

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 329 Animals Confined in Unattended Motor Vehicles

SPONSOR(S): Criminal Justice Subcommittee; Cortes, B.

TIED BILLS: None **IDEN./SIM. BILLS:** SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N, As CS	Keegan	White
2) Judiciary Committee			

SUMMARY ANALYSIS

Over the past several years, there have been a number of reported tragedies involving children and animals left to die in unattended vehicles. Studies have shown that the temperature in an unattended vehicle can rise sharply, even when the weather is relatively cool. In fact, temperatures have been measured at deadly levels within five minutes of closing the doors of a vehicle.

A “good samaritan” that forcibly enters a motor vehicle to rescue an endangered animal is immune from civil liability arising out of the treatment or care that is rendered. However, under current law, the good samaritan can be both criminally and civilly liable for the damage caused to the vehicle, and criminally liable for the act of forcibly entering the vehicle.

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 specified conditions that endanger the health or well-being of the animal. An authorized individual who carries out the provisions of the bill, such as removing an endangered animal from a vehicle, may not be held criminally or civilly liable for damages arising from such act.

The bill provides definitions of key terms and an exception for the transportation of specified agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

The bill may have an economic impact on local governments because the bill creates a new first degree misdemeanor, and thereby may increase the need for jail beds.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Over the past several years, there have been a number of reported tragedies involving children and animals left to die in unattended vehicles. 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
- 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

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 s. 828.12, F.S.

⁶ s. 768.13(2)(a), F.S.

⁷ s. 768.13(2)(d), F.S.

⁸ s. 768.13(3), F.S.

Criminal mischief is to willfully and maliciously injure or damage 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 criminal mischief.

Tampering with or interfering with a motor vehicle or trailer is to willfully, maliciously, intentionally, or otherwise interfere with any motor vehicle or trailer of another, without authority, which results in the cargo or contents becoming unloaded or damaged, or which results in the mechanical functions of such motor vehicle or trailer becoming inoperative or impaired.¹⁶ A first offense of tampering with or interfering with a motor vehicle or trailer is punishable as a second degree misdemeanor, and a second or subsequent conviction for the offense is punishable as a first degree misdemeanor.¹⁷

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

Effect of the Bill

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:

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

An authorized individual may use whatever means are reasonably necessary to remove the animal, after making a reasonable effort to locate the responsible party, and if the animal appears to be in immediate danger. An authorized individual 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 an exception for the transportation of horses, cattle, pigs, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

The bill provides the following definitions:

- “Authorized individual” means a first responder as defined in s. 125.01045, F.S., an animal control officer as defined in s. 828.27, F.S., or any individual who has contacted the local law

⁹ s. 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 s. 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).

¹⁶ s. 860.17, F.S.

¹⁷ *Id.*

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.

B. SECTION DIRECTORY:

Section 1. Citing the act as the “Protecting Animal Welfare and Safety Act” or “P.A.W.S. Act.”

Section 2. Creating s. 828.075, F.S., relating to animals confined in unattended motor vehicles.

Section 3. Providing that the bill is effective October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill creates a new first degree misdemeanor, and thereby may increase the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate economic impact on vehicle owners and insurance companies. The extent of damage caused by a good samaritan will depend on many factors, such as the age and make of the damaged vehicle.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2016, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorable as a committee substitute. Together, the amendments:

- Clarify the definition of “authorized individual”;
- Clarify prohibited circumstances for an animal to be left unattended;
- Remove unnecessary language precluding prosecution for criminal acts; and
- Change the effective date from July 1, 2016 to October 1, 2016.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.