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SUMMARY

Humane Societies and humane society agents

- Removes references in law to the “Ohio Humane Society,” which is designated as the state society for the prevention of cruelty to animals, but which is not currently functioning as an animal welfare society.
- Clarifies that any branch of the Ohio Humane Society that was organized prior to the effective date of the bill is considered to be a county humane society and has the same powers as a county humane society.
- Requires each county humane society to submit an annual report of enforcement activities to the appropriate county sheriff.
- Specifies that generally the records of an enforcement activity by a humane society agent are public records under Ohio Public Records Law.
- Prohibits a humane society from entering into a written agreement not to prosecute a person for an alleged violation of law unless a judge has reviewed and approved the agreement.
- Specifies procedures for the removal from office of a humane society agent.
- Specifies that a humane society agent is a public servant for the purposes of bribery law and is therefore subject to the criminal prohibition on bribery.

* This analysis was prepared before the report of the Senate Agriculture and Natural Resources Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Specifies that a county humane society may appoint, rather than employ, an attorney to prosecute certain violations of law.
- Increases the minimum monthly salary of humane society agents.
- Specifies that an appointment of an agent does not take effect unless approved by the applicable mayor or probate judge.
- Requires the approving authority to notify the appropriate county sheriff and the board of county commissioners when a humane society agent's appointment has been approved, and to file a copy of the proof of successful completion of training with the sheriff.
- Requires an individual who is currently serving as a humane society agent to obtain and present proof of successful completion of training within six months of the bill's effective date.
- Requires mayors, probate judges, and county sheriffs to maintain as a public record a copy of the proof of successful completion of training for each humane society agent operating in their jurisdictions.
- Requires authorities to investigate complaints about an agent's failure to complete the required training, and establishes a procedure for the disposition of the complaints.
- Removes all of a humane society's authority regarding children other than a duty to report suspected child abuse.

Animal cruelty: seizure and impoundment

- Expands current law governing the seizure and impoundment of companion animals, to apply to the seizure and impoundment of *any* animal when related to a violation of animal cruelty law.
- Requires that the written notice, which the impounding officer must provide to the owner, keeper, or harbinger of an animal, be given not later than 24 hours after the animal was seized and impounded.
- Modifies the law governing the amount of bond that a court may determine must be provided by the owner of the animal for the care of the animal during impoundment.

Limited license for drugs used for animal euthanasia

- Authorizes the State Board of Pharmacy to issue a limited license to the office of a county dog warden solely for the purpose of purchasing, possessing, and administering drugs for euthanizing animals and pre-euthanizing drugs for inducing anesthesia, sedation, or unconsciousness.
- Prohibits a dog warden or a dog warden's agent or employee from performing euthanasia by lethal injection, or administering pre-euthanasia drugs, unless the facility in which the dog warden, agent, or employee works is licensed.

- Requires a dog warden or a dog warden's agent or employee to complete a euthanasia technician certification course as a condition of licensure.
- Requires the State Veterinary Medical Licensing Board, in consultation with the State Board of Pharmacy, to approve substances to be used for lethal injection of an animal rather than requiring both Boards to approve those substances as in current law.
- Requires the State Board of Pharmacy, in consultation with the State Veterinary Medical Licensing Board, to approve pre-euthanasia drugs.
- Removes the order of preference in current law regarding authorized methods for euthanizing an animal when using a lethal solution.

Chemical capture of companion animals

- Authorizes the State Board of Pharmacy to grant a chemical capture classification to an animal shelter or county dog warden's limited license.
- Specifies that chemical capture includes using an anesthetic drug on a companion animal to immobilize and capture or attempt to immobilize and capture the animal.
- Establishes requirements and procedures with which an animal shelter or county dog warden must comply to receive a chemical capture classification designation.
- Requires the Board to adopt rules governing chemical capture.
- Specifies that only a certified officer may chemically capture an animal.
- Requires a person to complete specified training requirements prior to becoming a certified officer.
- Specifies that a certified officer may chemically capture a companion animal to limit injury to the officer, the animal or another animal, or the public.
- States that chemical capture of a companion animal by a certified officer is not an act of cruelty, that possession or control of dangerous drugs is authorized when in the scope of duties by a certified officer for use in chemical capture, and that the Veterinarians Law does not apply to an act of chemical capture by a certified officer.
- Establishes various prohibitions related to the chemical capture of a companion animal.

Veterinarians and veterinary technicians

- Clarifies that the bill's provisions do not preclude a licensed veterinarian or veterinarian technician from engaging in the practice of veterinary medicine.

Impounded dogs

- Revises the law governing the disposition of a dog that is seized and impounded by a dog warden and not redeemed by its owner.

Reenactment of animal law provisions

- Reenacts current law provisions governing animal fighting, bestiality, and humane agent residency requirements, which were found inapplicable in the Ohio Sixth Appellate District; thus making those provisions enforceable in that district.

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DETAILED ANALYSIS

Humane Societies and humane society agents

Elimination of references to the Ohio Humane Society

The bill removes references in law to the Ohio Humane Society, which is not currently functioning as an animal welfare society in Ohio. Under current law, the Ohio Humane Society is designated as “[t]he state society for the prevention of cruelty to animals.”¹ The Ohio Humane Society is still an incorporated entity in Ohio, but it no longer works towards the prevention of cruelty to animals. Rather, it is focused on children’s welfare and operates under the name Families Forward.² Consequently, the bill eliminates the Ohio Humane Society as a statewide animal welfare society, leaving county humane societies as the statutory agents for the law governing the prevention of cruelty to animals.³

The Ohio Humane Society was incorporated in 1887. And, local branches of it were formed and are still in existence today. Therefore, the bill specifies that a humane society that organized as a branch of the Ohio Humane Society prior to the bill’s effective date:

1. Continues to have the same powers and duties that were authorized on March 1, 2019; and
2. Is considered to be a county humane society organized for purposes of all laws regarding county humane societies.⁴

Accordingly, the bill specifies that a humane society agent that was appointed prior to the effective date of the bill by a branch of the Ohio Humane Society is considered to be a

¹ R.C. 1717.03 and 1717.04 (repealed); R.C. 955.16, 1717.02, 1717.08, 1717.09, and 1717.16 (conforming).

² See <https://www.familiesforward.net/index.cfm?fuseaction=cms.page&id=1012>.

³ R.C. 1717.03 and 1717.04 (repealed); makes conforming changes to R.C. 109.73, 935.19, 935.20, 955.16, 959.131, 959.132, 1717.02, 1717.05, 1717.06, 1717.07, 1717.08, 1717.09, 2151.421, and 5101.63.

⁴ R.C. 1717.05(E).

county humane society agent for purposes of the laws governing the prevention of cruelty to animals.⁵

Enforcement activity reports

The bill requires each county humane society annually to submit enforcement activity reports to the county sheriff. The bill also specifies that records of humane society agent enforcement activity are public records under Public Records Law, except that records that are confidential law enforcement investigatory records are not public records.⁶ Not later than 90 days after the bill's effective date, the probate judge of a county in which a humane society agent operates must send written notice to the humane society informing it about the bill's provisions related to the filing of annual enforcement activity reports.⁷

Nonprosecution agreements

The bill prohibits a humane society from entering into a written agreement not to prosecute a person for an alleged violation of law unless the agreement has been reviewed and approved by the judge that has presided over the hearing related to the case. (The hearing is required to determine if an officer had probable cause to seize the animal.) It requires the judge, as part of the review, if bond previously has been set, to reconsider whether the bond amount is necessary and reasonable for the animal's care. A judge cannot approve an agreement that requires a person to provide financial compensation that is in excess of what is necessary and reasonable for the animal's care during the impoundment of the animal. Furthermore, the bill renders a nonprosecution agreement void and unenforceable if a judge has not approved it.⁸

Humane society agent removal from office

The bill authorizes the probate judge of the county in which a humane society agent operates to revoke the approval of the agent's appointment for just cause, under the following procedure:

1. Motion to revoke

A movant may start the procedure by filing with the probate court a motion to revoke the appointment. The motion must be a sworn affidavit describing the conduct that constitutes just cause for the motion.

2. Probate judge's hearing determination

After reviewing the facts, the probate judge may dismiss the motion without a hearing or direct the court clerk to serve the humane society agent with a summons and a copy of the

⁵ R.C. 1717.06(B).

⁶ R.C. 149.43, not in the bill, and R.C. 1717.16.

⁷ Section 5.

⁸ R.C. 1717.18; R.C. 1717.01, and 1717.10 (conforming).

motion and any accompanying memorandum in accordance with the Rules of Civil Procedure. The summons must state the time and place for a hearing.

3. Humane society's right to a hearing

The humane society agent may waive the right to a hearing. If the humane society agent does so, the probate judge must revoke the humane society agent's approval of appointment as requested in the motion. If the humane society agent does not waive the right to a hearing, the probate judge must conduct a hearing. The humane society agent is entitled to the assistance of counsel at the hearing. The Rules of Evidence govern the conduct of the hearing.

4. Burden of proof at the hearing

At the hearing, the movant has the burden of proving, by a preponderance of the evidence, that just cause exists for the revocation of the humane society agent's appointment.

5. Hearing outcome

If, after the hearing, the probate judge finds that the movant has not sustained the burden of proof, the probate judge must deny the motion. If, after the hearing, the probate judge finds that the movant has sustained the burden of proof, the probate judge must grant the motion and revoke the humane society agent's approval of appointment.⁹

The bill also requires a humane society to notify the county sheriff and the approving authority when all approved humane society agents have ceased to perform the duties of the appointment and no agents are operating within the jurisdiction.¹⁰

Bribery law

The bill specifies that a humane society agent is a "public servant" for the purposes of bribery law. Under that law, a public servant cannot knowingly solicit or accept for themselves or another person any valuable thing or valuable benefit to corrupt or improperly influence the person or another public servant regarding the discharge of the public servant's duty. Bribery is a third degree felony.¹¹

Humane society appointment and pay of attorneys

The bill authorizes humane societies to appoint, rather than employ, attorneys to prosecute certain violations of law. A humane society may appoint an attorney and one or more assistant attorneys to prosecute violations of law relating to prevention of cruelty to animals, except for certain felony violations related to companion animals. The bill authorizes a county to pay these attorneys from the county general fund or the county dog and kennel fund.

⁹ R.C. 1717.17.

¹⁰ R.C. 1717.06(E).

¹¹ R.C. 2921.02.

Under current law, a county humane society may employ an attorney to prosecute certain violations of law. These attorneys are paid out of the county treasury in an amount approved as just and reasonable by the county's board of county commissioners.¹²

Humane society agent pay

The bill increases the minimum monthly salary of a humane society agent as follows:

1. When a village approves the agent, from \$5 to \$25;
2. When a city approves the agent, from \$20 to \$125; and
3. When a county approves the agent, from \$25 to \$150.

The bill allows a county to pay the agent from its dog and kennel fund, in addition to the county general fund, which is allowed in current law. It also increases the minimum salary amount by \$5 beginning January 1, 2020, and is increased by \$5 every five years thereafter.¹³

Approval of humane society agents

The bill specifies that an appointment of an agent does not take effect unless approved by the mayor of the municipal corporation for which it is made. If the society operates outside a municipal corporation, the appointment does not take effect until it is approved by the probate judge of the county for which it is made. Current law more narrowly provides that appointed at-large agents may not make arrests until having been approved by the mayor or probate judge.¹⁴

Notification of county sheriff and board of county commissioners

The bill requires the approving authority to notify the appropriate county sheriff and the board of county commissioners when the appointment of a humane society agent has been approved and, not later than two business days after the appointment has been approved, to file a copy of the proof of successful completion of training with the sheriff. The county sheriff must maintain as a public record a copy of the proof for each humane society agent that is operating in the county.¹⁵

Training

Public record

The bill requires approving authorities, namely mayors and probate judges, to maintain as a public record a copy of the proof of successful completion of training for each humane society agent acting within the approving authority's jurisdiction.¹⁶

¹² R.C. 2931.18.

¹³ R.C. 1717.07.

¹⁴ R.C. 1717.06(C)(2).

¹⁵ R.C. 1717.06(D).

¹⁶ R.C. 1717.06(C)(2).

Individuals serving as humane society agents before bill's effective date

Generally, to qualify for appointment as a humane society agent, an individual must present to the approving authority proof of successful completion of training that has been signed by the training entity. The bill requires an individual who is currently serving as a humane society agent to obtain and present proof of successful completion of training to the approving authority within six months after the bill's effective date. Furthermore, it requires the approving authority, not later than two business days after having received the proof of successful completion of training, to notify the appropriate county sheriff and board of county commissioners, and file a copy with the sheriff. A current humane society agent who has not presented the required proof of successful completion of training is suspended as a humane society agent by operation of law until the individual files proof with the county sheriff. The bill requires the probate judge of the appropriate county to, not later than 90 days after the bill's effective date, send written notice to the humane society informing it about the bill's provisions related to the presentation of an existing humane society agent's proof of successful completion of training.¹⁷

Complaint regarding failure to complete training

An individual who has reasonable cause to believe that a humane society agent has not successfully completed the required training or that an agent's proof of successful completion of training contains false or misleading information may file a complaint, in the form of an affidavit, with the approving authority. The approving authority must notify the appropriate humane society and investigate the complaint.

If the authority finds that the agent has not provided signed proof of successful completion of training, the authority must provide written notification to the agent's humane society to inform the society that the agent has a right to cure period of 30 days from the date of the notification. If the agent has not provided signed proof by the end of the right to cure period, the authority must rescind the approval of the appointment and order the applicable humane society to revoke the appointment.

If the authority finds that the agent knowingly provided proof of successful completion of training that contains false or misleading information, the authority must rescind the approval of the appointment and order the humane society to revoke the appointment.

The humane society must file written notice with the county sheriff of the revocation of a humane society agent's appointment.¹⁸

References in Humane Society Law – protection of persons

Generally, the bill limits a humane society's authority to the protection of animals. In that regard, the bill removes the authority of humane society agents to arrest a person for a

¹⁷ R.C. 1717.06 and 1717.061; Sections 4 and 5.

¹⁸ R.C. 1717.062.

violation of law for the protection of persons.¹⁹ It also removes a reference to the protection of children and the arrest of a person in relation to cruelty to persons under the Humane Society Law.²⁰

Additionally, the bill eliminates a humane society's authority to employ attorneys to prosecute violations of law relating to the cruelty to persons. Specifically, the bill eliminates the authority for these attorneys to prosecute violations of law relating to all of the following:

1. Cruelty to children, or the abandonment, nonsupport, or ill-treatment of a child by its parent;
2. Employment of a child under 14 years of age in public exhibitions or vocations injurious to health, life, or morals or which cause or permit the child to suffer unnecessary physical or mental pain; and
3. Neglect or refusal of an adult to support a destitute parent.²¹

Finally, the bill repeals current law that authorizes a humane society that is willing to render its services without compensation to be appointed by the court of common pleas as a trustee of a child under the Domestic Relations Law.²²

Removal of a child and duty to report abuse

The bill repeals a provision of the Humane Society Law that specifically requires humane society agents, when deeming it in the best interest of a child to have the child removed from possession and control of the parents, to do so in accordance with the law governing the reporting of child abuse. It is not clear whether the repealed section of law is considered to authorize the summary removal, by a humane society agent, of a child from the possession of the parents.

The bill retains provisions of law that require a humane society agent to report the abuse of a child. It further retains law that requires each public children services agency to prepare a memorandum of understanding that is signed by specified law enforcement and judicial officers in the area of jurisdiction, including the county humane society.²³

Animal cruelty: seizure and impoundment

The bill expands the application of the law governing the seizure and impoundment of animals that are victims of animal cruelty. Under current law, an officer may seize and impound a companion animal (an animal that is kept inside a residential dwelling and any dog or cat) that

¹⁹ R.C. 1717.06(A).

²⁰ R.C. 1717.02 and 1717.09.

²¹ R.C. 2931.18.

²² R.C. 3113.10 (repealed); R.C. 3113.04 and 3313.07, not in the bill.

²³ R.C. 1717.14 (repealed) and 2151.421(A)(1)(b) and (K).

the officer has probable cause to believe is the subject of an animal cruelty offense.²⁴ The bill, instead, authorizes an officer to seize and impound *any* animal that the officer has probable cause to believe is the subject of an animal cruelty offense.

The bill also requires notice of the seizure and impoundment to be made within 24 hours of the seizure. (Current law does not specify a time by which notice must be provided.) It then requires any bond posted for the care of the animal to be in an amount that is necessary and reasonable for the animal's care as determined by the court. (Current law specifies that the amount must be an amount that the court determines is "needed," or when renewing the bond, an amount that is "sufficient" for the animal's care.)²⁵ Finally, the bill authorizes the court to order a person who is convicted of or pleads guilty to the animal cruelty offense to reimburse the impounding agency for costs of care that have not been paid that are *reasonable and necessary*. (Current law specifies that those costs must be *reasonably necessary*.)²⁶

Limited license for drugs used for animal euthanasia

Overview

Under current law, the State Board of Pharmacy may issue a limited license to an animal shelter for the purpose of purchasing, possessing, and administering drugs (in dosage form) for animal euthanasia. In order to receive a license, an agent or employee of an animal shelter must successfully complete a euthanasia technician certification course. However, if the agent or employee is a registered veterinary technician, the agent or employee does not need to complete the course. An application for licensure must include the information the Board requires by rule. If the application meets the requirements of the rules, the Board must issue the limited license.²⁷

Limited license for dog wardens

The bill authorizes the State Board of Pharmacy to issue a limited license to the office of a county dog warden.²⁸ Given this authorization, the bill prohibits an agent or employee of a dog warden from performing euthanasia by means of lethal injection unless both of the following apply:

1. The facility in which the agent or employee works has a limited license; and
2. The agent or employee (which may include the dog warden) has received certification after successfully completing a euthanasia technician certification course. (If the agent,

²⁴ R.C. 959.131. Animal cruelty offenses are generally codified in Chapter 959. of the Revised Code.

²⁵ R.C. 959.132.

²⁶ R.C. 959.132 and 959.99(E)(6)(b).

²⁷ R.C. 4729.531.

²⁸ R.C. 4729.531.

employee, or dog warden is a veterinarian technician, completion of the course is not required.)

The bill also prohibits the agent or employee of a dog warden from administering pre-euthanasia drugs that induce anesthesia, sedation, or unconsciousness unless both (1) and (2) above apply and applies that prohibition to an agent or employee of an animal shelter. It retains a requirement that the administration of drugs must be performed in a humane and proficient manner in conformity with approved methods and not in violation of Ohio's animal cruelty laws.²⁹

Under current law, the curriculum for a euthanasia technician certification course must be approved by the State Veterinary Medical Licensing Board, be at least 16 hours in length, and include information in at least all of the following areas:

1. The pharmacology, proper administration, and storage of euthanasia solutions;
2. Federal and state laws regulating the storage and accountability of euthanasia solutions;
3. Euthanasia technician stress management; and
4. Proper disposal of euthanized animals.

The bill adds that the curriculum also must include information on both of the following:

1. The pharmacology, proper administration, and storage of sedation and anesthesia solutions; and
2. Federal and state laws regulating the storage and accountability of sedation and anesthesia solutions.³⁰

Drugs used by licensees

The bill requires the State Veterinary Medical Licensing Board, in consultation with the State Board of Pharmacy, to approve by rule any substance used by a county dog warden or an agent or employee of a county dog warden or animal shelter to euthanize an animal by lethal injection. It prohibits a dog warden or an agent or employee of a dog warden or animal shelter from performing euthanasia by means of lethal injection by use of any substance other than an approved substance. Current law instead requires the State Veterinary Medical Licensing Board and the State Board of Pharmacy to both approve by rule a combination of drugs that contains pentobarbital and at least one other drug used for euthanasia purposes.³¹ The bill also allows the Board to approve the transfer of euthanasia drugs from an animal shelter or dog warden to another licensee.³²

²⁹ R.C. 4729.532(A), (C), and (D).

³⁰ R.C. 4729.532(C).

³¹ R.C. 4729.532(A).

³² R.C. 4729.531(A) and 4729.533(B).

The bill removes the order of preference in current law regarding authorized methods for euthanizing an animal when using a lethal solution. Under the bill, when using a lethal solution to perform euthanasia on an animal, a dog warden or an agent or employee of a dog warden or animal shelter must use the solution in accordance with one of the following methods, but not in the order listed as in current law:

1. Intravenous injection by hypodermic needle;
2. Intraperitoneal injection by hypodermic needle;
3. Intracardial injection by hypodermic needle, but only on an animal verified to be unconscious; or
4. Oral administration of solution or powder.³³

Current law specifies under method (3), above, that the animal must be sedated or unconscious. Also under current law, method (4), above, is instead solution or powder added to food.

As indicated above, the bill authorizes an agent or employee of an animal shelter, a county dog warden, or an agent or employee of a county dog warden who has successfully completed a euthanasia technician certification course to administer a solution of one or more drugs exclusively for the purpose of inducing anesthesia, sedation, or unconsciousness prior to euthanasia. It specifies that the State Board of Pharmacy, in consultation with the State Veterinary Medical Licensing Board, must approve the drugs that may be used for pre-euthanasia purposes.³⁴

Use of dangerous drugs

The bill requires a county dog warden to apply for a limited category II or III terminal distributor license from the State Board of Pharmacy if the dog warden intends to use dangerous drugs for euthanasia purposes. With regard to the application, both of the following apply:

1. The dog warden must include with the application a list of the dangerous drugs to be administered to animals and the personnel who are authorized to administer the drugs to animals.³⁵
2. Once issued a license, the dog warden may possess and use dangerous drugs for euthanasia purposes as authorized by the bill.³⁶

Finally, the bill prohibits a county dog warden, like an animal shelter as in current law, from being licensed as a terminal distributor of dangerous drugs unless:

³³ R.C. 4729.532(A).

³⁴ R.C. 4729.532(B).

³⁵ R.C. 4729.54(F).

³⁶ R.C. 4729.54(H)(2) and 4729.542(C)

1. The dog warden will maintain supervision and control over the possession and custody of dangerous drugs that are acquired by or on behalf of the dog warden; and
2. At least one of the dog warden's agents or employees is a certified euthanasia technician as discussed above.³⁷

Chemical capture of companion animals

License classification

The bill authorizes an animal shelter or county dog warden that holds a limited license to apply to the State Board of Pharmacy for a chemical capture classification to the limited license. The classification allows the holder to purchase, possess, and administer a combination of drugs for chemical capture. Under the bill, chemical capture means using an anesthetic drug on a companion animal to do any of the following: (1) immobilize and capture, (2) attempt to immobilize and capture, or (3) attempt to immobilize or capture. Under existing law, a companion animal is any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. A companion animal does not include livestock or any wild animal.³⁸

An animal shelter or dog warden must include in the application for a chemical capture classification a notarized list of the dangerous drugs to be used in chemical capture and the certified officers employed by the applicant who are authorized to engage in chemical capture (see below).³⁹ The Board may grant a chemical capture classification to the limited license once application is so made.⁴⁰

To qualify for a chemical capture classification, an applicant must appoint or employ a certified officer.⁴¹ If an applicant meets the bill's requirements and rules adopted under the bill (see below), the Board must grant the classification. The Board may suspend or revoke a classification or refuse to issue or renew a classification for any violation of the bill's provisions regarding chemical capture or applicable rules.⁴²

The bill requires the Board, in accordance with the Administrative Procedure Act and in consultation with the State Veterinary Medical Licensing Board, to adopt rules that do all of the following:

1. Specify the information an applicant must provide for issuance or renewal of a chemical capture classification;

³⁷ R.C. 4729.55(B) and (H).

³⁸ R.C. 955.151(A) and 4729.533(B); R.C. 959.131(A)(1), not in the bill.

³⁹ R.C. 4729.542(A).

⁴⁰ R.C. 4729.533(B).

⁴¹ R.C. 4729.533(C).

⁴² R.C. 4729.533(D).

2. Specify the drugs to be used in chemical capture; the proper storage, administration, and use of approved drugs; the proper storage, maintenance, and use of instruments and equipment used in chemical capture; and the proper disposal of instruments used in chemical capture;
3. Establish criteria for determining when chemical capture is appropriate; the care of a companion animal immediately upon capture; and recordkeeping for the drugs used and actions taken during a chemical capture; and
4. Address any other matters the Board considers necessary or appropriate for administration and enforcement of the bill's provisions regarding chemical capture.⁴³ If the Board fails to adopt the rules within two years of the bill's effective date, the Attorney General or a county prosecuting attorney may seek a court order requiring adoption of the rules.⁴⁴

Under the bill, the holder of a limited license with a chemical capture classification must notify the Board immediately of any changes in the dangerous drugs to be used in chemical capture or in the certified officers employed by the holder.⁴⁵

Certified officers

Training

As indicated above, only certified officers may engage in the chemical capture of a companion animal. An individual is a certified officer if the individual either successfully completes an approved chemical capture course or successfully completes training acceptable to the State Board of Pharmacy from the National Animal Control Association or Safe Capture International, Inc.⁴⁶

In order to be an approved chemical capture course, the curriculum must include all of the following topics:

1. The pharmacology, proper administration, storage, and recordkeeping of drugs used in chemical capture;
2. Federal and state laws regulating the storage and accountability of drugs used in chemical capture;
3. Chemical capture technology, animal behavior, post-immobilization procedures, proper public and personnel safety, and marksmanship training; and

⁴³ R.C. 4729.533(E).

⁴⁴ Section 6.

⁴⁵ R.C. 4729.542(B).

⁴⁶ R.C. 4729.534(B).

4. Any other topic specified by the Board.⁴⁷

Other provisions applicable to certified officers

The bill does all of the following regarding certified officers:

1. Specifies that, in a civil action, a certified officer is immune from liability for any harm the officer causes to a companion animal, livestock, or wild animal if the officer is acting within the scope of the officer's employment and is in compliance with rules governing certified officers adopted by the State Board of Pharmacy;⁴⁸
2. Establishes authority in the law governing dogs for a certified officer appointed or employed by an animal shelter or county dog warden that holds a chemical capture classification granted by the Board to chemically capture a companion animal in accordance with the bill in order to limit injury to the officer, the animal or another animal, or the public;⁴⁹
3. States that chemical capture of a companion animal by a certified officer in accordance with Ohio law is not an act of cruelty;⁵⁰ and
4. Declares that the law governing veterinarians does not apply to an act of chemical capture by a certified officer.⁵¹

Prohibitions and penalties

The bill prohibits all of the following:

1. A person from performing chemical capture with a drug or combination of drugs other than the drugs specified in rules adopted by the State Board of Pharmacy;
2. An animal shelter or county dog warden from permitting an individual to perform chemical capture unless the shelter or warden holds a chemical capture classification granted by the Board and the individual is a certified officer; and
3. An individual from performing chemical capture unless the individual is a certified officer and is appointed or employed by an animal shelter or county dog warden that holds a chemical capture classification.⁵²

⁴⁷ R.C. 4729.534(C).

⁴⁸ R.C. 4729.534(D).

⁴⁹ R.C. 955.151(B).

⁵⁰ R.C. 959.134.

⁵¹ R.C. 4741.201.

⁵² R.C. 4729.535.

Veterinarians and veterinary technicians

Regarding both chemical capture and animal euthanasia by agents and employees of animal shelters, county dog wardens, and agents and employees of county dog wardens, the bill specifies that its provisions and current law do not preclude licensed veterinarians and registered veterinary technicians from engaging in the practice of veterinary medicine.⁵³

Impounded dogs

The bill revises provisions of law governing the disposition of a dog that has been seized and impounded by a county dog warden, but that has not been redeemed by its owner, keeper, or harbinger (“owner”). For the purposes of redemption, current law generally requires a dog that has been seized and impounded by the county dog warden to be kept, housed, and fed for a specified time period, dependent on the conditions under which the dog warden seizes and impounds the dog. After that time period, if a nonprofit agency that trains assistance dogs requests a dog that is not redeemed, the county dog warden or dog poundkeeper must donate the dog to the agency. The dog warden or poundkeeper may sell any dog that is not requested by an assistance dog agency to any person, including to any nonprofit Ohio institution or organization that is certified by the Director of Health as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals. Any dog that is not disposed of by redemption or sale may be humanely destroyed.⁵⁴

The bill revises the provisions governing the disposition of a dog that is not redeemed by its owner as follows:

1. It eliminates the requirement that a dog warden or poundkeeper first donate the dog to a nonprofit agency that trains assistance dogs when requested;
2. It authorizes a dog warden or poundkeeper to adopt out or donate the dog to any person, including a nonprofit agency that trains assistance dogs and a nonprofit teaching or research institution or organization that is certified by the Director of Health as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals; and
3. It authorizes a dog warden to charge an adoption fee for any dog that is adopted.⁵⁵

The bill retains the authority for a dog warden to humanely destroy a dog that is not adopted out.

⁵³ R.C. 4729.532(E) and R.C. 4729.535.

⁵⁴ R.C. 955.16.

⁵⁵ R.C. 955.16(A) and (B).

Uniformity of animal law provisions

Background

The 131st General Assembly enacted Sub. S.B. 331, which went into effect on March 21, 2017. It amended a variety of laws related to: (1) pet stores, (2) dog breeders, (3) animal fighting, (4) bestiality, (5) humane agent residency requirements, (6) micro wireless facilities, and (7) minimum wage. After its enactment, many municipalities challenged the act, claiming, among other things, that it violated the Ohio Constitution's one-subject rule.⁵⁶

The Ohio Constitution states that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.”⁵⁷ If a bill is challenged for violating the one-subject rule, a court may sever portions of an act that violate the one-subject rule in order to cure the defect and save the portions which do relate to a single subject.⁵⁸ However, if the court can discern no “primary” subject matter of the bill, severance is not possible and the bill must be held unconstitutional in its entirety.⁵⁹

The courts in *City of Bexley v. State*, *City of Cincinnati v. State*, and *City of Cleveland v. State* preserved the pet store regulations enacted by Sub. S.B. 331, as well as all other animal-related provisions (dog breeding, animal fighting, bestiality, and humane agent residency requirements).

However, the Sixth District Appellate Court in *City of Toledo v. State* (which heard consolidated actions from the cities of Toledo, Maumee, Napoleon, Sylvania, and Perrysburg) found that the “application of the severance doctrine to save any portion of [Sub.] S.B. 331 is unwarranted because there is no discernible primary subject of the bill.” The court did not save any provisions of the bill, including the animal fighting, bestiality, or humane agent residency requirement provisions. Therefore, the laws governing animal fighting, bestiality, and humane agent residency requirements that were enacted by Sub. S.B. 331 cannot be enforced within the jurisdiction of the Sixth Appellate District, which includes all of Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams, and Wood counties. Currently, in that jurisdiction:

- A person may be prosecuted for violating the animal fighting law only as it existed prior to March 21, 2017;

⁵⁶ *City of Toledo v. State*, 2018 Ohio App. LEXIS 4854, 2018-Ohio-4534, 123 N.E.3d 343 (6th Dist.), *City of Bexley v. State*, Franklin C.P. No. 2017-CV-2672, 92 N.E.3d 397 (June 2, 2017), *City of Cincinnati v. State*, 2018 Ohio App. LEXIS 4826, 2018-Ohio-4498, 121 N.E.3d 897 (1st Dist.), and *City of Cleveland v. State*, 2019 Ohio App. LEXIS 364, 2019-Ohio-315 (8th Dist.).

⁵⁷ Ohio Constitution, Article II, Section 15(D).

⁵⁸ *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999), *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St.3d 145, 580 N.E.2d 767 (1991), see also R.C. 1.50.

⁵⁹ *Akron Metro. Hous. Auth. Bd. of Trustees v. State*, 2008 Ohio App. LEXIS 2384, 2008-Ohio-2836 (11th Dist.).

- A person in that jurisdiction cannot be prosecuted for violating the bestiality law because that law did not exist prior to that date,⁶⁰ and
- A county humane society may appoint agents, but the agents must be residents of the county or municipal corporation for which the appointment is made.⁶¹

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The bill reenacts prohibitions associated with cockfighting, bearbaiting, or pitting an animal against another (animal fighting activities); sexual conduct with an animal (bestiality); and hiring a county humane agent who lives outside the county or municipal corporation for which the society is located. These provisions currently apply in all areas of the state except Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams, and Wood counties (“Sixth Appellate District”). By reenacting these provisions, the bill makes them uniformly enforceable across the state, including in the Sixth Appellate District.⁶² Below is a comparison of the law prior to Sub. S.B. 331 (the law currently enforced in the Sixth Appellate District) and the law after Sub. S.B. 331 (the law that is enforced in the remainder of the state).

Animal fighting law

Prior to Sub. S.B. 331, the law prohibited a person from knowingly doing any of the following:

1. Engaging in an animal fighting activity;
2. Being employed at an animal fighting activity; or
3. Aiding and abetting (see below) by purchasing a ticket of admission, being present at, or witnessing animal fighting activities.

A violation of any of the above was a fourth degree misdemeanor. Sub. S.B. 331 kept engaging in an animal fighting activity a fourth degree misdemeanor,⁶³ but increased the penalty for a violation of being employed at an animal fighting activity from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁶⁴ With regard to (3) above, Sub. S.B. 331 retained the prohibition against witnessing animal fighting activities as an aiding and abetting offense, but altered the other elements of the prohibition by doing all of the following:

- Specifying that no person may pay money or give anything else of value in exchange for admission to or being present at the event;

⁶⁰ Although the District Courts were split on the severability issue concerning Sub. S.B. 331’s provisions, the Ohio Supreme Court did not accept the appeal of *City of Toledo v. State* for review, see The Supreme Court of Ohio Case Announcements, March 20, 2019.

⁶¹ R.C. 1717.06.

⁶² Section 4.

⁶³ R.C. 959.99(C).

⁶⁴ R.C. 959.15(B)(1) and 959.99(I).

- Specifying that paying money or giving anything else of value in exchange for admission to or being present at the event is a principal offense and no longer an aiding and abetting offense (see below); and
- Increasing the penalty for a violation of any of the elements of (3) from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁶⁵

The law prior to Sub. S.B. 331 prohibited a person from recklessly doing either of the following:

1. Receiving money for the admission of another to a place kept for animal fighting activities; or
2. Using, training, or possessing any animal for seizing, detaining, or maltreating a domestic animal.

Sub. S.B. 331 retained (2) above and its associated penalty (a fourth degree misdemeanor),⁶⁶ but heightened the required culpable mental state from recklessly to knowingly.

Sub. S.B. 331 altered (1) above by doing all of the following:

- Adding that no person may receive anything else of value in exchange for the admission of another person to the event or for another person to be present at the event;
- Heightening the required culpable mental state from recklessly to knowingly; and
- Increasing the penalty for the violation from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.⁶⁷

Sub. S.B. 331 also created new prohibitions – a person is prohibited from knowingly doing any of the following:

- Wagering money or anything else of value on the results of the animal fighting event;
- Using, possessing, or permitting to be present at the event any device or substance intended to enhance an animal's ability to fight or to inflict injury on another animal; or
- Permitting or causing a minor to be present at the event if any person present at or involved with the event is engaging in any prohibited animal fighting activities.⁶⁸

Violation of these prohibitions is a felony with a fine of up to \$10,000.⁶⁹

⁶⁵ R.C. 959.15(B)(2) and 959.99(I).

⁶⁶ R.C. 959.99(C).

⁶⁷ R.C. 959.15(B) and 959.99(I).

⁶⁸ R.C. 959.15(B)(2)(a), (d), and (e).

⁶⁹ R.C. 959.99(I).

Bestiality

Sub. S.B. 331 enacted a new law that prohibits a person from knowingly (1) engaging in sexual conduct with an animal, (2) possessing, selling, or purchasing an animal with the intent that it be subjected to sexual conduct, or (3) organizing, promoting, aiding, or abetting in the conduct of an act involving any sexual conduct with an animal.⁷⁰ Prior to Sub. S.B. 331, Ohio law did not expressly prohibit these activities (collectively known as “bestiality”).

For purposes of this law, sexual conduct is either of the following committed for the purpose of sexual gratification:

1. Any act done between a person and animal that involves contact of the penis of one and the vulva of the other, the penis of one and the penis of the other, the penis of one and the anus of the other, the mouth of one and the penis of the other, the mouth of one and the anus of the other, the vulva of one and the vulva of the other, the mouth of one and the vulva of the other, any other contact between a reproductive organ of one and a reproductive organ of the other, or any other insertion of a reproductive organ of one into an orifice of the other; or
2. Without a bona fide veterinary or animal husbandry purpose to do so, the insertion, however slight, of any part of a person’s body or any instrument, apparatus, or other object into the vaginal, anal, or reproductive opening of an animal. An animal is defined as a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.⁷¹

Penalties

A violation of any of the bestiality prohibitions is a second degree misdemeanor. In addition, the court may order the offender to forfeit the animal and may provide for its disposition, including its sale. If an animal is forfeited and sold, the proceeds from the sale first must be applied to the expenses for the animal’s care from the time it was taken from the former owner’s custody. The balance of the sale proceeds, if any, must be paid to the former owner.⁷²

Also, if the court has reason to believe that the offender suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court must order the offender to pay the costs of the evaluation or counseling.⁷³

⁷⁰ R.C. 959.21(B) and (C).

⁷¹ R.C. 959.21(A)(4).

⁷² R.C. 959.99(D).

⁷³ R.C. 959.99(E)(7).

Humane agent residency requirement

Prior to Sub. S.B. 331, the law required a county humane society agent to reside in the county or municipal corporation for which the agent was appointed.⁷⁴ Sub. S.B. 331 removed this residency requirement for county humane society agents.

HISTORY

Action	Date
Introduced	02-12-19
Reported, H. Agriculture and Rural Development	05-14-19
Passed House (92-0)	10-30-19
Reported, S. Agriculture & Natural Resources	---

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⁷⁴ R.C. 1717.06.