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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 24  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsor:** Rep. Hambley

Jeff Grim, Research Associate

### 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.
- 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.

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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.”<sup>1</sup> 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

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 R.C. 1717.03 and 1717.04 (repealed); R.C. 955.16, 1717.02, 1717.08, 1717.09, and 1717.16 (conforming).

the name Families Forward.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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

### **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.<sup>6</sup> 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.<sup>7</sup>

### **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

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

<sup>3</sup> 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.

<sup>4</sup> R.C. 1717.05(E).

<sup>5</sup> R.C. 1717.06(B).

<sup>6</sup> R.C. 149.43, not in the bill, and R.C. 1717.16.

<sup>7</sup> Section 5.

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.<sup>8</sup>

### **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 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.<sup>9</sup>

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<sup>8</sup> R.C. 1717.18; R.C. 1717.01, and 1717.10 (conforming).

<sup>9</sup> R.C. 1717.17.

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.<sup>10</sup>

### **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.<sup>11</sup>

### **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.

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.<sup>12</sup>

### **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.<sup>13</sup>

### **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

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<sup>10</sup> R.C. 1717.06(E).

<sup>11</sup> R.C. 2921.02.

<sup>12</sup> R.C. 2931.18.

<sup>13</sup> R.C. 1717.07.

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.<sup>14</sup>

### **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.<sup>15</sup>

### **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.<sup>16</sup>

### **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.<sup>17</sup>

### **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

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<sup>14</sup> R.C. 1717.06(C)(2).

<sup>15</sup> R.C. 1717.06(D).

<sup>16</sup> R.C. 1717.06(C)(2).

<sup>17</sup> R.C. 1717.06 and 1717.061; Sections 4 and 5.

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.<sup>18</sup>

### **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 violation of law for the protection of persons.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup>

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<sup>18</sup> R.C. 1717.062.

<sup>19</sup> R.C. 1717.06(A).

<sup>20</sup> R.C. 1717.02 and 1717.09.

<sup>21</sup> R.C. 2931.18.

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

## **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.<sup>23</sup>

## **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 the officer has probable cause to believe is the subject of an animal cruelty offense.<sup>24</sup> 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.)<sup>25</sup> 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*.)<sup>26</sup>

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<sup>23</sup> R.C. 1717.14 (repealed) and 2151.421(A)(1)(b) and (k).

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

<sup>25</sup> R.C. 959.132.

<sup>26</sup> R.C. 959.132 and 959.99(E)(6)(b).



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## History

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

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