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SENATE BILL NO. 851

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 27, 1999)

(Patron Prior to Substitute—Senator Stolle)

*A BILL to amend and reenact §§ 3.1-796.76, 3.1-796.122, 18.2-144 and 18.2-403.1, 18.2-403.2 and 19.2-8 of the Code of Virginia, relating to cruelty to animals; penalties.***Be it enacted by the General Assembly of Virginia:****1. That §§ 3.1-796.76, 3.1-796.122, 18.2-144 and 18.2-403.1, 18.2-403.2 and 19.2-8 of the Code of Virginia are amended and reenacted as follows:**

§ 3.1-796.76. Injured or sick animal; action by veterinarian.

A. If a licensed veterinarian is called or by his own action comes upon an animal that is sick or injured and the owner of such animal cannot be immediately located, then the licensed veterinarian, in his professional judgment, may treat, hospitalize or euthanize the animal without the permission of the owner. The veterinarian shall make such reports and keep such records of such sick or injured animals as may be prescribed by the Board of Veterinary Medicine, including the information required under subsection B of § 3.1-796.105.

B. In no event shall a licensed veterinarian who has *acted in good faith and* properly exercised professional judgment regarding such an animal be subject to liability for his actions *in (i) acting in accordance with subsection A or (ii) reporting cases of suspected cruelty to animals.*

§ 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; or (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment; or (iii) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; or (iv) 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 (v) 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. ~~Prosecution for violations of this subsection shall commence within five years after commission of the offense. Prosecutions of this subsection regarding agricultural animals, as defined in § 3.1-796.66, shall commence within one year after commission of the offense.~~

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; or (ii) instigates, engages in, or in any way furthers any act of cruelty to any animal; or (iii) causes any of the actions described in subdivisions (i) and (ii) of this subsection, or being the owner of such animal permits such acts to be done by another; and has been previously 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. ~~Prosecution for violations of subsections A and B shall commence within five years after commission of the offense. However, prosecutions regarding agricultural animals, as defined in § 3.1-796.66, shall commence within one year after commission of the offense.~~

D. Any person who abandons any dog, cat or other domesticated animal in any public place including the right-of-way of any public highway, road or street or on the property of another shall be guilty of a Class 3 misdemeanor.

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

F. 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, the word animal shall be construed to include birds and fowl.

G. *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.*

§ 18.2-144. Maiming, killing or poisoning animals, fowl, etc.

Except as otherwise provided for by law, if any person maliciously shoot, stab, wound or otherwise cause bodily injury to, or administer poison to or expose poison with intent that it be taken by, any horse, mule, pony, cattle, swine or other livestock of another, with intent to maim, disfigure, disable or kill the same, or if he do any of the foregoing acts to any animal of his own with intent to defraud any

insurer thereof, he shall be guilty of a Class 5 felony. ~~And if~~ *If any person do any of the foregoing acts to any fowl or to any companion animal with any of the aforesaid intents, he shall be guilty of a Class 1 misdemeanor, except that any second or subsequent offense shall be a Class 6 felony if the current offense or any previous offense 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 section.*

§ 18.2-403.1. Offenses involving animals - Class 1 misdemeanors.

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 1 misdemeanor:

1. Violation of subsection A of § 3.1-796.122 pertaining to cruelty to animals, *except as provided for second or subsequent violations in that section.*

2. Violation of § 3.1-796.69 pertaining to transporting animals under certain conditions.

3. Making a false claim or receiving money on a false claim under § 3.1-796.118 pertaining to compensation for livestock and poultry killed by dogs.

4. Violation of § 3.1-796.83:1 pertaining to boarding establishments and groomers as defined in § 3.1-796.68.

§ 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 and subsection ~~B~~ *D* of § 3.1-796.122 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 § 3.1-796.123 pertaining to soring horses.

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

§ 19.2-8. Limitation of prosecutions.

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.1-196 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of §§ 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 which involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of §§ 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements,

documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection *A or B* of § 3.1-796.122 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act (§ 24.2-900 et seq.) shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without this Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$ 0.