

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 765 Animal Protection
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Garcia and others
TIED BILLS: IDEN./SIM. BILLS: SB 1708

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Agriculture & Natural Resources Policy Committee, 10 Y, 0 N, As CS, Thompson, Reese. Row 2: General Government Policy Council, 15 Y, 0 N, Thompson, Hamby.

SUMMARY ANALYSIS

It has recently been reported that South Florida has experienced an increase in the illegal horse meat market. In response, in 2009, the Miami-Dade County Board of County Commissioners issued a resolution1 urging the Florida Legislature to increase the criminal penalties related to the unlawful slaughter of horses.

The bill, in part:

- Creates four new horse meat for human consumption offenses: transporting, distributing, purchasing, or possessing.
Increases the penalties for said offenses to a third degree unranked felony.
Authorizes the sentencing of violent career criminals, habitual felony and habitual violent felony offenders, and three-time violent felony offenders of the horse meat for human consumption provision.
Provides for a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for violations of said offenses.
Authorizes the suspension of any license of any restaurant, store, or other business, as provided for in the applicable licensing law, upon the conviction of an owner or employee of said business for a violation of the horse meat for human consumption provision.
Expands the classification of protection for registered breeds of horses to include any animal of the genus Equus (horse) and provides for a minimum mandatory fine of \$3,500 and period of incarceration of one year for violations of the horse killing or aggravated abuse provision.
Specifies that anyone convicted of a violation relating to animal cruelty or whose license to practice veterinary medicine has been revoked, suspended, inactive, or delinquent is not exempt from the veterinary license requirements provided for under chapter 474, F.S., relating to veterinary medical practice.
Revises procedures regarding custody proceedings relating to animals found in distress.

Although the bill creates a new third degree felony, the Department of Corrections anticipates an insignificant fiscal impact. The Criminal Justice Impact Conference determined that the bill will have an insignificant impact on prison admissions and populations. It is impossible to forecast how many violations might occur, thus the actual fiscal impact on state and local governments is unknown. Associated medical and insurance costs to the private sector may be reduced. (See Fiscal Comments section for additional details)

Unless otherwise provided, the bill has an effective date of July 1, 2010.

1 Miami-Dade Resolution No. R.-1215-09

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Generally, horse meat is consumed in parts of Europe, Asia and South America. In 2007, three horse slaughter plants operated in the United States (U.S.), two in Texas and one in Illinois, all owned by French and Belgian firms,<sup>2</sup> whereby the meat was primarily exported to foreign markets. Although a commercial market for horsemeat as food has never emerged in the U.S., it is reported that areas of South Florida are currently experiencing an increase in demand for such meat.<sup>3</sup>

It has recently been reported that areas of South Florida have experienced an increase in the illegal horse meat market.<sup>4</sup> In 2009, South Florida experienced approximately twenty illegal horse slaughtering cases. According to the South Florida Society for the Prevention of Cruelty to Animals (SPCA),<sup>5</sup> many of these horses are butchered for meat. According to the Miami-Dade Agricultural Patrol Unit, many of the resulting carcasses are left at the scene of the crime or on the roadside.<sup>6</sup> In response, on October 20, 2009, the Miami-Dade County Board of County Commissioners issued a resolution<sup>7</sup> urging the Florida Legislature to increase the criminal penalties related to the unlawful slaughter of horses.

During the 1996 regular session, the Legislature enacted laws<sup>8</sup> repealing the State Meat Inspection Program within the Florida Department of Agriculture and Consumer Services (DACs). The repeal transferred the entire state program over to the federal government to be regulated by the U.S. Department of Agriculture (USDA). Currently, the DACs only provides inspection and testing programs for retail food stores, food processing plants, food storage and distribution points, and other locations in Florida where food is sold to the public.

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<sup>2</sup> Dallas Crown, Inc. in Kaufman, Texas; Beltex Corporation in Fort Worth, Texas; and Cavel International, Inc. in DeKalb, Illinois

<sup>3</sup> USA Today, South Florida sees rise in illegal horse meat market; Gomez, Alan; [http://www.usatoday.com/news/nation/2009-10-05-horse-meat\\_N.htm](http://www.usatoday.com/news/nation/2009-10-05-horse-meat_N.htm)

<sup>4</sup> USA Today, South Florida sees rise in illegal horse meat market; Gomez, Alan; [http://www.usatoday.com/news/nation/2009-10-05-horse-meat\\_N.htm](http://www.usatoday.com/news/nation/2009-10-05-horse-meat_N.htm)

<sup>5</sup> <http://www.sPCA-sofla.org/>

<sup>6</sup> Per phone communication with Detective Mario Fernandez, Miami-Dade P.D. 305-252-8311

<sup>7</sup> Miami-Dade Resolution No. R.-1215-09

<sup>8</sup> 96-423, Laws of Florida

The Federal Meat Inspection Act (FMIA)<sup>9</sup> requires the USDA to inspect all “amenable species” such as, cattle, sheep, goats, and horses when slaughtered for processing into products for human consumption. This act, administered by USDA’s Food Safety and Inspection Service (FSIS), aims to ensure that meat and meat products from these animals are safe, wholesome, and properly labeled. FSIS safety inspection is mandatory, and most costs are covered by appropriated funds.<sup>10</sup> Without these inspections, there can be no legal sale or slaughter of horses for human consumption.

In 2005, Congress passed a provision<sup>11</sup> that would have stopped the USDA appropriation paying for the inspections of horses sold for slaughter. In response, the USDA issued a rule<sup>12</sup>, amending the Congressional provision, creating a “fee-for-service” inspection program that allowed slaughterhouses to continue with inspections if the costs were borne by the slaughterhouses. Consequently, several national animal welfare organizations filed suit<sup>13</sup> against the USDA for accepting private payments. On March 28, 2007, a United States District Court ruled that private (fee-for-service) payment to government entities is unconstitutional. This effectively cut the funding for inspections of horses sold for slaughter, thus, eliminating any legal means for the processing or sale of horse meat for human consumption in the U.S.

## **Proposed Changes**

### Veterinary Medical Practices

The Florida Veterinary Practice Act (Chapter 474, F.S.), “finds that the practice of veterinary medicine is potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.” It provides exemptions relating to acts or conditions not in violation of the Florida Veterinary Practice Act.

Section 474.203(5)(b), F.S., specifies that this chapter does not apply to:

“A person hired on a part-time or temporary basis, or as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals, including castration, dehorning, parasite control, and debeaking, or a person hired on a part-time or temporary basis, or as an independent contractor, by an owner to provide farriery and manual hand floating of teeth on equines.”

The bill amends s. 474.203(5)(b), F.S., to specify the above part time worker exemption does not apply to any person who has been convicted of a violation of chapter 828, F.S., that relates to animal cruelty or a similar offense in another jurisdiction.

Section 474.203(7), F.S., specifies that this chapter does not apply to:

“Any veterinary aide, nurse, laboratory technician, preceptor, or other employee of a licensed veterinarian who administers medication or who renders auxiliary or supporting assistance under the responsible supervision of a licensed veterinarian, including those tasks identified by rule of the board requiring immediate supervision.”

The bill amends s. 474.203(7), F.S., to specify the above veterinary aid exemption does not apply to any person whose license to practice veterinary medicine is revoked, suspended, inactive, or delinquent, whether in this state, another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction; provide for technical changes.

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<sup>9</sup> 21 U.S.C., s. 603

<sup>10</sup> Congressional Research Service, Horse Slaughter Prevention Bills and Issues; Becker, Geoffrey S.; May 8, 2009

<sup>11</sup> Section 794, an amendment to the FY 2006 Agricultural Appropriations Act

<sup>12</sup> 9 C.F.R. 352.19

<sup>13</sup> Westlaw: 520 F.Supp.2d 8; Civil Action No. 06265

## Horse Meat

Section 500.452, F.S., prohibits the sale of horse meat for human consumption in the markets of the state unless the meat is clearly stamped, marked, and described as horse meat for human consumption. Violations of this section are a misdemeanor of the second degree, punishable by a fine of not more than \$500 or sixty days in jail, or both.

HB 765 amends s. 500.451, F.S., to include four additional horse meat offenses: transporting, distributing, purchasing, or possessing. The bill expands the branding requirement<sup>14</sup> to include the phrase "horsemeat that is not acquired from a licensed slaughterhouse." The bill increases violations to a third degree felony punishable by a \$5,000 fine and up to five years in jail plus applicable administrative fees and court costs.<sup>15</sup> Additionally, the bill authorizes the sentencing of violent career criminals, habitual felony and habitual violent felony offenders, and three-time violent felony offenders<sup>16</sup> of the horse meat for human consumption provision. The bill provides for a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for horse meat for human consumption offenses. Additionally, the bill authorizes the suspension of any license of any restaurant, store, or other business, as provided for in the applicable licensing law, upon the conviction of an owner or employee of said business for a violation of this section. The bill provides that this section will become effective October 1, 2010.

## Cruelty to Animals

Section 828.073, F.S. provides procedures by which a neglected or mistreated animal can be removed from custody or ordered to be cared for by its owner.

The bill amends s. 828.073, F.S., to:

- Create a timeframe of within 10 days after an animal is seized or upon issuance of an order to provide care, that law enforcement officers and animal cruelty prevention agents must file petitions for custody proceedings involving neglected animals.
- Consolidate the current timeframes of the scheduling and commencement hearings of the court to both be held within 30 days after such petitions are filed.
- Direct county courts to expedite the commencement of such custody proceedings and exempt the owner from payment of care provided for the animal during any period of delay caused by the officer or agent involved.
- Decrease the period from five to three days within which written notice must be served to the owner of the animal before the hearing date of such custody proceedings.
- Delete the order to serve notice in accordance with chapter 49, F.S., service of process, relating to when the owner of the animal is residing outside of the county where the animal was taken.
- Authorize the court, upon judgment that the owner of the animal is unable or unfit to adequately provide for the animal, to take certain actions regarding the disposal of the animal.
- Delete the provision requiring the testimony of the agent who took custody of the animal, or the testimony of other qualified witnesses in order for the court to order an animal destroyed or remanded into custody.
- Provide clarifying technical changes.

Section 828.125, F.S., prohibits the willful and unlawful killing, maiming, mutilating or causing of great bodily harm or permanent breeding disability to any animal of any registered breed of horse or cattle. Violations of this section are a second degree felony, punishable by a fine of not more than \$10,000 or 15 years in prison, or both.

The bill amends s. 828.125, F.S., to expand the classification of protection for registered breeds of horses to include any animal of the genus *Equus* (horse). Also, the bill provides for a minimum

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<sup>14</sup> s. 500.451(1), F.S.

<sup>15</sup> ss. 775.082, 775.083, F.S.

<sup>16</sup> s. 775.084, F.S.

mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for violations of this section.

The bill provides that this section will become effective October 1, 2010. Also, the bill provides for clarifying technical changes in the sections named above.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 474.203, F.S., providing circumstances that render inapplicable certain veterinary licensure exemptions pertaining to part-time and independent contractors; providing circumstances that render inapplicable an exemption for certain employees under veterinary supervision.

Section 2. Amends s. 500.451, F.S.; providing for four additional horse meat for consumption offenses; providing for increased violations and penalties; providing for suspension of licenses of certain businesses; providing for mandatory minimum penalties; providing for conforming technical changes in the section title; providing this section will become effective October 1, 2010.

Section 3. Amends s. 828.073, F.S., revising the procedures for law enforcement officers and certain animal cruelty prevention agents to file petitions in custody proceedings involving neglected animals; directing county courts to expedite the commencement of such proceedings; exempting animal owners from payment of the care provided for their animals during such proceedings under certain circumstances; revising the period within which written notice of such proceedings must be served; deleting a provision requiring publication of notices of such proceedings under certain circumstances; revising provisions relating to remand of neglected animals directly to the seizing officer or agent for disposition.

Section 4. Amends s. 828.125, F.S.; providing for an expanded classification of protected horses to apply to all horses regardless of breed; providing for mandatory minimum penalties; providing for conforming technical changes in the section title; providing this section will become effective October 1, 2010.

Section 3. Providing an effective date of October 1, 2010, unless otherwise provided.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent that the bill may improve the health of horses in Florida by reducing illegal slaughtering deaths, associated medical and insurance costs to the private sector may be decreased.

**D. FISCAL COMMENTS:**

The bill creates 4 new horse meat for human consumption offenses. It is impossible to predict how many additional violations will occur relating to these new offenses. The related fiscal impact is indeterminate.

Unless the bill expressly ranks the new felony offense on the state's offense severity ranking chart, s. 921.0022, F.S., the new felony will be "unranked." According to the Criminal Justice Impact Conference, this is not uncommon. An unranked, 3rd degree felony, defaults to Level 1 on the ranking chart, which is the least severe, thus imposing a lower percentage of related prison sentences.

According to the Department of Corrections (DOC), one conviction of the current horse meat provision has occurred in the last two years. Also according to DOC, it costs the state approximately \$20,000 per year for an incarcerated adult male. Consequently, the fiscal impact of increasing the classification of the current horse meat provision to a third degree unranked felony on the state may likely be insignificant.

Pursuant to s. 216.136(5), F.S., a function of the Criminal Justice Impact Conference (CJIC) is the development of official forecasts of prison admissions and population as they relate to new felonies. Typically, a new felony is not created until a consensus has been reached within the CJIC process. On February 23, 2010, the CJIC met and concluded that the effects of HB 765 will have an insignificant impact on prison admissions and populations.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

According to the State Constitution, a bill imposes a mandate if the substance of the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.<sup>17</sup>

The mandates provision appears to apply because the bill requires a minimum incarceration of one year that would be served in county jail, thus requiring the county to spend related funds; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

None

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<sup>17</sup> Article VII, Section 18; Florida Constitution

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### Minimum Mandatory Incarceration

The bill requires a minimum incarceration of one year. Pursuant to s. 922.051, F.S., a felony sentence of one year or less may be served in county jail if the total of the defendant's cumulative sentences is one year or less. Also, s. 775.08, F.S., distinguishing between felonies and misdemeanors, requires a person convicted of a felony to be imprisoned in the state penitentiary for a sentence exceeding one year.

If a person is sentenced to just the minimum mandatory, it would be served in county jail because that is where sentences of a year or less are served. If the judge sentences the person to longer than the minimum mandatory sentence, the time would be served in state prison. If the intent of the bill is to make sure that the person goes to state prison, rather than county jail, for the minimum mandatory, the sentence will have to be longer than a year.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment to this bill. In addition to the original provisions of the bill, the amendment:

- Specifies that anyone convicted of a violation relating to animal cruelty or whose license to practice veterinary medicine has been revoked, suspended, inactive, or delinquent is not exempt from the requirements provided for under chapter 474, F.S., relating to veterinary medical practice.
- Revises procedures regarding custody proceedings relating to animals found in distress.
- Provides an effective date of October 1, 2010, for the provisions amending to s. 500.451, F.S., relating to horse meat for consumption offenses and s. 828.125, F.S., relating to abuse of registered breeds of horses.