEOROLOGY & CLIMATE SCIENCE, SAN JOSE STATE UNIVERSITY, <http://noheatstroke.org/> (last visited November 6, 2015); Catherine McLaren et al., *Heat Stress from Enclosed Vehicles: Moderate Ambient Temperatures Cause Significant Temperature Rise in Enclosed Vehicles*, 116 PEDIATRICS 109, 109 (2005).

² McLaren, *supra* note 1, at 109.

³ McLaren, *supra* note 1, at 111.

⁴ ARIZ. REV. STAT. ANN. §13-2910(A)(7); CAL. PENAL CODE §597.7; DEL. CODE ANN. tit. 11, §1325; ILL. COMP. STAT. 70/7.1; ME. REV. STAT. §4019; MD. CODE ANN. TRANSP. §21-1004.1; MINN. STAT. ANN. §346.57; NEV. REV. STAT. §574.195; N.H. REV. STAT. ANN. §644:8-aa; N.J. STAT. ANN. §4:22-26; N.Y. AGRIC. & MKTS. LAW §353-d; N.C. GEN. STAT. §14-363.3; N.D. CENT. CODE §36-21.2-12; R.I. GEN. LAWS §4-1-3.2; S.D. CODIFIED LAWS §40-1-36; TENN. CODE ANN. §29-34-209; VT. STAT. ANN. tit. 13, §386; WASH. REV. CODE §16.52.340; and W. VA. CODE §61-8-19.

⁵ Section 828.12, F.S.

⁶ Section 768.13(2)(a), F.S.

⁷ Section 768.13(2)(d), F.S.

- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.⁸

While the GSA provides immunity from civil liability for damages arising out of any care or treatment rendered, it does not specifically address immunity from liability for property damage related to the rendering of emergency care or treatment, such as the forcible entry of a motor vehicle to rescue an endangered animal.

Criminal Penalties Associated with Entering Another’s Motor Vehicle

Trespass in a conveyance is defined in s. 810.08(1), F.S., as: whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance. The offense is a second degree misdemeanor.

Criminal mischief is committed if a person willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, acts of vandalism. Criminal mischief varies in severity depending on the value of the damage caused.⁹ Criminal mischief is punishable as follows:

- Second degree misdemeanor¹⁰ if the damage is \$200 or less;
- First degree misdemeanor¹¹ if the damage is more than \$200 but less than \$1,000; or
- Third degree felony¹² if the damage is \$1,000 or greater.¹³

The term “malicious” is used in various sections of statute,¹⁴ but is never defined. The term is defined in the dictionary as “having or showing a desire to cause harm to another person.”¹⁵ Absent a statute providing criminal immunity for breaking into a vehicle to retrieve a distressed animal, an individual who breaks into a vehicle in these circumstances could be prosecuted for trespass or criminal mischief.

Florida law does not currently provide any immunity from criminal charges associated with forcibly entering a vehicle to remove a distressed animal that is inside the vehicle.

III. Effect of Proposed Changes:

The bill makes it a first degree misdemeanor for any person to intentionally, knowingly, or recklessly confine an animal in an unattended motor vehicle under conditions that endanger the health or well-being of the animal due to:

⁸ Section 768.13(3), F.S.

⁹ Section 806.13(1)(a), F.S.

¹⁰ A second degree misdemeanor is punishable by up to sixty days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹² A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹³ Section 806.13(1)(b), F.S.

¹⁴ See, e.g., ss 57.085, 104.271, 106.265, 255.25, 365.172, 427.727, 628.6013, 934.21, and 1012.85, F.S.

¹⁵ MERRIAM-WEBSTER, *Malicious*, <http://www.merriam-webster.com/dictionary/malicious> (last visited Nov. 5, 2015).

- Heat;
- Cold;
- Lack of adequate ventilation;
- Lack of food or water; or
- Other circumstances that could reasonably be expected to cause suffering, disability, or death of the animal.

The bill contains a provision specifying that the bill does not preclude prosecution for any other criminal offense.

The bill provides that an authorized individual may use whatever means are reasonably necessary to remove an animal that appears to be in immediate danger under the circumstances described above, after making a reasonable effort to locate the responsible party.

If the authorized individual extracts the animal from the vehicle, he or she must leave written notice on or in the vehicle and must take the animal to an animal shelter, place of safekeeping, or to a veterinary hospital.

An authorized individual may not be held criminally or civilly liable for actions taken while carrying out the provisions of the bill.

The bill provides the following definitions:

- “Authorized individual” means a law enforcement officer, an animal control officer, a firefighter, a first responder, or any individual who has contacted the local law enforcement agency, fire department, or 911 operator and has been instructed by such entity to use reasonable force to remove an animal from a motor vehicle pursuant to this section.
- “Motor vehicle” has the same meaning as in s. 316.003, F.S.¹⁶

The bill does not apply to the transportation of horses, cattle, pigs, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

The act is called the “Protecting Animal Welfare and Safety Act” or “P.A.W.S. Act.” It becomes effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ MOTOR VEHICLE.—Except when used in s. [316.1001](#), a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, swamp buggy, or moped. s. 316.003(21), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate economic impact on vehicle owners and insurance companies where a vehicle is damaged by a person authorized by the bill to break into the vehicle if necessary to rescue an endangered animal.

C. Government Sector Impact:

The bill creates a new first degree misdemeanor therefore local jails may experience some fiscal impact.

VI. Technical Deficiencies:

The definition of “authorized individual” includes law enforcement officers, firefighters, and other professionals, without providing a definition of such terms. Including statutory cross-references for such professionals will prevent the possibility of ambiguity.

The bill provides that this section does not preclude the prosecution of animal cruelty under s. 828.12, F.S. This provision is unnecessary because prosecution under the provisions of this bill and s. 828.12, F.S., or any other crime, would be constitutionally permissible regardless of the provision in the bill declaring it so.

The bill attempts to create an exemption for the transportation of specified agricultural animals in motor vehicles designed to transport such animals for agricultural purposes. However, a close read of the bill reveals that only transportation of such animals is not prohibited by the bill. Clarifying language is needed to clearly indicate an exemption from the provisions of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 828.075 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
