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H.B. 350
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Hoops

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SUMMARY

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

DETAILED ANALYSIS

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) micro wireless facilities, and (6) minimum wage. After its enactment, many municipalities challenged the act, claiming, among other things, that it violated the Ohio Constitution's one-subject rule.¹

The Ohio Constitution states that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title."² 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.³ However, if the court can discern no

¹*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.).

² Ohio Constitution, Article II, Section 15(D).

³ *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.

“primary” subject matter of the bill, severance is not possible and the bill must be held unconstitutional in its entirety.⁴

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, and bestiality).

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 or bestiality provisions. Therefore, the laws governing animal fighting and bestiality 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, a person in that jurisdiction may be prosecuted for violating the animal fighting law only as it existed prior to March 21, 2017. A person in that jurisdiction cannot be prosecuted for violating the bestiality law because that law did not exist prior to that date.⁵

H.B. 350

H.B. 350 reenacts prohibitions associated with cockfighting, bearbaiting, or pitting an animal against another (animal fighting activities) and sexual conduct with an animal (bestiality) that currently apply in all areas of the state except Erie, Fulton, Huron, Lucas, Ottawa, Sandusky, Williams, and Wood counties (“Sixth Appellate District”). By doing so, the bill makes those prohibitions uniformly enforceable across the state, including in the Sixth Appellate District.⁶ 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

⁴ *Akron Metro. Hous. Auth. Bd. of Trustees v. State*, 2008 Ohio App. LEXIS 2384, 2008-Ohio-2836 (11th Dist.).

⁵ 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.

⁶ Section 4.

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,⁷ 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 \$10,000.⁸ 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;
- 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 \$10,000.⁹

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 mistreating a domestic animal.

Sub. S.B. 331 retained (2) above and its associated penalty (a fourth degree misdemeanor),¹⁰ 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

⁷ R.C. 959.99(C).

⁸ R.C. 959.15(B)(1) and 959.99(I).

⁹ R.C. 959.15(B)(2) and 959.99(I).

¹⁰ R.C. 959.99(C).

- Increasing the penalty for the violation from a fourth degree misdemeanor to a felony with a fine of up to \$10,000.¹¹

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.¹²

Violation of these prohibitions is a felony with a fine of up to \$10,000.¹³

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.¹⁴ 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.¹⁵

¹¹ R.C. 959.15(B) and 959.99(I).

¹² R.C. 959.15(B)(2)(a),(d), and (e).

¹³ R.C. 959.99(I).

¹⁴ R.C. 959.21(B) and (C).

¹⁵ R.C. 959.21(A)(4).

Seizure and impoundment, and possible outcomes

An officer may seize and impound an animal that the officer has probable cause to believe is the subject of a violation of the law governing bestiality or an attempt to commit a bestiality violation (an “offense”). The officers authorized to enforce the prohibitions are law enforcement officers, agents of a county humane society, or other persons appointed to act as an animal control officer for a municipal corporation or township in accordance with Ohio law, an ordinance, or a resolution.¹⁶

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.¹⁷

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.¹⁸

HISTORY

Action	Date
Introduced	09-26-19

H0350-I-133/ar

¹⁶ R.C. 959.21(D).

¹⁷ R.C. 959.99(D).

¹⁸ R.C. 959.99(E)(7).