

ACT 114

S.B. NO. 1665

A Bill for an Act Relating to Animals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to strengthen Hawaii's animal cruelty laws.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§711-A Cruelty to animals in the first degree.** (1) A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal resulting in serious bodily injury or death of the pet animal.

(2) Subsection (1) shall not apply to:

(a) Accepted veterinary practices;

(b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(c) Cropping or docking as customarily practiced.

(3) Whenever any pet animal is so severely injured that there is no reasonable probability that its life can be saved, the pet animal may be immediately destroyed without creating any offense under this section.

(4) Cruelty to animals in the first degree is a class C felony.”

SECTION 3. Section 711-1100, Hawaii Revised Statutes, is amended to read as follows:

“§711-1100 Definitions. In this chapter, unless a different meaning is plainly required, or the definition is otherwise limited by this section:

“Animal” includes every living creature, except a human being.

[“Cruelty”, “torture” or “torment” includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.]

“Facsimile” means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

“Necessary sustenance” means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal’s needs;
- (3) Access to protection from wind, rain, or sun; and
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health.

“Obstructs” means renders impassable without unreasonable inconvenience or hazard.

“Pet animal” means a dog, cat, domesticated rabbit, guinea pig, [~~domestic rat or mouse,~~] domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only)[~~]~~ so long as not bred for consumption.

“Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

“Public” means affecting or likely to affect a substantial number of persons.

“Public place” means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

“Record”, for the purposes of sections 711-1110.9 and 711-1111, means to videotape, film, photograph, or archive electronically or digitally.

“Torment” means fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal.

“Torture” includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.”

SECTION 4. Section 711-1109, Hawaii Revised Statutes, is amended to read as follows:

“§711-1109 Cruelty to animals[~~]~~ in the second degree. (1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

- (a) Overdrives, overloads, tortures, torments, [~~eruelly~~] beats, causes substantial bodily injury, or starves any animal, or causes [~~or proeures~~] the overdriving, overloading, torture, torment, [~~eruel~~] beating, or starving

of any animal, or deprives a pet animal of necessary sustenance or causes such deprivation;

- (b) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests;
- (c) Keeps, uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, [dog,] cock, or other animal, and every person who encourages, aids, or assists therein, or who permits or suffers any place to be so kept or used;
- (d) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner; or
- (e) Assists another in the commission of any act [~~of cruelty to any animal.~~] specified in subsections (1)(a) through (1)(d).

(2) Subsection (1)(a), (b), (d), and (e),<sup>1</sup> [~~and the following subsection (3) are~~] shall not [~~applicable~~] apply to [~~accepted~~]:

- (a) Accepted veterinary practices [~~and to activities~~];
- (b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices[-]; or
- (c) Pest control operations conducted pursuant to chapter 149A by a pest control operator licensed pursuant to chapter 460J, if the pest control is performed under a written contract.

(3) Whenever any [~~domestic~~] animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed[-] without creating any offense under this section.

(4) Cruelty to animals in the second degree is a misdemeanor.”

SECTION 5. Section 711-1109.1, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1109, 711-, or 711-1109.3, a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.”

SECTION 6. Section 711-1109.2<sup>2</sup> is amended as follows:

1. By amending subsection (1) to read:

“(1) If any pet animal is impounded pursuant to section 711-1109.1, prior to final disposition of the criminal charge under section 711-1109, 711-, or 711-1109.3 against the pet animal’s owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.”

## 2. By amending subsection (3) to read:

“(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1109, 711-, or 711-1109.3. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.”

## 3. By amending subsection (5) to read:

“(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1109, 711-, or 711-1109.3 against the pet animal’s owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved.”

SECTION 7. Section 711-1110.5, Hawaii Revised Statutes, is amended to read as follows:

“**§711-1110.5 Surrender or forfeiture of animals.** Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1109, 711-, or 711-1109.3:

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected.

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute an appropriate section number for the letter used in designating the new section in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

## **ACT 114**

**SECTION 11.** This Act shall take effect upon its approval.

(Approved June 1, 2007.)

### **Notes**

1. Comma should be underscored.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.