

ACT 149

S.B. NO. 1069

A Bill for an Act Relating to Cruelty to Animals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Cruelty to animals by fighting dogs in the second degree. (1) A person commits the offense of cruelty to animals by fighting dogs in the second degree if the person knowingly:

- (a) Wagers on a dogfight;
- (b) Attends or pays to attend a dogfight; or
- (c) Possesses any device intended to enhance the dog’s fighting ability with the intent that the device be used to train or prepare the dog for a dogfight.

(2) As used in this section:

“Bait dog” means a live animal used to train or prepare dogs for a dogfight.

“Device” means both animate and inanimate objects and includes live animals used as bait dogs.

“Dogfight” means a dog or dogs pitted against another dog or dogs with the intent that the encounter will result in injury to one or more of the dogs.

“Wager” means staking or risking something of value on the outcome of a dogfight.

(3) Cruelty to animals by fighting dogs in the second degree is a class C felony.”

SECTION 2. Section 711-1109.1, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, [Ø] 711-1109.6, or 711-____, a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.”

SECTION 3. Section 711-1109.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) If any pet animal is impounded pursuant to section 711-1109.1, prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, [or] 711-1109.6, or 711-____, against the pet animal’s owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.”

2. By amending subsection (3) to read:

“(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, [or] 711-1109.6[-], or 711-____. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.”

3. By amending subsection (5) to read:

“(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, [or] 711-1109.6, or 711-____, against the pet animal’s owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved.”

SECTION 4. Section 711-1109.3, Hawaii Revised Statutes, is amended to read as follows:

“§711-1109.3 Cruelty to animals[;] by fighting dogs[-] in the first degree.

(1) A person commits the offense of cruelty to animals by fighting dogs in the first degree if the person:

- ~~[(a) Owns or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog;~~
- ~~[(b) For amusement or gain, intentionally causes any dog to fight with another dog, or causes any dog to injure another dog; or~~
- ~~[(c) Knowingly or recklessly permits any act in violation of paragraph (a) or (b) to be done on the premises under the person’s charge or control, or aids or abets any such act.]~~
- (a) Knowingly:**
 - (i) Causes, sponsors, arranges, or holds a dogfight for entertainment or financial gain; or**
 - (ii) Owns, trains, transports, possesses, sells, transfers, or equips any dog with the intent that the dog shall be engaged in a dogfight; or**
- (b) Recklessly:**

- (i) Allows a dogfight to occur on any property owned or controlled by the person; or
- (ii) Allows any dog intended to be used for a dogfight to be kept, trained on, or transported in, any property owned or controlled by the person.
- (2) Nothing in this section shall prohibit any of the following:
 - (a) The use of dogs in the management of livestock by the owner of the livestock or the owner's employees or agents or other persons in lawful custody thereof;
 - (b) The use of dogs in hunting wildlife including game; or
 - (c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.
- (3) As used in this section, "dogfight" means a dog or dogs pitted against another dog or dogs with the intent that the encounter will result in injury to one or more of the dogs.
- ~~[(3)]~~ (4) Violation of this section shall be a class ~~[C]~~ B felony.
- ~~[(4)]~~ (5) If there is any conflict between this section and section 711-1109, or any other provision of law, this section shall apply."

SECTION 5. Section 711-1110.5, Hawaii Revised Statutes, is amended to read as follows:

"§711-1110.5 Surrender or forfeiture of animals. Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, 711-1109.3, ~~[or] 711-1109.6[;], or 711-~~_____:

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected.

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section."

SECTION 6. Act 128, Session Laws of Hawaii 2008, as amended by Act 160, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2015~~[-]; provided that sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.~~"

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2011; provided that the amendments made to section 711-1109.1, Hawaii Revised Statutes, in section 2 of this Act, to section 711-1109.2, Hawaii Revised Statutes, in section 3 of this Act, and to section 711-1110.5, Hawaii Revised Statutes, in section 5 of this Act, shall not be repealed when those sections are reenacted on July 1, 2015, by section 6 of this Act.

(Approved June 21, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.