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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Hambley

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Summary

- Changes references in law of the “Ohio Humane Society,” which appears to be obsolete, to the “Ohio Society for the Prevention of Cruelty to Animals,” and clarifies that this entity is a humane society with all the powers of a county humane society.
- Requires each county humane society, and the Ohio Society for the Prevention of Cruelty to Animals, 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.
- Expands the current law, which governs the seizure and impoundment of companion animals, to apply to the seizure and impoundment of *any* animal when related to a violation of domestic animal law.
- Requires that the written notice, which the impounding officer must provide to the owner, keeper, or harbinger of an animal, to 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.
- Eliminates the residency requirement for county humane society agents.

- Specifies that the Ohio Society for the Prevention of Cruelty to Animals or 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 agents of the Ohio Society for the Prevention of Cruelty to Animals to complete the same training that is required for county humane society agents.
- 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 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.
- Authorizes the Director of Agriculture to designate an agent of the Ohio Society for the Prevention of Cruelty to Animals to conduct inspections of premises at which a dangerous wild animal or restricted snake is confined.
- Removes: (1) a humane society agent's arrest authority related to the protection of persons and children, (2) a humane society appointed prosecuting attorney's authority to prosecute certain violations of law related to cruelty to persons, and (3) a humane society's authority to serve as a trustee for a child under the Domestic Relations Law.
- Adds agents appointed by the Ohio Society for the Prevention of Cruelty to Animals to the list of professionals, such as nurses and social workers, who have a duty to report child abuse, or to report suspected abuse, neglect, or exploitation of an adult.

Detailed Analysis

The bill makes various changes to the Humane Society Law, including making changes regarding enforcement activities, appointment and removal procedures, criminal law applicability, and salaries. Each change is explained in more detail below.

Ohio Society for the Prevention of Cruelty to Animals

The bill changes references in law of the Ohio Humane Society, to the Ohio Society for the Prevention of Cruelty to Animals (Ohio SPCA), and clarifies that the entity is a humane society with all the powers of a county humane society. Current law, repealed by the bill, states

that “[t]he state society for the prevention of cruelty to animals shall remain a body corporate, under the name of “the Ohio [H]umane [S]ociety.”¹

Enforcement activity reports

The bill requires each county humane society annually to submit enforcement activity reports to the county sheriff. Similarly, the Ohio SPCA must submit annual enforcement activity reports to the Franklin County Sheriff. The bill also specifies that records of a 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.² 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.³

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, which is required to determine if an officer had probable cause to seize the animal. The bill 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 must not 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. Furthermore, the bill renders a nonprosecution agreement void and unenforceable if a judge has not approved it.⁴

Humane society agent removal from office

Under the bill, the probate judge of the county in which a humane society agent operates may revoke the approval of an appointment for just cause, under the following procedure:

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. 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. 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

¹ R.C. 1717.03; R.C. 955.16, 1717.02, 1717.04, 1717.08, 1717.09, 1717.16, and 2151.421 (conforming).

² R.C. 149.43, not in the bill, and R.C. 1717.16.

³ Section 5.

⁴ R.C. 1717.18; R.C. 1717.01, 1717.03, and 1717.10 (conforming).

hearing. The Rules of Evidence govern the conduct of 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. 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.⁵

Also, the bill 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.⁶

Bribery law

The bill specifies that a humane society agent is a "public servant" for the purposes of bribery law. Under continuing bribery law that the bill applies to a humane society agent, no public servant may knowingly solicit or accept for self 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.⁷

Seizure and impoundment of animals

The bill expands the current law, which governs the seizure and impoundment of companion animals, to apply to the seizure and impoundment of *any* animal when related to a violation of domestic animal law.⁸ Under current law, an officer may seize and cause to be impounded a companion animal that the officer has probable cause to believe is the subject of certain specific offenses. "Companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. "Companion animal" does not include livestock or any wild animal. For example, it currently is an offense for a person to knowingly torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal, or knowingly cause serious physical harm to a companion animal. Also, a person may not negligently deprive the companion animal of sustenance, or confine the animal without affording it with access to shelter.⁹ So, under the bill, an officer may seize and cause to be impounded *any* animal that the officer has probable cause to believe is the subject of a violation of domestic animal law.

Current law specifies the procedures for seizure and impoundment of companion animals that have been the subject of certain specific offenses towards companion animals. The bill expands these procedures to apply to *any* animal for any offense under domestic animal

⁵ R.C. 1717.17.

⁶ R.C. 1717.04(D) and 1717.06(D).

⁷ R.C. 2921.02.

⁸ Generally, Chapter 959 of the Revised Code.

⁹ R.C. 959.131 and 959.132.

law.¹⁰ For instance, under the bill, the procedures apply to the seizure and impoundment of a horse to which a person has committed the offense of cruelty to animals.¹¹

Written notice

Under continuing law, an officer must give written notice of the seizure and impoundment of an animal to the owner, keeper, or harbinger of the animal. The bill requires that the notice be given not later than 24 hours after the animal was seized and impounded.¹²

Bond for animal's care during impoundment

The bill requires the court to determine the amount of a bond or cash deposit that is "necessary and reasonable" to provide for the animal's care during impoundment. Under current law, the court determines the amount "needed," or when renewing the bond, the amount "sufficient" for the animal's care.¹³

Residency requirement

The bill eliminates the residency requirement for humane society agents. Under current law, an agent must be a resident of the county or municipal corporation for which the agent's appointment is made. The bill makes no specifications regarding the residency of appointed humane society agents.¹⁴

Humane society appointment and pay of attorneys

The bill authorizes humane societies to appoint rather than employ attorneys to prosecute certain violations of law. Under the bill, 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, the Ohio SPCA or 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.¹⁵

Humane society agent pay

The bill increases the minimum monthly salary of a humane society agent as follows: when a village approves the agent, from \$5 to \$25; when a city approves the agent, from \$20 to \$125; and 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 current law allows. And, the bill increases the minimum salary amount by \$5 on January 1, 2020, and

¹⁰ R.C. 959.132(A).

¹¹ R.C. 959.13, not in the bill.

¹² R.C. 959.132(C).

¹³ R.C. 959.132(E).

¹⁴ R.C. 1717.06.

¹⁵ R.C. 2931.18.

each fifth year thereafter. Also, the bill clarifies that an Ohio SPCA agent is entitled to the same pay under the same approval process as applies to county humane society agents.¹⁶

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, or for an individual appointed as an at-large agent by the Ohio SPCA, approved by the probate judge of the Franklin County Court of Common Pleas. Current law more narrowly provides that appointed at-large agents may not make arrests until having been approved by the mayor or probate judge.¹⁷

Notification of county sheriff and board of county commissioners

The bill requires that the approving authority 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. An approving authority that has approved an at-large agent must notify the Franklin County Sheriff and the Franklin County Board of Commissioners, and must file a copy of the proof of successful completion of training with the Franklin County 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.¹⁸

Proof of training

Public record

Additionally, 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.¹⁹

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 individuals who are 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, the bill 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

¹⁶ R.C. 1717.07.

¹⁷ R.C. 1717.04 and 1717.06.

¹⁸ R.C. 1717.04(C) and 1717.06(C).

¹⁹ R.C. 1717.04(B), 1717.06(B), and 1717.061.

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.²⁰

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 applicable humane society to revoke the appointment.

The applicable humane society must file written notice with the county sheriff of the revocation of a humane society agent's appointment.²¹

References in Humane Society Law – protection of persons

Generally, the bill narrows humane societies' authority to apply only 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.²² And, the bill 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.²³

Additionally, the bill eliminates 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: (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

²⁰ R.C. 1717.06 and 1717.061; Sections 4 and 5.

²¹ R.C. 1717.062.

²² R.C. 1717.04(A) and 1717.06(A).

²³ R.C. 1717.02 and 1717.09.

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.²⁴

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.²⁵

Ohio SPCA agent jurisdiction

The bill clarifies that the Ohio SPCA may appoint agents to represent it within a specified jurisdiction of a county or of a municipal corporation where no active county humane society exists.²⁶

Parity in law for agents of the Ohio SPCA

The bill amends numerous provisions of law creating parity in the law between county humane society agents and agents of the Ohio SPCA as listed below.

Training

The bill requires agents of the Ohio SPCA to complete the same training that is required for agents of a county humane society. Under continuing law, agents of a county humane society must successfully complete a minimum of 20 hours of training on issues relating to the investigation and prosecution of cruelty to and neglect of animals. The training must comply with rules recommended by the Ohio Peace Officer Training Commission.²⁷

Fine moneys

Under the bill, the clerk of court must send any fine moneys collected that are imposed for any violation of domestic animal law to the Franklin County Treasurer if the Ohio SPCA is to be paid the fine money. The Treasurer must forward the fine moneys to the Ohio SPCA, similar to current law for county treasurers and county humane societies.²⁸

Specific authority

The bill clarifies that an agent of a county humane society and of the Ohio SPCA only has the specific authority granted to the agent under law. Current law includes a similar provision for agents of county humane societies. But no comparable provision currently exists for Ohio SPCA agents.²⁹

²⁴ R.C. 2931.18.

²⁵ R.C. 3113.10 (repealed); R.C. 3113.04 and 3313.07, not in the bill.

²⁶ R.C. 1717.04(A).

²⁷ R.C. 109.73(A)(12) and (D) and 1717.061; R.C. 959.131 (conforming). The training requirements are recodified in the bill to appear in a newly enacted section, R.C. 1717.061.

²⁸ R.C. 959.131(H).

²⁹ R.C. 1717.04(E); see R.C. 1717.06.

Inspections for the Director of Agriculture

The bill authorizes the Director of Agriculture to designate an agent of the Ohio SPCA to conduct inspections of a premises at which a dangerous wild animal or restricted snake is confined, and to investigate and order the quarantine or transfer of a dangerous wild animal or restricted snake. Under continuing law, the Director may designate agents of a county humane society to conduct these inspections and investigations.³⁰

Duty to report abuse

The bill adds agents of the Ohio SPCA to the list of professionals, such as nurses and social workers, who have a duty to report child abuse. Current law includes an agent of a county humane society, but not those of the Ohio SPCA. The “Duty to Report” Law requires the person to make a report either by telephone or in person to a public children services agency or to a peace officer. 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 Duty to Report Law. It is not clear whether the repealed section of law was considered to authorize the summary removal, by a humane society agent, of a child from the possession of the parents. But, under the bill, a humane society agent would clearly have a “duty to report” to facilitate the removal of the child.³¹

The bill also adds agents of the Ohio SPCA to the list of professionals that have a duty to report having reasonable cause to believe that an adult is being abused, neglected, or exploited. These individuals must report that belief to the county department of job and family services. Current law includes an agent of a county humane society, but not those of the Ohio SPCA.³²

Children services agency memorandum of understanding

Current law requires that each public children services agency 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. The bill specifies that the Ohio SPCA or the county humane society must be a signatory.³³

History

Action	Date
Introduced	02-12-19

H0024-I-133/ts

³⁰ R.C. 935.19(B)(5) and 935.20(I)(5).

³¹ R.C. 1717.14 (repealed); R.C. 2151.421.

³² R.C. 5101.63.

³³ R.C. 2151.421(K)(1)(h).