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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-51, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY
JUDICIAL OVERSIGHT
FINAL ANALYSIS**

BILL #: CS/HB 691 (IDENTICAL TO CS/SB 1002, 1ST ENGROSSED)
RELATING TO: Cruelty to Animals
SPONSOR(S): Council for Competitive Commerce, Representatives Kottkamp and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 7 NAYS 2
- (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 11 NAYS 1
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This act requires that, in a prosecution for felony animal cruelty, if the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that kills, mutilates, or injures the animal, the court must order the defendant to pay a minimum mandatory fine of \$2,500, and complete an anger management treatment program or psychological counseling. A repeat violator of the felony animal cruelty statute is subject to a minimum mandatory sentence of 6 months incarceration and a minimum mandatory fine of \$5,000. The minimum mandatory fine and sentence for a repeat violator of the statute does not require a finding of knowing and intentional torture or torment of an animal that kills, mutilates, or injures the animal.

The fiscal impact on state and local governments of this bill is indeterminate.

On March 21, 2002, CS/SB 1002, 1st Engrossed, was substituted for CS/HB 691, which was laid on the table. CS/SB 1002 became law as Chapter 2002-51, Laws of Florida on April 18, 2002 and was effective as of that date. This analysis, with certain exceptions, is of Chapter 2002-51, Laws of Florida. The exceptions are those sections that address the House bill, which are clearly identified.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill expands the scope of a criminal statute and provides minimum mandatory sentences for certain felony violations of the animal cruelty statute.

B. PRESENT SITUATION:

Section 828.12, F.S., prohibits cruelty to animals. Section 828.12(1), F.S., provides that 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" commits a first degree misdemeanor, punishable by not more than one year in jail or by a fine of not more than \$5,000,¹ or both.

Section 828.12(2), F.S., provides that 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" commits a third degree felony, punishable by not more than five years in prison or by a fine of not more than \$10,000,² or both.

Section 828.12(3), F.S., provides that a veterinarian cannot be held criminally liable for any decisions made or services rendered under the provisions of this section. Section 828.05, F.S., provides procedures for destroying animals that are suffering from incurable or untreatable conditions or are diseased and allows animal owners to destroy their domestic animals without criminal sanctions if appropriate procedures are followed. See s. 828.05, F.S. Chapter 828 also provides for euthanasia of animals. See e.g. ss. 828.055, 828.058, 828.065, F.S.

C. EFFECT OF PROPOSED CHANGES:

This act provides for minimum mandatory sentences applicable to a person convicted of felony animal cruelty. If the violation includes the, "knowing and intentional torture or torment"³ of an animal and that action kills, mutilates, or injures the animal, the convicted person must complete an

¹ The fine amount under this statute is greater than the fine amount imposed under s. 775.083, F.S., for first degree misdemeanors. Section 775.083, F.S., provides for a fine not greater than \$1,000 for a first degree misdemeanor.

² The fine amount under this statute is greater than the fine amount imposed under s. 775.083, F.S., for third degree felonies. Section 775.083, F.S., provides for a fine of not greater than \$5,000 for a third degree felony.

³ "Torture," "cruelty," and "torment" are defined under current law as, "every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief." s. 828.02, F.S.

anger management treatment program or undergo psychological counseling, and pay a minimum mandatory fine of \$2,500.

This act also requires a person convicted of a second or subsequent violation of felony animal cruelty under s. 828.12(2), F.S., to serve a minimum mandatory sentence of six months of incarceration, and pay a minimum mandatory fine of \$5,000. In addition, this act requires a person who is convicted under this statute to serve 100 percent of the sentence imposed by a court, and provides that the person is not eligible for parole, control release, or any other form of early release.

This act also requires any plea of nolo contendere under the felony animal cruelty sub-section to be considered a conviction. In effect, this would cause any person pleading no contest to a felony animal cruelty charge to be considered convicted of felony animal cruelty for purposes of punishment, and for determining whether that person was a repeat offender.

This act became effective upon becoming law on April 18, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

The Criminal Justice Impact Conference determined that HB 691 as filed would have an insignificant prison bed impact on the Department of Corrections. As amended and passed, the fiscal impact appears to be likewise.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties and municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Judicial Oversight adopted two amendments to this bill. The first amendment provides that the finder of fact, and not the court, must determine whether the facts exist that require the imposition of the minimum mandatory sentences created by this bill. **This amendment was incorporated into the Council Substitute on March 4, 2002.** The second amendment provides that an offender may be ordered to undergo psychological counseling in lieu of attending an anger management program in situations where the crime involved the knowing and intentional torture or torment of an animal. **In effect, this amendment was incorporated into the council substitute.**

On February 12, 2002, the Committee on Crime Prevention, Corrections & Safety adopted two amendments. The first amendment removed language in the bill that would have criminalized the unnecessary deprivation of medical attention or sanitation to an animal. **This amendment was incorporated into the Council Substitute on March 4, 2002.** The second amendment removed language from the bill that would have required the counties to pay for anger management treatment for indigent defendants. **In effect, this amendment was incorporated into the council substitute.**

On March 4, 2002, the Council for Competitive Commerce adopted one amendment and voted to incorporate two of the traveling amendments into a council substitute. The Council amendment provided that a person convicted of felony animal cruelty, where the crime involved the knowing and intentional torture or torment of an animal, must pay a \$2,500 minimum mandatory fine, and complete an anger management program or undergo psychological counseling. The amendment removed the

language addressing payment for the anger management or psychological counseling program, thereby removing the financial burden on counties to pay the costs if the court deemed the convicted person indigent.⁴ **This amendment nullified the effect of two traveling amendments.** The remaining two amendments that changed the term “court” to “finder of fact”, and removed the terms “medical attention” and “sanitation” from the initial definition of misdemeanor animal cruelty, were incorporated into the council substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier, Jr., J.D.

Nathan L. Bond, J.D.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

Trina Kramer

AS REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Council Director:

Katherine Scott

Matthew Carter

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier, Jr., J.D.

Nathan L. Bond, J.D.

⁴ The original bill required counties to pay for anger management program costs if the court found the perpetrator indigent.