

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE                              | ACTION              | ANALYST    | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|---------------------|------------|--|
| 1) Criminal Justice Subcommittee       | 12 Y, 0 N, As<br>CS | 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 clarifies that aggravated animal cruelty can result from a person’s *failure* to act. The bill 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 creates s. 828.1615, F.S., making it a second degree misdemeanor for a person to:

- Dye or artificially color animals under 12 weeks of age, or fowl or rabbits of any age;
- Bring dyed or artificially colored animals under 12 weeks of age, or fowl or rabbits of any age, into the state; or
- Sell, offer for sale, or give away as merchandising premiums baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys, or retail premiums.

The first two prohibitions listed above do not apply to animals that are temporarily dyed by agricultural entities for protective health purposes.

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>

In 2009, Florida's 5<sup>th</sup> District Court of Appeal (DCA) reviewed a case in which the trial court held that acts of omission could not be charged as felony animal cruelty.<sup>4</sup> In so ruling, the trial judge observed that the misdemeanor animal cruelty offense specifically referred to depriving an animal of necessary sustenance or shelter and expressed doubt that, given this specific reference to deprivation of sustenance in the misdemeanor section of the statute, that the felony could be committed by depriving the animal of sustenance.<sup>5</sup> Due to procedural reasons, the 5<sup>th</sup> DCA could not overturn the trial court's ruling, but did note in its opinion that the trial court's ruling regarding acts of omission was "dangerously wrong."<sup>6</sup>

Regarding a separate issue, a circuit judge in the First Judicial Circuit recently held that, "a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions."<sup>7</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 clarifies that aggravated animal cruelty can occur when a person who owns or has custody or control of an animal fails to act, and such failure results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done.

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.

##### **Artificially Coloring Animals**

Section 828.161, F.S. (2011), made it a second degree misdemeanor<sup>8</sup> for a person to:

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<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> *Hynes v. State*, 1 So.3d 328 (Fla. 5th DCA 2009).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 330. Since the *Hynes* decision, the 2<sup>nd</sup> DCA held that a defendant's act of systematically depriving his dogs of nourishment was properly charged as felony animal cruelty rather than misdemeanor. *State v. Morival*, 75 So.3d 810 (Fla. 2nd DCA 2011).

<sup>7</sup> *State v. Kervin, Sr.*, Case No. CF 000887A (Fla. 1<sup>st</sup> Cir. Ct. 2012).

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

- Dye or color artificially any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings, or to bring any dyed or colored animal or fowl into this state; or
- Sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys or retail premiums.

This statute was not construed to apply to any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings to be used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

In 2012, House Bill 1197, an omnibus agricultural bill, was enacted.<sup>9</sup> Prior to its passage in the Florida Senate, a floor amendment was adopted which repealed s. 828.161, F.S.<sup>10</sup>

#### *Effect of the Bill*

The bill creates s. 828.1615, F.S., which largely recreates the provisions of former s. 828.161, F.S. The bill makes it a second degree misdemeanor for a person to:

- Dye or artificially color animals under 12 weeks of age, or fowl or rabbits of any age;
- Bring dyed or artificially colored animals under 12 weeks of age, or fowl or rabbits of any age, into the state; or
- Sell, offer for sale, or give away as merchandising premiums baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys, or retail premiums.

The first two prohibitions listed above do not apply to animals that are temporarily dyed by agricultural entities for protective health purposes. The bill prohibits the statute from being construed to apply to any animal that is under 12 weeks of age, or any fowl or rabbit of any age that are used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

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

Florida's RICO Act<sup>11</sup> makes it a first degree felony,<sup>12</sup> ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart:<sup>13</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>14</sup>

<sup>9</sup> Chapter 2012-83, L.O.F.

<sup>10</sup> Amendment barcode number 303390, filed by Senator Bogdanoff on March 6, 2012, adopted by the Florida Senate on March 6, 2012, concurred to by the Florida House of Representatives on March 6, 2012.

<sup>11</sup> Sections 895.01 – 895.06, F.S.

<sup>12</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>13</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>14</sup> Sections 895.03 and 895.04, F.S.

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>15</sup>

#### *Effect of the Bill*

The bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., which makes it a third degree felony for a person to:

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

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

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

Section 2. Creates s. 828.1615, F.S., relating to prohibiting artificial coloring and sale of certain animals.

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:**

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<sup>15</sup> Section 16.56, F.S.  
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**DATE:** 3/13/2013

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:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the provisions amending s. 828.122, F.S., relating to animal fighting or baiting, and created s. 828.1615, F.S., relating to artificially coloring animals. The bill also added a provision to s. 828.12, F.S., clarifying that aggravated animal cruelty can result from a person's failure to act.

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