

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 707

An Act to amend and reenact §§ 3.1-796.113, 3.1-796.122, 3.1-796.124, and 18.2-403.2 of the Code of Virginia and to repeal § 3.1-796.125 of the Code of Virginia, relating to animal protection; penalty.

[S 592]

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-796.113, 3.1-796.122, 3.1-796.124, and 18.2-403.2 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-796.113. Power of search for violations of statutes against cruelty to animals.

When a sworn complaint is made to any proper authority by any animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative that the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in any particular building or place, such authority, if satisfied that there is reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff or police officer, to search the building or place. ~~No search shall be made after sunset unless specially authorized by the authority upon satisfactory cause shown.~~

§ 3.1-796.122. Cruelty to animals; penalty.

A. Any person who (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment; (iii) sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (v) carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vi) causes any of the above things, or being the owner of such animal permits such acts to be done by another, shall be guilty of a Class 1 misdemeanor.

B. Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or (v) causes any of the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, shall be guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this subsection or subsection A.

C. Nothing in this section shall be construed to prohibit the dehorning of cattle.

D. For the purposes of this section and §§ 3.1-796.111, 3.1-796.113, 3.1-796.114, 3.1-796.115, and ~~3.1-796.125~~ 3.1-796.124, the word animal shall be construed to include birds and fowl.

E. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the Code of Virginia, including, but not limited to Title 29.1, or to farming activities as provided under this title or regulations promulgated thereto.

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

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

H. Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona

vide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, shall be 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 injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this subsection. The provisions of this subsection shall not overrule § 3.1-796.93:1 or § 3.1-796.116.

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

§ 3.1-796.124. Animal fighting; penalty.

A. No person shall knowingly ~~do any of the following~~:

1. Promote, *prepare for*, engage in, or be employed in, the fighting of ~~dogs~~ *animals* for amusement, sport or gain;

2. ~~Wager money or anything of value on the result of such fighting;~~

3. ~~Receive money or anything of value for the admission of another person to a place for dogfighting;~~

4. ~~Possess, own, train, transport, or sell any dog with the intent that such dog engage in an exhibition of fighting with another dog; or~~

5. ~~Permit any act described in subdivisions 1 through 4 of this subsection on any premises under his charge or control; or aid or abet any such act.~~

2. *Attend an exhibition of the fighting of animals;*

3. *Authorize or allow any person to undertake any act described in this section on any premises under his charge or control; or*

4. *Aid or abet any such acts.*

Except as provided in subsection B, any person who violates any provision of this subsection is guilty of a Class 1 misdemeanor.

B. Any person who violates any provision of subsection A in combination with one or more of the following is guilty of a Class 6 felony:

1. *When a dog is one of the animals;*

2. *When any device or substance intended to enhance an animal's ability to fight or to inflict injury upon another animal is used, or possessed with intent to use it for such purpose;*

3. *When money or anything of value is wagered on the result of such fighting;*

4. *When money or anything of value is paid or received for the admission of a person to a place for animal fighting;*

5. *When any animal is possessed, owned, trained, transported, or sold with the intent that the animal engage in an exhibition of fighting with another animal; or*

6. *When he permits or causes a minor to (i) attend an exhibition of the fighting of any animals or (ii) undertake or be involved in any act described in this subsection.*

C. 1. Any animal control officer, as defined in § 3.1-796.66, shall confiscate any ~~dogs~~ *animal* that ~~have been, are, or are he determines has been, is, or is intended to be used in dogfighting~~ animal fighting and any equipment used in training such ~~dogs~~ *animal* or used in ~~dogfighting~~ animal fighting.

2. Upon confiscation of an animal, the animal control officer shall petition the appropriate court for a hearing for a determination of whether the animal has been, is, or is intended to be used in animal fighting. The hearing shall be not more than 10 business days from the date of the confiscation of the animal. If the court finds that the animal has not been used, is not used and is not intended to be used in animal fighting, it shall order the animal released to its owner. However, if the court finds probable cause to believe that the animal has been, is, or is intended to be used in animal fighting, the court shall order the animal forfeited to the locality unless the owner posts bond in surety with the locality in an amount sufficient to compensate the locality for its cost of caring for the animal for a period of nine months. He shall post additional bond for each successive nine-month period until a final determination by the trial court on any criminal charges brought pursuant to subsections A or B.

3. Upon a final determination of guilt by the trial court on criminal charges brought pursuant to subsections A or B, the court shall order that the animal be forfeited to the locality. Upon a final determination of not guilty by the trial court on the underlying criminal charges, a confiscated animal shall be returned to its owner and any bond shall be refunded to him.

C. D. Any person convicted of violating ~~this section~~ *may any provision of subsection A or B* shall be prohibited by the court from possession or ownership of ~~other~~ companion animals or cocks.

D. Any person who violates any provision of this section shall be guilty of a Class 6 felony.

E. In addition to ~~any other~~ fines and costs, *the court shall order any person who is convicted of a violation of this section shall to pay all reasonable costs incurred in housing, caring for, or euthanizing any confiscated dogs animal. If the court finds that the actual costs are reasonable, it may order*

payment of actual costs.

F. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duties. This section shall not prohibit (i) authorized wildlife management activities or hunting, fishing, or trapping authorized under any title of the Code of Virginia or regulations promulgated thereto or (ii) farming activities authorized under Title 3.1 of the Code of Virginia or regulations promulgated thereto.

§ 18.2-403.2. Offenses involving animals - Class 3 misdemeanors.

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

1. Violation of § 3.1-796.71 pertaining to the failure of a shopkeeper or pet dealer to provide adequate care to animals.

2. Violation of § 3.1-796.72 pertaining to the misrepresentation of an animal's condition by the shopkeeper or pet dealer.

3. Violation of § 3.1-796.73 pertaining to the abandonment of animals.

4. Violation of § 3.1-796.70 pertaining to the sale of baby fowl.

5. Violation of § 3.1-796.125 pertaining to fighting cocks, dogs and other animals.

6. Violation of clause (iii) of subsection A of § 3.1-796.122 pertaining to soring horses.

7 6. Violation of § 3.1-796.83:2 pertaining to notice of consumer remedies required to be supplied by boarding establishments.

2. That § 3.1-796.125 of the Code of Virginia is repealed.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.