*Michael J. O'Neill* *Legislative Service Commission*

# H.B. 108

123rd General Assembly
(As Introduced)

**Reps. Tiberi, Brading, Clancy, D. Miller, Taylor, Thomas, Patton, Harris, Grendell, Schuring, Evans, Jolivette**

## BILL SUMMARY


- Prohibits a person from committing specified acts of cruelty upon a companion animal.
- Prohibits a person who owns, harbors, or keeps a companion animal from failing to provide it with specified necessities or from abandoning it.
- Authorizes a law enforcement officer, humane officer, dog warden, assistant dog warden, or other person appointed to act as an animal control officer to impound a companion animal that the officer or warden has reasonable cause to believe is the subject of a violation of the new prohibitions.
- Establishes a procedure by which a court may require a person charged with a violation of any of the new prohibitions either to pay a deposit to cover the cost of the care of the companion animal until the disposition of the charges or to forfeit the animal.
- Provides specific immunities for an impounding agency with respect to claims of third parties to ownership of a forfeited companion animal.


## CONTENT AND OPERATION

### ***Cruelty to animals***

#### ***Existing law***

Existing law prohibits a person from doing any of the following (sec. 959.13(A)):

(1) Torturing an animal, depriving one of necessary sustenance, unnecessarily or cruelly beating, needlessly mutilating or killing, or impounding or confining an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water;

(2) Impounding or confining an animal without affording it during the confinement access to shelter from wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the animal would otherwise become sick or suffer in some other way, except that this prohibition does not apply to animals impounded or confined prior to slaughter. For purposes of this prohibition, "shelter" means a man-made enclosure, windbreak, sunshade, or natural windbreak or sunshade that is developed from the earth's contour, tree development, or vegetation.

(3) Carrying or conveying an animal in a cruel or inhuman manner;

(4) Keeping animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, or feeding cows on food that produces impure or unwholesome milk;

(5) Detaining livestock in railroad cars or compartments longer than 28 hours after they are so placed without supplying them with necessary food, water, and attention, or permitting livestock to be so crowded as to overlie, crush, wound, or kill each other. The law provides one exception (sec. 959.13(B)): upon the written request of the owner or person in custody of any particular shipment of livestock, which must be separate and apart from a printed bill of lading or other railroad form, the length of time in which livestock may be detained in any cars or compartment without food, water, and attention, may be extended to 36 hours without penalty.

The above-described provisions do not prohibit the dehorning of cattle. (Sec. 959.13(B).)

A violation of the above prohibitions against cruelty to animals is a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including, but not limited to, the sale of the animal or livestock. If an animal or livestock is forfeited and sold, the proceeds from the sale first must be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, must be paid to the former owner of the animal. (Sec. 959.99(D).)

All fines collected for violations of the above prohibitions must be paid to the society or association for the prevention of cruelty to animals, if there is a society or association in the county, township, or municipal corporation where the violation occurred (sec. 959.13(C)).

Existing law also prohibits an owner or keeper of a dog, cat, or other domestic animal from abandoning the animal. A violation of the prohibition is a minor misdemeanor. (Secs. 959.01 and 959.99(A).)

***Operation of the bill***

The bill repeals the prohibition against abandoning a dog, cat, or other domestic animal (secs. 959.01 (repealed) and 959.99(A)). The bill retains the other existing prohibitions against cruelty to animals but specifies that those prohibitions do not apply to a "companion animal" (sec. 959.13(D)). It defines a "companion animal" as any dog, any cat, or any other animal kept as a pet or mascot, but not including an animal used in activities that are approved by an institutional animal care and use committee and that are conducted in accordance with federal law, an animal used exclusively as livestock, or a free-roaming wild animal (sec. 959.131(A)(1)).

***Prohibitions regarding a companion animal***

The bill creates the following prohibitions with respect to a companion animal (sec. 959.131(B), (C), and (D)):

(1) It prohibits a person from torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty upon a companion animal (see **COMMENT**).

(2) It prohibits a person who owns, keeps, or harbors a companion animal from failing to provide it with any of the following necessities (the bill states that this prohibition is a strict liability offense for which proof of a culpable mental state is not required):

(a) Sufficient quantities of wholesome food and potable water;

(b) Ventilation and circulation of wholesome air;

(c) Access to shelter from heat, cold, wind, rain, snow, excessive direct sunlight, or other adverse environmental conditions if it is reasonable to expect that without shelter it would become sick or suffer;

(d) Adequate veterinary care to prevent unnecessary or unjustifiable pain or suffering;

(e) Adequate exercise;

(f) A sanitary living area free from excessive accumulated waste, standing water, or debris;

(g) A primary enclosure that has adequate space in which the companion animal may stand up to its full height, stretch out, turn around, and lie down comfortably.

(3) It prohibits a person who owns, keeps, or harbors a companion animal from abandoning it. (The provision replaces the repealed section 951.01, which prohibited the abandonment of domestic animals.)

A violation of (1) or (3), above, is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. A violation of (2), above, is a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense. (Sec. 959.99(E)(1).)

A court may order a person who is convicted of or pleads guilty to a violation of (1), (2), or (3), above, to forfeit to an impounding agency any or all of the companion animals in that offender's ownership or care. The court also may prohibit the offender from owning or caring for companion animals for a specified or indefinite period of time. If the court has reason to believe that the offender suffers from a mental disorder that contributed to the violation, the court may impose as a community control sanction or a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court must order that the person pay the costs of any evaluation or counseling. A fine for a violation of a prohibition in (1), (2), or (3), above, must be paid to the impounding agency that participated in the case. An impounding agency must use all such fine moneys to train its officers and employees to enforce the bill's requirements with respect to companion animals. (Sec. 959.99(E)(2), (3), and (4).)

Under the bill, "impounding agency" means the humane society, animal shelter, or law enforcement agency that, in accordance with the impoundment provisions described in "***Procedure for impounding or otherwise monitoring a companion animal***," below, either has impounded a companion animal or has made regular visits to the place where a companion animal is kept to determine whether it is provided necessities (sec. 959.131(A)(3)).

***Procedure for impounding or otherwise monitoring a companion animal***

The bill authorizes a law enforcement officer, humane officer, dog warden, assistant dog warden, or other person appointed to act as an animal control officer for a county, municipal corporation, or township to impound a companion animal if the officer, warden, or other person has reasonable cause to believe that the companion animal is the subject of a violation of the bill's prohibitions with respect to companion animals and to continue the impoundment during the pendency of charges against the owner or person having custody of the companion animal. If the companion animal is not impounded, the court in which charges are pending with respect to the violation may order the owner or person having custody of the companion animal to provide necessities for the animal until the final disposition of the charges. If the court issues an order of that nature, it also must authorize a law enforcement officer, humane officer, dog warden, assistant dog warden, or other appointed person to regularly visit the companion animal to ascertain whether it is receiving the necessities and to seize and remove it if the owner or other person having custody of the animal does not provide the necessities or if a person treats the animal in a manner that violates the second prohibition, above. (Sec. 959.131(E).)

Not later than 30 days after impounding a companion animal, the impounding agency may file a petition in the court in which charges are pending requesting that the defendant post a deposit to cover the costs of care for the companion animal. The petition must be accompanied by an affidavit that sets forth an estimate of the reasonable expenses (including, but not limited to, the estimated cost of veterinary care, food, and board for at least 30 days) that the agency expects to incur in providing that care. (Sec. 959.131(F)(1).)

The bill requires the court, within ten days after the filing of a petition for the deposit to cover the costs of care for the animal, to hold a hearing on the petition at which the impounding agency must prove that there is probable cause to find that the companion animal was the subject of a violation of one of the bill's prohibitions with respect to companion animals. Upon finding that probable cause of that nature exists, the court must order the defendant either to deposit with the clerk of the court a specified amount of money to cover the cost of care of the companion animal from the date of impoundment until disposition of the charges or to forfeit the companion animal to the impounding agency. The court must set the amount of the deposit after reviewing the agency's estimate of reasonable expenses of care for the animal. If the defendant elects to deposit the requisite amount, the defendant must post the deposit no later than five business days after the hearing, and, if the deposit is exhausted before the final disposition of the case, the court must order the defendant, within five business days after the effective

date of the order, to post another deposit in an amount the court determines to be sufficient to cover the further reasonable expenses the impounding agency will incur in caring for the companion animal.

The court must order the immediate forfeiture of the companion animal to the impounding agency if the defendant does not post the deposit, posts it but not within the time specified by the court, or fails to post an additional deposit ordered by the court within the specified period of time. (Sec. 959.131(F)(2).)

Under the bill, the clerk of the court, upon approval of the court, must release to the impounding agency from the deposit posted by the defendant an amount to compensate the agency for the reasonable expenses that it will incur in caring for the companion animal. Upon the disposition of the criminal charges on which the impoundment is based and upon order of the court, the clerk must refund to the defendant any portion of the deposit that is not necessary to pay the impounding agency's expenses, except that, if the court orders the defendant to pay a fine, the court first must apply any remaining amount of the deposit to the payment of the fine.

If the defendant is acquitted of all charges, the impounding agency must comply with one or both of the following, as applicable:

(1) If the defendant posted a deposit, the impounding agency must reimburse the defendant for the full amount of the deposit.

(2) If the animal was forfeited because the defendant did not timely post the original deposit or the additional amount of the deposit, the impounding agency must return the animal to the defendant. If the animal cannot be returned, the impounding agency must pay to the defendant an amount equal to the value of the animal. (Sec. 959.131(F)(3) and (4).)

Under the bill, a companion animal forfeited to an impounding agency becomes the property of the impounding agency. Upon forfeiture, the impounding agency is immune from liability with respect to any claim of a third party to ownership of the forfeited companion animal. The bill specifies that its provisions do not require an impounding agency to conduct an investigation to determine whether a person other than the person charged with a violation of one of the bill's prohibitions with respect to companion animals claims an interest in an impounded companion animal. It further specifies that an impounding agency is immune from liability for failure to discover a person who may have an ownership interest in a companion animal and who is not known to the agency. (Sec. 959.131(F)(5).)

At any time before or after the filing of a petition for the deposit for care of the animal, an impounding agency may euthanize a companion animal impounded under the bill's provisions upon the determination of a licensed veterinarian that euthanasia is necessary to prevent the companion animal from suffering. If practicable, the impounding agency must notify the owner or custodian of the companion animal prior to its euthanasia. (Sec. 959.131(G).)

## COMMENT

The bill defines "cruelty," "torment," and "torture" to include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief (sec. 959.131(A)(2) by reference to sec. 1717.01(B)--not in the bill).

## HISTORY

| ACTION | DATE | JOURNAL ENTRY |
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| Introduced | 01-28-99 | p. 121 |

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