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Indicates New Matter

COMMITTEE REPORT

May 23, 2012

**S. 788**

Introduced by Senator Verdin

S. Printed 5/23/12--H.

Read the first time April 19, 2012.

**THE COMMITTEE ON AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (S. 788) to amend Chapter 21, Title 47 of the 1976 Code, relating to the Farm Animal and Research Facilities Protection Act, by amending Section 47‑21‑70 to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting SECTION 2 on pages 6 and 7 in its entirety and inserting:

/ Chapter 4, Title 47 of the 1976 Code is amended by adding:

“Section 47‑4‑170. Information prepared, owned, used, submitted to, in the possession of, or retained by the commission or the State Veterinarian related to the exercise of its official duties pursuant to this chapter, including, but not limited to, certificates of veterinary inspection, animal medical records, laboratory reports, or other records that may be used to identify a person or private business activities subject to regulation by the commission is confidential and exempt from disclosure pursuant to Chapter 4, Title 30 unless the State Veterinarian determines that disclosure is necessary to implement the programs contained in this chapter or the State Veterinarian determines that disclosure is necessary to prevent the spread of animal disease or to protect the public health. Information prepared, owned, used, submitted to, in the possession of, or retained by the commission or the State Veterinarian related to the exercise of its official duties pursuant to this chapter concerning the receipt and expenditure of public funds and summaries of agency activities are not subject to the exemption from Chapter 4, Title 30 provided in this section.” /

Renumber sections to conform.

Amend title to conform.

NELSON L. HARDWICK for Committee.

**A** **BILL**

TO AMEND CHAPTER 21, TITLE 47 OF THE 1976 CODE, RELATING TO THE FARM ANIMAL AND RESEARCH FACILITIES PROTECTION ACT, BY AMENDING SECTION 47‑21‑70 TO PROVIDE ADDITIONAL LIABILITY EXEMPTIONS TO VETERINARIANS AND PEOPLE WHO HOLD A SUPERIOR INTEREST IN THE PROPERTY; BY ADDING SECTION 47‑21‑90 TO PROVIDE FOR A CIVIL CAUSE OF ACTION FOR A PERSON THAT SUFFERS DAMAGES AS A RESULT OF VIOLATIONS OF CHAPTER 21 RELATING TO ANIMAL FACILITY OPERATIONS; AND BY ADDING ARTICLE 5 TO PROVIDE THAT IT IS UNLAWFUL TO TAMPER WITH CROP OPERATIONS, TO INTERFERE WITH THE OPERATIONS OF A CROP OPERATION, TO FRAUDULENTLY GAIN ACCESS TO A CROP OPERATION, AND TO PROVIDE FOR A CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT RELATED TO CROP OPERATIONS, TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT, TO DEFINE NECESSARY TERMS, AND TO MAKE TECHNICAL CORRECTIONS.

COMMITTEE AMENDMENT ADOPTED

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 21, Title 47 of the 1976 Code is amended to read:

“Chapter 21

Farm Animal, Crop Operation, and

Research Facilities Protection Act

Article 1

Citation and Definitions

Section 47‑21‑10. This chapter may be cited as the ‘Farm Animal, Crop Operation, and Research Facilities Protection Act’.

Section 47‑21‑20. As used in this chapter:

(1) ‘Actor’ means a person accused of any of the offenses defined in this chapter.

(2) ‘Animal’ means a warm or cold‑blooded animal used in food or fiber production, agriculture, research, testing, or education, including poultry, fish, and insects.

(3) ‘Animal facility’ includes a vehicle, building, structure, or premises where an animal is kept, tested, handled, housed, exhibited, bred, or offered for sale and includes a research facility where research or testing on animals is conducted.

(4) ‘Consent’ means assent in fact, whether express or apparent.

(5) ‘Crop operation’ includes a vehicle, building, structure, or premises where a crop is raised, maintained, tested, handled, housed, exhibited, or offered for sale and includes a research facility where research on or testing of crops is conducted.

~~(5)~~(6) ‘Deprive’ means:

(a) to withhold an animal or other property from the owner permanently or for such an extended time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(b) to restore the animal or other property only upon payment for reward or other compensation; or

(c) to dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

~~(6)~~(7) ‘Effective consent’ includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(a) induced by force, threat, false pretenses, or fraud;

(b) given by a person the actor knows is not legally authorized to act for the owner;

(c) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(d) given solely to detect the commission of an offense.

~~(7)~~(8) ‘Owner’ means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

~~(8)~~(9) ‘Person’ means an individual, corporation, association, nonprofit corporation, joint‑stock company, firm, trust, partnership, two or more persons having a joint or common interest, or other legal entity.

~~(9)~~(10) ‘Possession’ means actual care, custody, control, or management.

Article 3

Animal Facilities

Section 47‑21‑30. ~~A person commits an offense if, without~~ Without the effective consent of the owner, ~~the~~ it is unlawful for a person ~~acquires or otherwise exercises~~ to acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property from an animal facility with the intent to deprive the owner of the facility, animal, or property, and to disrupt or damage the enterprise conducted at the animal facility.

Section 47‑21‑40. ~~A person commits an offense if, without~~ Without the effective consent of the owner, ~~the~~ it is unlawful for a person ~~damages or destroys~~ to damage or destroy an animal facility, ~~or~~ an animal, or property in or on an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility.

Section 47‑21‑50. ~~A person commits an offense if, without~~ Without the effective consent of the owner, and with the intent to disrupt or damage the enterprise conducted at the animal facility, ~~the~~ it is unlawful for a person to:

(1) ~~enters~~ enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section;

(2) ~~remains~~ remain concealed, with intent to commit an act prohibited by this section, in an animal facility; or

(3) ~~enters~~ enter an animal facility and ~~commits~~ commit or ~~attempts~~ attempt to commit an act prohibited by this section.

Section 47‑21‑60. (A) ~~A person commits an offense if, without~~ Without the effective consent of the owner, ~~the~~ it is unlawful for a person ~~enters or remains~~ to enter or remain in an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility, and the person:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(B) For purposes of this section, ‘notice’ means:

(1) oral or written communication by the owner or someone with apparent authority to act for the owner;

(2) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(3) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

Section 47‑21‑70. This chapter does not apply to, affect, or otherwise prohibit actions taken by:

(1) the Department of Agriculture, any other federal, state, or local department or agency, or an official or employee of these entities while in the exercise or performance of a power or duty imposed by law or regulation~~.~~;

(2) a licensed veterinarian practicing veterinary medicine pursuant to Chapter 69, Title 40 and according to customary standards of care; or

(3) a person holding a legal interest in an animal facility, an animal from an animal facility, or other property in or on an animal facility who has an interest in the facility, animal, or other property superior to the interest held by the person incurring damages.

Section 47‑21‑80. (A) A person violating Sections 47‑21‑30, 47‑21‑40, and 47‑21‑50 is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

(B) A person violating Section 47‑21‑60 is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

Section 47‑21‑90. A person who suffers damages resulting from the commission of an act prohibited by this article has a civil cause of action for treble the amount of his actual damages, for consequential damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs.

Article 5

Crop Operations

Section 47‑21‑200. Without the effective consent of the owner, it is unlawful for a person to acquire or otherwise exercise control over a crop operation, a crop from a crop operation, or other property from a crop operation with the intent to deprive the owner of the operation, crop, or property, and to disrupt or damage the enterprise conducted at the crop operation.

Section 47‑21‑210. Without the effective consent of the owner, it is unlawful for a person to damage or destroy a crop operation, a crop, or property in or on a crop operation with the intent to disrupt or damage the enterprise conducted at the crop operation.

Section 47‑21‑220. Without the effective consent of the owner, and with the intent to disrupt or damage the enterprise conducted at the crop operation, it is unlawful for a person to:

(1) enter a crop operation, not then open to the public, with intent to commit an act prohibited by this section;

(2) remain concealed, with intent to commit an act prohibited by this section, in a crop operation; or

(3) enter a crop operation and commit or attempt to commit an act prohibited by this section.

Section 47‑21‑230. (A) Without the effective consent of the owner, it is unlawful for a person to enter or remain in a crop operation with the intent to disrupt or damage the enterprise conducted at the crop operation, and the person:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(B) For purposes of this section, ‘notice’ means:

(1) oral or written communication by the owner or someone with apparent authority to act for the owner;

(2) fencing or other enclosure obviously designed to exclude intruders or to contain a crop; or

(3) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

Section 47‑21‑240. This chapter does not apply to, affect, or otherwise prohibit actions taken by:

(1) the Department of Agriculture, any other federal, state, or local department or agency, or an official or employee of these entities while in the exercise or performance of a power or duty imposed by law or regulation; or

(2) a person holding a legal interest in a crop operation, a crop from a crop operation, or other property in or on a crop operation who has an interest in the operation, crop, or other property superior to the interest held by the person incurring damages.

Section 47‑21‑250. (A) A person violating Sections 47‑21‑200, 47‑21‑210, and 47‑21‑220 is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than three years, or both.

(B) A person violating Section 47‑21‑230 is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

Section 47‑21‑260. A person who suffers damages resulting from the commission of an act prohibited by this article has a civil cause of action for treble the amount of his actual damages, for consequential damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs.”

SECTION 2. Chapter 4, Title 47 of the 1976 Code is amended by adding:

“Section 47-4-170. Information prepared, owned, used, submitted to, in the possession of, or retained by the commission or the State Veterinarian related to the exercise of its official duties pursuant to this chapter, including, but not limited to, certificates of veterinary inspection, animal medical records, laboratory reports, or other records that may be used to identify a person or private business activities subject to regulation by the commission is confidential and exempt from disclosure pursuant to Chapter 4, Title 30 unless the State Veterinarian determines that disclosure is necessary to implement the programs contained in this chapter or the State Veterinarian determines that disclosure is necessary to prevent the spread of animal disease or to protect the public health.”

SECTION 3. This act takes effect upon approval by the Governor.

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