

SENATE SUBSTITUTE TO HB 863:

AS PASSED SENATE

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:

7 SECTION 1.

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

11 "16-12-4.

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

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

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

20 (2) 'Malice' means:

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

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

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

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

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

32 (2) Having intentionally exercised custody, control, possession, or ownership of an  
 33 animal, fails to provide to such animal adequate food, water, sanitary conditions, or  
 34 ventilation that is consistent with what a reasonable person of ordinary knowledge would  
 35 believe is the normal requirement and feeding habit for such animal's size, species, breed,  
 36 age, and physical condition.

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

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

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

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

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

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

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

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

67 (5) Having intentionally exercised custody, control, possession, or ownership of an  
 68 animal, maliciously fails to provide to such animal adequate food, water, sanitary  
 69 conditions, or ventilation that is consistent with what a reasonable person of ordinary  
 70 knowledge would believe is the normal requirement and feeding habit for such animal's  
 71 size, species, breed, age, and physical condition to the extent that the death of such  
 72 animal results or a member of its body is rendered useless or is seriously disfigured.

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

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

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

100 ~~(f)(1) Nothing in this Code section shall be construed as prohibiting a person from:~~  
 101 ~~(A) Defending his or her person or property, or the person or property of another, from~~  
 102 ~~injury or damage being caused by an animal, or~~  
 103 ~~(B) Injuring or killing an animal reasonably believed to constitute a threat for injury~~  
 104 ~~or damage to any property, livestock, or poultry.~~

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

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

111 (A) The person being threatened is attempting to commit, committing, or fleeing after  
 112 the commission or attempted commission of a crime;  
 113 (B) The person or other animal being threatened is attempting to commit or committing  
 114 a trespass or other tortious interference with property; or  
 115 (C) The animal being threatened is not lawfully on the property where the threat is  
 116 occurring.

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

122

**SECTION 2.**

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