

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**HOUSE BILL 2098
RATIFIED BILL**

AN ACT TO AMEND THE LAW RELATING TO THE PROTECTION OF ANIMALS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. CIVIL REMEDY FOR CRUELTY AMENDMENTS.

SECTION 1.1. G.S. 19A-3 reads as rewritten:

"§ 19A-3. Preliminary ~~injunction~~injunction; care of animal pending hearing on the merits.

(a) Upon the filing of a verified complaint in the district court in the county in which cruelty to an animal has allegedly occurred, the judge may, as a matter of discretion, issue a preliminary injunction in accordance with the procedures set forth in G.S. 1A-1, Rule 65. Every such preliminary injunction, if the ~~complainant~~plaintiff so requests, may give the ~~complainant~~plaintiff the right to provide suitable care for the animal. If it appears on the face of the complaint that the condition giving rise to the cruel treatment of an animal requires the animal to be removed from its owner or other person who possesses it, then it shall be proper for the court in the preliminary injunction to allow the ~~complainant~~plaintiff to take possession of the ~~animal~~animal as custodian.

(b) The plaintiff as custodian may employ a veterinarian to provide necessary medical care for the animal without any additional court order. Prior to taking such action, the plaintiff as custodian shall consult with, or attempt to consult with, the defendant in the action, but the plaintiff as custodian may authorize such care without the defendant's consent. Notwithstanding the provisions of this subsection, the plaintiff as custodian may not have an animal euthanized without written consent of the defendant or a court order that authorizes euthanasia upon the court's finding that the animal is suffering due to terminal illness or terminal injury.

(c) The plaintiff as custodian may place an animal with a foster care provider. The foster care provider shall return the animal to the plaintiff as custodian on demand."

SECTION 1.2. G.S. 19A-4 reads as rewritten:

"§ 19A-4. Permanent injunction.

(a) In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in which the original action was brought shall determine the merits of the action by trial without a jury, and upon hearing such evidence as may be presented, shall enter orders as the court deems appropriate, including a permanent injunction and dismissal of the action along with dissolution of any preliminary injunction that had been issued.

(b) If the plaintiff prevails, the court in its discretion may include the costs of food, water, shelter, and care, including medical care, provided to the animal, less any amounts deposited by the defendant under G.S. 19A-70, as part of the costs allowed to the plaintiff under G.S. 6-18. In addition, if the court finds by a preponderance of the evidence that even if a permanent injunction were issued there would exist a substantial risk that the animal would be subjected to further cruelty if returned to the possession of the defendant, the court may terminate the defendant's ownership and right of possession of the animal and transfer ownership and right of possession to the plaintiff or other appropriate successor owner. For good cause shown, the court may also enjoin

the defendant from acquiring new animals for a specified period of time or limit the number of animals the defendant may own or possess during a specified period of time.

(c) If the final judgment entitles the defendant to regain possession of the animal, the custodian shall return the animal, including taking any necessary steps to retrieve the animal from a foster care provider.

(d) The court shall consider and may provide for custody and care of the animal until the time to appeal expires or all appeals have been exhausted."

PART II. DEPOSIT REQUIREMENT WHEN COUNTY OR MUNICIPAL ANIMAL SHELTER TAKES CUSTODY OF ANIMAL PENDING LITIGATION.

SECTION 2.1. Article 6 of Chapter 19A of the General Statutes reads as rewritten:

"Article 6.

"Care of Dogs Illegally Used for Fighting. Animal Subjected to Illegal Treatment.

"§ 19A-70. Care of ~~dogs illegally used for fighting.~~ animal subjected to illegal treatment.

(a) In every arrest under G.S. 14-362.2, any provision of Article 47 of Chapter 14 of the General Statutes or under G.S. 67-4.3 or upon the commencement of an action under Article 1 of this Chapter by a county or municipality, by a county-approved animal cruelty investigator, by other county or municipal official, or by an organization operating a county or municipal shelter under contract, if an animal shelter takes custody of ~~dogs illegally used for fighting,~~ an animal, the animal operator of the shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred by the animal shelter in caring for and providing for the ~~dogs~~ animal pending the disposition of the ~~charges.~~ litigation. For purposes of this section, "reasonable expenses" includes the cost of providing food, water, shelter, and care, including medical care, for at least 30 days.

(b) Upon receipt of a petition, the court shall set a hearing on the ~~petition.~~ petition to determine the need to care for and provide for the animal pending the disposition of the litigation. The hearing shall be conducted no less than 10 and no more than 15 business days after the petition is filed. The operator of the animal shelter shall mail written notice of the hearing and a copy of the petition to the defendant at the address contained in the criminal ~~charges.~~ charges or the complaint or summons by which a civil action was initiated. If the defendant is in a local detention facility at the time the petition is filed, the operator of the animal shelter shall also provide notice to the custodian of the detention facility.

(c) The court shall set the amount of funds necessary for 30 days' care after taking into consideration all of the facts and circumstances of the case, including the need to care for and provide for the animal pending the disposition of the litigation, the recommendation of the operator of the animal shelter and shelter, the estimated cost of caring for and providing for the ~~dogs~~ animal, as well as and the defendant's ability to pay. If the court determines that the defendant is unable to deposit funds, the court may consider issuing an order under subsection (f) of this section.

Any order for funds to be deposited pursuant to this section shall state that if the operator of the animal shelter files an affidavit with the clerk of superior court, at least two business days prior to the expiration of a 30-day period, stating that, to the best of the ~~shelter's~~ affiant's knowledge, the ~~criminal~~ case against the defendant has not yet been resolved, the order shall be automatically renewed every 30 days until the ~~criminal~~ case is resolved.

(d) If the court orders that funds be deposited, the amount of funds necessary for 30 days shall be posted with the clerk of superior court. The defendant shall also deposit the same amount with the clerk of superior court every 30 days thereafter until the ~~criminal charges are~~ litigation is resolved, unless the defendant requests a hearing no less than five business days prior to the expiration of a 30-day period. If the defendant

fails to deposit the funds within five business days of the initial hearing, or five business days of the expiration of a 30-day period, the ~~dogs are~~ animal is forfeited by operation of law. If funds have been deposited in accordance with this section, the operator of the animal shelter may draw from the funds the actual costs incurred in caring for the ~~dogs-~~ animal.

In the event of forfeiture, the animal shelter may determine whether ~~any of the dogs are~~ the animal is suitable for adoption and whether adoption can be arranged for ~~any of the dogs.~~ the animal. The ~~dogs~~ animal may not be adopted by the defendant or by any person residing in the defendant's ~~household, and~~ household. If the adopted animal is a dog used for fighting, the animal shelter shall notify any persons adopting the ~~dogs~~ dog of the liability provisions for owners of dangerous dogs under Article 1A of Chapter 67 of the General Statutes. If no adoption can be arranged after the forfeiture, or the ~~dogs are~~ animal is unsuitable for adoption, the shelter shall humanely euthanize the ~~dogs-~~ animal.

(e) The deposit of funds shall not prevent the animal shelter from disposing of the ~~dogs~~ animal prior to the expiration of the 30-day period covered by the deposit if the court makes a final determination of the charges or claims against the defendant. Upon ~~the adjudication of the charges,~~ determination, the defendant is entitled to a refund for any portion of the deposit not incurred as expenses by the animal shelter. ~~A person who is adjudicated not guilty of the charges under G.S. 14-362.2 shall be entitled to a full refund of the deposit.~~ A person who is acquitted of all criminal charges or not found to have committed animal cruelty in a civil action under Article 1 of this Chapter is entitled to a refund of the deposit remaining after any draws from the deposit in accordance with subsection (d) of this section.

(f) Pursuant to subsection (c) of this section, the court may order a defendant to provide necessary food, water, shelter, and care, including any necessary medical care, for any ~~dogs that are~~ animal that is the basis of the charges or claims against the defendant without the removal of the ~~dogs~~ animal from the existing location and until the charges or claims against the defendant are adjudicated. If the court issues such an order, the court shall provide for an animal control officer or other law enforcement officer to make regular visits to the location to ensure that the ~~dogs are~~ animal is receiving necessary food, water, shelter, and care, including any necessary medical care, and to impound the ~~animals if they are~~ animal if it is not receiving those necessities."

PART III. CLARIFY THAT THE PROHIBITION AGAINST DOGFIGHTING INCLUDES FIGHTS BETWEEN DOGS AND OTHER ANIMALS.

SECTION 3.1. G.S. 14-362.2 reads as rewritten:

"§ 14-362.2. Dog fighting and baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under ~~his~~ the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is void, and a lessor who knows this use is made or is intended to be made of ~~his~~ the lessor's property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the ~~fighting or~~ baiting of that dog or the fighting of that dog with another dog or with another animal is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the ~~fighting or~~ baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.

(d) This section does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

PART IV. EFFECTIVE DATE.

SECTION 4.1. This act becomes effective December 1, 2006, and applies to actions commenced on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 2006.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2006