

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 851 Animal Cruelty  
**SPONSOR(S):** Moskowitz and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 828.12(1) and (2), F.S., provide the following:

- (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 first degree misdemeanor 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 third degree felony or by a fine of not more than \$10,000, or both.

The bill designates a violation of s. 828.12(1), F.S., as “animal cruelty,” and a violation of s. 828.12(2), F.S., as “aggravated animal cruelty,” and adds a provision specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill amends s. 828.122, F.S., to add “paraphernalia” to the list of items a person is prohibited from owning, possessing, or selling if used in animal fighting or baiting activities. The bill specifies that the terms “equipment” and “paraphernalia” include, but are not limited to:

- A pen, pit, ring, or enclosure;
- A gaff, sparring glove; muff, blade, slasher, or other implement designed to be attached to a bird in the location of its natural spurs;
- A betting slip, a document or record relating to a fight, training and fighting ;literature, or a fight trophy or award; and
- A cat mill, slat mill, treadmill, jenny, rape stand, spring pole, flirt pole, break stick, supplement, drug, or scale when found in combination with or in proximity to any other item listed above.

The bill requires a court, other authority, or jury to consider specified factors when determining whether an object is animal fighting or baiting paraphernalia.

The bill also amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., relating to animal fighting and baiting.

The bill may have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments. See fiscal section.

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Animal Cruelty**

Section 828.12(1) and (2), F.S., provide the following:

- (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 first degree misdemeanor<sup>1</sup> 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 third degree felony<sup>2</sup> or by a fine of not more than \$10,000, or both.<sup>3</sup>

Recently, a circuit judge in the First Judicial Circuit held that, “a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions.”<sup>4</sup> The court also stated, “the confinement of animals without sufficient food, water, or exercise charges are not distinguishable into separate acts merely because of an allegation that individual animals are kept in separate pens.”

##### *Effect of the Bill*

The bill designates a violation of s. 828.12(1), F.S., as “animal cruelty,” and a violation of s. 828.12(2), F.S., as “aggravated animal cruelty.”

The bill adds a new subsection (3) to s. 828.12, F.S. specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

##### **Fighting or Baiting Animals**

Section 828.122(3), F.S., makes it a third degree felony for a person to:

- (a) Bait, breed, train, transport, sell, own, possess, or use any wild or domestic animal for the purpose of animal fighting or baiting; or
- (b) Own, possess, or sell equipment for use in any activity described above.

##### *Effect of the Bill*

The bill amends s. 828.122, F.S., to add “paraphernalia” to the list of items it is unlawful to own, possess, or sell if used in animal fighting or baiting activities. The bill also specifies that the terms “equipment” and “paraphernalia” include, but are not limited to:

- A pen, pit, ring, or enclosure;
- A gaff, sparring glove, muff, blade, slasher, or other implement designed to be attached to a bird in the location of its natural spurs;
- A betting slip, a document or record relating to a fight, training and fighting literature, or a fight trophy or award; and
- A cat mill, slat mill, treadmill, jenny, rape stand, spring pole, flirt pole, break stick, supplement, drug, or scale when found in combination with or in proximity to any other item listed above.

<sup>1</sup> A first degree misdemeanor is punishable by up to one year in county jail. Sections 775.082, F.S.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment. Sections 775.082, F.S.

<sup>3</sup> Section 828.12(2)(a) and (b), F.S., provide increased penalties for violations of subsection (2) when the violation involves knowing and intentional torture of an animal that results in specified injuries, or when the offense is a second or subsequent violation of subsection (2).

<sup>4</sup> *State v. Kervin, Sr.*, Case No. CF 000887A (Fla. 1<sup>st</sup> Cir. Ct. 2012).

In determining whether an object is animal fighting or baiting paraphernalia, the bill requires a court, other authority, or jury to consider the following, in addition to other logically relevant evidence:

- Statements by the owner or by anyone in control of the object concerning its use;
- The proximity of the object, in time and space, to a violation of s. 828.122(3), F.S.;
- The proximity of the object to an animal fight;
- The existence of any blood on the object;
- Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver the object to a person who he or she knows, or should reasonably know, intends to use the object to facilitate a violation of s. 828.122, F.S.;
- Instructions, oral or written, provided with the object concerning its use;
- Descriptive materials accompanying the object which explain or depict its use;
- Any advertising concerning the object's use;
- The manner in which the object is displayed for sale;
- The existence and scope of legitimate uses for the object in the community; and
- Expert testimony concerning the object's use.

### **Racketeer Influenced and Corrupt Organization (RICO) Act**

Florida's RICO Act<sup>5</sup> makes it a first degree felony,<sup>6</sup> ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart.<sup>7</sup>

- For any person. who has with criminal intent. received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- For any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- For any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- For any person to conspire or endeavor to violate any of the above-described provisions.<sup>8</sup>

Section 895.02, F.S., defines the term "racketeering activity," in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S. There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide prosecution.<sup>9</sup>

#### *Effect of the Bill*

The bill amends the definition of "racketeering activity" to include violations of s. 828.122, F.S., relating to animal fighting and baiting.

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

Section 1. Amends s. 828.12, F.S., relating to cruelty to animals.

Section 2. Amends s. 828.122, F.S., relating to fighting or baiting animals; offenses; penalties.

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<sup>5</sup> Sections 895.01 – 895.06, F.S.

<sup>6</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; the defendant's prior criminal history record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

<sup>8</sup> Sections 895.03 and 895.04, F.S.

<sup>9</sup> Section 16.56, F.S.

Section 3. Amends s. 895.02, F.S., relating to definitions.

Section 4. Provides an effective date of July 1, 2013.

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

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

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

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

#### **2. Expenditures:**

The bill clarifies that a person who commits multiple acts of aggravated animal cruelty may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. To the extent judges have been interpreting s. 828.12, F.S., as only permitting a single charge for such acts of aggravated animal cruelty, the bill could have a negative jail bed impact on the Department of Corrections (DOC).

The bill could also have a negative jail bed impact on DOC because it includes violations of s. 828.122, F.S., relating to animal fighting or baiting, in the definition of "racketeering activity." Under the RICO Act, a crime involving racketing activity is a first degree felony ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

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

#### **2. Expenditures:**

The bill clarifies that a person who commits multiple acts of animal cruelty may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. To the extent judges have been interpreting s. 828.12, F.S., as only permitting a single charge for such acts of animal cruelty, the bill could have a negative jail bed impact on local governments.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **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:**

The bill lists a variety of items that qualify as animal fighting or baiting "equipment" or "paraphernalia." None of these terms are defined, nor is it readily apparent what the items are.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**