

The Senate Judiciary Non-Civil Committee offered the following substitute to HB 863:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to offenses against public health and morals, so as to
3 change provisions relating to cruelty to animals and aggravated cruelty to animals; to provide
4 for and change definitions; to clarify provisions relating to justification; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

7 Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
8 general provisions relative to offenses against public health and morals, is amended by
9 revising Code Section 16-12-4, relating to cruelty to animals, as follows:

10 "16-12-4.

11 (a) As used in this Code section, the term:

12 (1) 'Adequate care' shall include, but shall not be limited to, adequate food, adequate
13 water, sanitary conditions, adequate ventilation, adequate shelter, and veterinary care
14 consistent with the normal requirements and feeding habits of an animal's size, species,
15 breed, age, and physical condition.

16 ~~(1)~~(2) 'Animal' shall not include any fish nor shall such term include any pest that might
17 be exterminated or removed from a business, residence, or other structure.

18 (2) ~~'Conviction' shall include pleas of guilty or nolo contendere or probation as a first~~
19 ~~offender pursuant to Article 3 of Chapter 8 of Title 42 and any conviction, plea of guilty~~
20 ~~or nolo contendere, or probation as a first offender for an offense under the laws of the~~
21 ~~United States or any of the several states that would constitute a violation of this Code~~
22 ~~section if committed in this state.~~

23 (3) 'Malice' means:

24 (A) An actual intent, which may be shown by the circumstances connected to the act,
25 to cause the particular harm produced without justification or excuse; or
26

27 (B) The wanton and willful doing of an act with an awareness of a plain and strong
 28 likelihood that a particular harm may result.

29 ~~(3) 'Willful neglect' means the intentional withholding of food and water required by an~~
 30 ~~animal to prevent starvation or dehydration.~~

31 (b) A person commits the offense of cruelty to animals when he or she ~~causes death or~~
 32 ~~unjustifiable physical pain or suffering to any animal by an act, an omission, or willful~~
 33 ~~neglect:~~

34 (1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or
 35 omission; or

36 (2) Having intentionally exercised custody, control, possession, or ownership of an
 37 animal, fails to provide adequate care to such animal.

38 ~~(c) Any person convicted of a violation of this subsection~~ the offense of cruelty to animals
 39 shall be guilty of a misdemeanor; provided, however, that:

40 ~~(1) Any person who is convicted of a second or subsequent violation of this subsection~~
 41 ~~shall be punished by imprisonment not to exceed 12 months, a fine not to exceed~~
 42 ~~\$5,000.00, or both; and~~

43 ~~(2) Any any person who is convicted of a second or subsequent violation of this~~
 44 ~~subsection which results in the death of an animal~~ has had a prior adjudication of guilt for
 45 the offense of cruelty to animals or aggravated cruelty to animals, or an adjudication of
 46 guilt for the commission of an offense under the laws of any other state, territory,
 47 possession, or dominion of the United States, or of any foreign nation recognized by the
 48 United States, which would constitute the offense of cruelty to animals or aggravated
 49 cruelty to animals if committed in this state, including an adjudication of a juvenile for
 50 the commission of an act, whether committed in this state or in any other state, territory,
 51 possession, or dominion of the United States, or any foreign nation recognized by the
 52 United States, which if committed by an adult would constitute the offense of cruelty to
 53 animals or aggravated cruelty to animals, upon the second or subsequent conviction of
 54 cruelty to animals shall be guilty of a misdemeanor of a high and aggravated nature and
 55 ~~shall be punished by imprisonment for not less than three months nor more than 12~~
 56 ~~months, a fine not to exceed \$10,000.00, or both, which punishment shall not be~~
 57 ~~suspended, probated, or withheld.~~

58 ~~(c)(d)~~ (d) A person commits the offense of aggravated cruelty to animals when he or she
 59 ~~knowingly and maliciously:~~

60 (1) Maliciously causes the death or physical harm to of an animal;

61 (2) Maliciously causes physical harm to an animal by depriving it of a member of its
 62 body, by rendering a part of such animal's body useless, or by seriously disfiguring such
 63 animal animal's body or a member thereof;

64 (3) Maliciously tortures an animal by the infliction of or subjection to severe or
 65 prolonged physical pain;

66 (4) Maliciously administers poison to an animal, or exposes an animal to any poisonous
 67 substance, with the intent that the substance be taken or swallowed by the animal; or

68 (5) Having care and control of an animal, maliciously fails to provide adequate care to
 69 such animal to the extent that the death of such animal results, or a member of its body
 70 is rendered useless, or its body or a member thereof is seriously disfigured.

71 (e) Any A person convicted of the offense of aggravated cruelty to animals shall be guilty
 72 of a felony and shall be punished by imprisonment for not less than one nor more than five
 73 years, a fine not to exceed \$15,000.00, or both; provided, however, that any person who
 74 is convicted of a second or subsequent violation of this subsection has had a prior
 75 adjudication of guilt for the offense of aggravated cruelty to animals, or an adjudication of
 76 guilt for the commission of an offense under the laws of any other state, territory,
 77 possession, or dominion of the United States, or of any foreign nation recognized by the
 78 United States, which would constitute the offense of aggravated cruelty to animals if
 79 committed in this state, including an adjudication of a juvenile for the commission of an
 80 act, whether committed in this state or in any other state, territory, possession, or dominion
 81 of the United States, or any foreign nation recognized by the United States, which if
 82 committed by an adult would constitute the offense of aggravated cruelty to animals, upon
 83 the second or subsequent conviction of aggravated cruelty to animals shall be punished by
 84 imprisonment for not less than one nor more than five ten years, a fine not to exceed the
 85 amount provided by Code Section 17-10-8 \$100,000.00, or both.

86 ~~(d)~~(f) Before sentencing a defendant for any conviction under this Code section, the
 87 sentencing judge may require psychological evaluation of the offender and shall consider
 88 the entire criminal record of the offender.

89 ~~(e)~~(g) The provisions of this Code section shall not be construed as prohibiting conduct
 90 which is otherwise permitted under the laws of this state or of the United States, including,
 91 but not limited to, agricultural, animal husbandry, butchering, food processing, marketing,
 92 scientific; research, training, medical, zoological, exhibition, competitive, hunting,
 93 trapping, fishing, wildlife management, or pest control practices or the authorized practice
 94 of veterinary medicine nor to limit in any way the authority or duty of the Department of
 95 Agriculture, Department of Natural Resources, any county board of health, any law
 96 enforcement officer, dog, animal, or rabies control officer, humane society, veterinarian,
 97 or private landowner protecting his or her property.

98 ~~(f)(1)~~ Nothing in this Code section shall be construed as prohibiting a person from:

99 ~~(A) Defending his or her person or property, or the person or property of another, from~~
 100 ~~injury or damage being caused by an animal, or~~

101 ~~(B) Injuring or killing an animal reasonably believed to constitute a threat for injury~~
 102 ~~or damage to any property, livestock, or poultry.~~

103 (h)(1) In addition to justification and excuse as provided in Article 2 of Chapter 3 of this
 104 title, a person shall be justified in injuring or killing an animal when and to the extent that
 105 he or she reasonably believes that such act is necessary to defend against an imminent
 106 threat of injury or damage to any person, other animal, or property.

107 (2) A person shall not be justified in injuring or killing an animal under the
 108 circumstances set forth in paragraph (1) of this subsection when:

109 (A) The person being threatened is attempting to commit, committing, or fleeing after
 110 the commission or attempted commission of a crime;

111 (B) The person or other animal being threatened is attempting to commit or committing
 112 a trespass or other tortious interference with property; or

113 (C) The animal being threatened is not lawfully on the property where the threat is
 114 occurring.

115 (2)(3) The method used to injure or kill such an animal under the circumstances set forth
 116 in paragraph (1) of this subsection shall be designed to be as humane as is possible under
 117 the circumstances. A person who humanely injures or kills an animal under the
 118 circumstances indicated in this subsection shall incur no civil or criminal liability or
 119 criminal responsibility for such injury or death."

120 **SECTION 2.**

121 All laws and parts of laws in conflict with this Act are repealed.