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HOUSE BILL NO. 2642

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 14, 2019)

(Patrons Prior to Substitute—Delegates Levine and Ransone [HB 1874])

A **BILL** to amend and reenact §§ 3.2-6569, 3.2-6570, and 18.2-403.2 of the Code of Virginia, relating to cruelty to animals; aggravated cruelty; penalty.

Be it enacted by the General Assembly of Virginia:

9 1. That §§ 3.2-6569, 3.2-6570, and 18.2-403.2 of the Code of Virginia are amended and reenacted
10 as follows:

**11 § 3.2-6569. Seizure and impoundment of animals; notice and hearing; disposition of animal;
12 disposition of proceeds upon sale.**

13 A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize
14 live animals held in violation of this section.

14 and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an
15 apparent violation of this chapter that has rendered the animal in such a condition as to constitute a
16 direct and immediate threat to its life, safety or health. The seizure or impoundment of an equine
17 resulting from a violation of clause (iii) (iv) of subsection A or clause (ii) of subsection B of § 3.2-6570
18 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received
19 training in the examination and detection of sore horses as required by 9 C.F.R. Part 11.7.

20 B. Before seizing or impounding any agricultural animal, the humane investigator, law-enforcement
21 officer or animal control officer shall contact the State Veterinarian or State Veterinarian's representative,
22 who shall recommend to the person the most appropriate action for effecting the seizure and
23 impoundment. The humane investigator, law-enforcement officer or animal control officer shall notify
24 the owner of the agricultural animal and the local attorney for the Commonwealth of the
25 recommendation. The humane investigator, law-enforcement officer or animal control officer may
26 impound the agricultural animal on the land where the agricultural animal is located if:

27 1. The owner or tenant of the land where the agricultural animal is located gives written permission;
28 2. A general district court so orders; or

29 3. The owner or tenant of the land where the agricultural animal is located cannot be immediately
30 located, and it is in the best interest of the agricultural animal to be impounded on the land where it is
31 located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the location of impoundment, and any other information required by the State Veterinarian.

37 C. Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or
38 animal control officer shall petition the general district court in the city or county where the animal is
39 seized for a hearing. The hearing shall be not more than 10 business days from the date of the seizure
40 of the animal. The hearing shall be to determine whether the animal has been abandoned, has been
41 cruelly treated, or has not been provided adequate care.

42 D. The humane investigator, law-enforcement officer, or animal control officer shall cause to be
43 served upon the person with a right of property in the animal or the custodian of the animal notice of
44 the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the
45 animal is seized, written notice shall be given at least five days prior to the hearing of the time and
46 place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where
47 such animal is seized, written notice by any method or service of process as is provided by the Code of
48 Virginia shall be given. If such person or the custodian is not known, the humane investigator,
49 law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general
50 circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior
51 to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the
52 hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall
53 be held.

54 E. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial
55 by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The
56 Commonwealth shall be required to prove its case beyond a reasonable doubt.

57 F. The humane investigator, law-enforcement officer, or animal control officer shall provide for such
58 animal until the court has concluded the hearing. Any locality may require the owner of any animal held
59 pursuant to this subsection for more than ~~thirty~~ 30 days to post a bond in surety with the locality for the

60 amount of the cost of boarding the animal for a period of time set by ordinance, not to exceed nine
61 months.

62 In any locality that has not adopted such an ordinance, a court may order the owner of an animal
63 held pursuant to this subsection for more than 30 days to post a bond in surety with the locality for the
64 amount of the cost of boarding the animal for a period of time not to exceed nine months. The bond
65 shall not be forfeited if the owner is found to be not guilty of the violation.

66 If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of
67 adequate care, the animal shall be returned to the owner. If the court determines that the animal has
68 been (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in
69 § 3.2-6500, or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation
70 of § 3.2-6571, then the court shall order that the animal may be: (a) sold by a local governing body, if
71 not a companion animal; (b) disposed of by a local governing body pursuant to subsection D of
72 § 3.2-6546, whether such animal is a companion animal or an agricultural animal; or (c) delivered to the
73 person with a right of property in the animal as provided in subsection G.

74 G. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the
75 court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The
76 court shall direct that the animal be delivered to the person with a right of property in the animal, upon
77 his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is
78 not attributable to the actions or inactions of such person.

79 H. The court shall order the owner of any animal determined to have been abandoned, cruelly
80 treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for
81 such animal from the time the animal is seized until such time that the animal is disposed of in
82 accordance with the provisions of this section, to the provider of such care.

83 I. The court may prohibit the possession or ownership of other companion animals by the owner of
84 any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In
85 making a determination to prohibit the possession or ownership of companion animals, the court may
86 take into consideration the owner's past record of convictions under this chapter or other laws
87 prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental
88 and physical condition.

89 J. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may
90 prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural
91 animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as
92 evidenced by previous convictions of violating § 3.2-6504 or 3.2-6570. In making a determination to
93 prohibit the possession or ownership of agricultural animals, the court may take into consideration the
94 owner's mental and physical condition.

95 K. Any person who is prohibited from owning or possessing animals pursuant to subsection I or J
96 may petition the court to repeal the prohibition after two years have elapsed from the date of entry of
97 the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the
98 satisfaction of the court that the cause for the prohibition has ceased to exist.

99 L. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the
100 unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any,
101 shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds
102 remaining shall be paid into the Literary Fund.

103 M. Nothing in this section shall be construed to prohibit the humane destruction of a critically
104 injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement
105 officer, animal control officer, or licensed veterinarian.

106 **§ 3.2-6570. Cruelty to animals; penalty.**

107 A. Any person who: (i) overrides, overdrives, overloads, ~~tortures~~, ill-treats, or abandons *any animal*,
108 *whether belonging to himself or another*; (ii) *tortures any animal*, willfully inflicts inhumane injury or
109 pain not connected with bona fide scientific or medical experimentation *on any animal*, or cruelly or
110 unnecessarily beats, maims, mutilates, or kills any animal, *whether belonging to himself or another*; (iii)
111 deprives any animal of necessary food, drink, shelter, or emergency veterinary treatment; (iv)
112 sores any equine for any purpose or administers drugs or medications to alter or mask such sores for
113 the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications
114 is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (v)
115 ropes, lassoes, or otherwise obstructs or interferes with one or more legs of an equine in order to
116 intentionally cause it to trip or fall for the purpose of engagement in a rodeo, contest, exhibition,
117 entertainment, or sport unless such actions are in the practice of accepted animal husbandry or for the
118 purpose of allowing veterinary care; (vi) willfully sets on foot, instigates, engages in, or in any way
119 furthers any act of cruelty to any animal; (vii) carries or causes to be carried by any vehicle, vessel
120 or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary
121 suffering; or (viii) causes any of the above things, or being the owner of such animal permits such

122 acts to be done by another is guilty of a Class 1 misdemeanor.

123 In addition to the penalties provided in this subsection, the court may, in its discretion, require any
 124 person convicted of a violation of this subsection to attend an anger management or other appropriate
 125 treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of
 126 such a program or counseling upon the person convicted.

127 B. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona
 128 fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills
 129 any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers
 130 drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibit of any kind,
 131 unless such administration of drugs or medications is under the supervision of a licensed veterinarian
 132 and solely for therapeutic purposes; (iii) ropes, lassoes, or otherwise obstructs or interferes with one or
 133 more legs of an equine in order to intentionally cause it to trip or fall for the purpose of engagement in
 134 a rodeo, contest, exhibition, entertainment, or sport unless such actions are in the practice of accepted
 135 animal husbandry or for the purpose of allowing veterinary care; (iv) maliciously deprives any
 136 companion animal of necessary food, drink, shelter or emergency veterinary treatment; (v) instigates,
 137 engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv);
 138 or (vi) causes any of the actions described in clauses (i) through (v), or being the owner of such animal
 139 permits such acts to be done by another; and has been within five years convicted of a violation of this
 140 subsection or subsection A, is guilty of a Class 6 felony if the current violation or any previous
 141 violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an
 142 animal based on the recommendation of a licensed veterinarian upon a determination that such
 143 euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a
 144 violation of this subsection or subsection A.

145 C. Nothing in this section shall be construed to prohibit the dehorning of cattle conducted in a
 146 reasonable and customary manner.

147 D. This section shall not prohibit authorized wildlife management activities or hunting, fishing or
 148 trapping as regulated under other titles of the Code of Virginia, including Title 29.1, or to farming
 149 activities as provided under this title or regulations adopted hereunder.

150 E. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide,
 151 fur or pelt of the dog or cat. A violation of this subsection is a Class 1 misdemeanor. A second or
 152 subsequent violation of this subsection is a Class 6 felony.

153 F. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona
 154 fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, or mutilates any
 155 dog or cat that is a companion animal whether belonging to him or another; and (ii) as a direct result
 156 causes *serious bodily injury to such dog or cat that is a companion animal*, the death of such dog or cat
 157 that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed
 158 veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, is
 159 guilty of a Class 6 felony. If a dog or cat is attacked on its owner's property by a dog so as to cause
 160 injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against
 161 the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken
 162 necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have
 163 violated this subsection. The provisions of this subsection shall not overrule § 3.2-6540, 3.2-6540.1, or
 164 3.2-6552.

165 For the purposes of this subsection, "serious bodily injury" means bodily injury that involves
 166 substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss
 167 or impairment of the function of a bodily member, organ, or mental faculty.

168 G. Any person who violates any provision of this section with the intent to coerce, intimidate, or
 169 harass a family or household member as defined in § 16.1-228 is guilty of a Class 6 felony.

170 H. Any person convicted of violating this section may be prohibited by the court from possession or
 171 ownership of companion animals.

172 **§ 18.2-403.2. Offenses involving animals — Class 3 misdemeanors.**

173 The following unlawful acts and offenses against animals shall constitute and be punished as a Class
 174 3 misdemeanor:

175 1. Violation of § 3.2-6511 pertaining to the failure of a shopkeeper or pet dealer to provide adequate
 176 care to animals.

177 2. Violation of § 3.2-6509 pertaining to the misrepresentation of an animal's condition by the
 178 shopkeeper or pet dealer.

179 3. Violation of § 3.2-6510 pertaining to the sale of baby fowl.

180 4. Violation of clause (iii) (iv) of subsection A of § 3.2-6570 pertaining to sores horses.

181 5. Violation of § 3.2-6519 pertaining to notice of consumer remedies required to be supplied by
 182 boarding establishments.

183 2. That the provisions of this act may result in a net increase in periods of imprisonment or
184 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the
185 necessary appropriation cannot be determined for periods of imprisonment in state adult
186 correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,
187 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of
188 \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
189 appropriation cannot be determined for periods of commitment to the custody of the Department
190 of Juvenile Justice.