

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 379 Animal Welfare  
**SPONSOR(S):** Business & Professions Subcommittee, Killebrew and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

### SUMMARY ANALYSIS

Current law governing the practice of veterinary medicine provides protections for the medical records and medical condition of veterinarian patients. Specifically, the law prohibits medical records from being furnished to any person other than the client, the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. This also applies to discussing the medical condition of a patient.

The law allows "such records" to be furnished without written authorization only as follows:

- to the entity that procured or furnished the examination or treatment, with the client's consent;
- in any civil or criminal action, upon the issuance of a subpoena only and with notice to the client; and
- for statistical and scientific research, if the identity of the client is protected.

The law does not allow a veterinarian to discuss the medical condition of a patient related to suspected criminal violations without the client's authorization.

The bill authorizes a veterinarian to report suspected criminal violations relating to dogs and cats, without notice to or authorization from the client, to a law enforcement officer, an animal control officer, or an approved animal cruelty investigator.

The bill prohibits the report from including written medical records except upon the issuance of a court order.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In 1979, the Legislature determined that minimum requirements for the safe practice of veterinary medicine were necessary to protect public health and safety.<sup>1</sup> The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on veterinary medical practice.<sup>2</sup>

A veterinarian is a health care practitioner licensed by the board to engage in the practice of veterinary medicine in Florida<sup>3</sup> and subject to disciplinary action from the board for various violations of the practice act.<sup>4</sup>

The practice of “veterinary medicine” is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.<sup>5</sup>

A “patient” is any animal for which the veterinarian practices veterinary medicine.<sup>6</sup>

A “veterinarian/client/patient relationship” is one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.<sup>7</sup>

##### **Animal Cruelty Violations**

Under Florida law, the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal,
- Depriving any animal of necessary sustenance or shelter,
- Unnecessarily mutilating any animal,
- Killing any animal, or
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.<sup>8</sup>

Animal cruelty is a first-degree misdemeanor, punishable by up to one year in the county jail and a \$1,000 fine.<sup>9</sup>

A person commits aggravated animal cruelty, a third-degree felony,<sup>10</sup> by intentionally committing an act to an animal, or failing to act if the person is the owner having custody and control of the animal, and such action or omission results in:

- The cruel death of the animal, or
- The excessive or repeated infliction of unnecessary pain or suffering on an animal.<sup>11</sup>

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<sup>1</sup> See s. 474.201, F.S.

<sup>2</sup> See ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

<sup>3</sup> See s. 474.202(11), F.S.

<sup>4</sup> Ss. 474.213 & 214, F.S.

<sup>5</sup> See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

<sup>6</sup> S. 474.202(8), F.S.

<sup>7</sup> S. 474.202(12), F.S.

<sup>8</sup> S. 828.12(1), F.S.

<sup>9</sup> SS. 775.082 and 775.083, F.S.

<sup>10</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. SS. 775.082 and 775.083, F.S.

<sup>11</sup> S. 828.12(2), F.S.

Aggravated animal cruelty carries minimum mandatory sanctions of a \$2,500 fine and psychological testing or anger management for a first conviction,<sup>12</sup> and a \$5,000 fine and six months of incarceration for a second or subsequent conviction.<sup>13</sup> A person convicted of a second or subsequent time of aggravated animal cruelty is ineligible for any form of early release, including gain time.<sup>14</sup>

All 50 states now have felony provisions for serious crimes against dogs and cats. The FBI tracks these crimes via the National Incident-Based Reporting System.<sup>15</sup>

## **Animal Cruelty and Human Behavior**

According to the Humane Society of the United States, animal cruelty is a serious problem that results in the abuse of thousands of dogs and cats each year.<sup>16</sup> There are approximately 70 million pet dogs and 74 million pet cats in the U.S. It is difficult to determine the exact number of abuse cases because of an absence of a national tracking system available to veterinarians. However, studies suggest that many veterinarians will encounter animal abuse, neglect, or cruelty during their career.<sup>17</sup>

According to the American Veterinary Medical Association (AVMA), animal abuse and family violence, specifically child maltreatment, are linked. In one study, researchers found that pet abuse had occurred in 88 percent of the families under supervision for physical abuse of their children.<sup>18</sup> The AVMA has found that even witnessing animal abuse can increase the likelihood of someone later committing violent offenses against animals, people, or both. As a result, it has been suggested that increasing the importance of animal abuse as a crime, can help create safer communities by enabling officials to identify people at risk of committing acts of violence.<sup>19</sup>

## **Veterinary Reporting of Animal Cruelty**

Research suggests that overall, veterinarians in the U.S. are unsure of their state laws regarding reporting of animal abuse. As a result, many veterinarians are reluctant to report animal abuse due to concerns regarding possible civil and criminal liability should they fail to make a report as prescribed by law.<sup>20</sup>

Florida's Veterinary Medical Practice Act (Act) contains a confidentiality provision that prohibits veterinarians from discussing a patient's medical condition with anyone except the client, except for a few exceptions such as upon the issuance of a subpoena and for research.<sup>21</sup>

Section 474.2165(4), F.S., of the Act, prohibits veterinary patient medical records from furnishing to any person other than the client, the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. This also applies to discussing the medical condition of a patient.

The law allows "such records" to be furnished without written authorization only as follows:

- to the entity that procured or furnished the examination or treatment, with the client's consent;

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<sup>12</sup> S. 828.12(2)(a), F.S.

<sup>13</sup> S. 828.12(2)(b), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Federal Bureau of Investigation, Tracking Animal Cruelty, <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> (last visited Mar. 26, 2019).

<sup>16</sup> Humane Society of the United States, Animal Cruelty Facts and Stats, <https://www.humanesociety.org/resources/animal-cruelty-facts-and-stats> (last visited Mar. 27, 2019).

<sup>17</sup> Lori R. Kogan, *Survey of attitudes toward and experiences with animal abuse encounters in a convenience sample of US veterinarians*, Journal of the American Veterinary Medical Association, Vol. 250, No. 6, Mar. 15, 2017.

<sup>18</sup> *Supra* note 17.

<sup>19</sup> *Supra* note 19 at 689.

<sup>20</sup> *Id.*

<sup>21</sup> *See* s. 474.2165, F.S.

- in any civil or criminal action, upon the issuance of a subpoena only and with notice to the client; and
- for statistical and scientific research, if the identity of the client is protected.

Veterinarians who violate these provisions are subject to discipline by the Board of Veterinary Medicine. The Act also prohibits veterinarians from reporting or discussing a patient's condition without a subpoena and notice to the client.

However, s. 828.12, F.S., relating to cruelty to animals, provides protections for veterinarians for any decisions made or services rendered relating to animal cruelty. A veterinarian licensed to practice in the state is held harmless from either criminal or civil liability for any decisions made or services rendered related to the animal cruelty laws and such a veterinarian is immune from a lawsuit for his or her part in an investigation of cruelty to animals.

As a result, it appears the immunity provided in the animal cruelty law conflicts with the prohibitions in the Act. At least one court has thrown out evidence obtained from a veterinarian based on this conflict.<sup>22</sup>

In addition, veterinarians appear to be treated differently from other health care providers who are authorized to report certain acts of violence and abuse. Florida law requires anyone who knows or has reasonable cause to suspect that a child<sup>23</sup> or vulnerable adult<sup>24</sup> is being abused or neglected to report such knowledge or suspicion to the appropriate authorities. Thus, health professionals may disclose protected health information to public health authorities or other appropriate government authorities authorized by law to receive reports of child abuse and vulnerable adult abuse.<sup>25</sup>

### **Proposed Changes**

The bill authorizes a veterinarian to report suspected criminal violations relating to a dog or a cat, without notice to or authorization from the client, to a law enforcement officer, an animal control officer, or an approved animal cruelty investigator.

The bill prohibits the report from including written medical records except upon the issuance of a court order.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 474.2165, F.S., authorizing a veterinarian to report suspected criminal violations relating to dogs and cats, to law enforcement officers and animal control agents without notice to or authorization from a client.

Section 2. Provides an effective date of July 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

<sup>22</sup> State v. Milewski, 194 So. 3d 376 (Fla. 3<sup>rd</sup> DCA 2016), reh'g denied (June 3, 2016), review denied, No. SC16-1187, 2016 WL 6722865 (Fla. Nov. 15, 2016).

<sup>23</sup> S. 39.201, F.S.

<sup>24</sup> S. 415.1034, F.S.

<sup>25</sup> See also 45 C.F.R. §164.512(b)(1)(ii) (HIPAA allows covered entities to report protected health information to specified authorities in abuse situations other than those involving child abuse and neglect.)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 March 26, 2019, the Business & Professions Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute removed from the bill:

- The prohibition on financing dogs and cats;
- The authorization that courts include animals in restraining orders for domestic violence;
- The requirement that euthanasia technicians complete continuing education; and
- The requirement that local animal control agencies and humane organizations meet Department of Agriculture and Consumer Services veterinarian inspection requirements.

The staff analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.