GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2005

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HOUSE BILL 2098* Committee Substitute Favorable 6/8/06 Senate Judiciary II Committee Substitute Adopted 6/26/06

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General Assembly of North Carolina

1	(c) The plaintiff as custodian may place an animal with a foster care provider.
2	The foster care provider shall return the animal to the plaintiff as custodian on demand."
3	SECTION 1.2. G.S. 19A-4 reads as rewritten:
4	"§ 19A-4. Permanent injunction.
5	(a) In accordance with G.S. 1A-1, Rule 65, a district court judge in the county in
6	which the original action was brought shall determine the merits of the action by trial
7	without a jury, and upon hearing such evidence as may be presented, shall enter orders
8	as the court deems appropriate, including a permanent injunction and dismissal of the
9	action along with dissolution of any preliminary injunction that had been issued.
10	(b) If the plaintiff prevails, the court in its discretion may include the costs of
11	food, water, shelter, and care, including medical care, provided to the animal, less any
12	amounts deposited by the defendant under G.S. 19A-70, as part of the costs allowed to
13	the plaintiff under G.S. 6-18. In addition, if the court finds by a preponderance of the
14	evidence that even if a permanent injunction were issued there would exist a substantial
15	risk that the animal would be subjected to further cruelty if returned to the possession of
16	the defendant, the court may terminate the defendant's ownership and right of
17	possession of the animal and transfer ownership and right of possession to the plaintiff
18	or other appropriate successor owner. For good cause shown, the court may also enjoin
19	the defendant from acquiring new animals for a specified period of time or limit the
20	number of animals the defendant may own or possess during a specified period of time.
21	(c) If the final judgment entitles the defendant to regain possession of the animal,
22	the custodian shall return the animal, including taking any necessary steps to retrieve the
23	animal from a foster care provider.
24	(d) The court shall consider and may provide for custody and care of the animal
25	until the time to appeal expires or all appeals have been exhausted."
26	PART II. DEPOSIT REQUIREMENT WHEN COUNTY OR MUNICIPAL
27	ANIMAL SHELTER TAKES CUSTODY OF ANIMAL PENDING
28	LITIGATION.
29	
20	SECTION 2.1. Article 6 of Chapter 19A of the General Statutes reads as
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31 32 33 34 35 36 37 38 39 40 41	 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
31 32 33 34 35 36 37 38 39 40 41 42	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
31 32 33 34 35 36 37 38 39 40 41	 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

"reasonable expenses" includes the cost of providing food, water, shelter, and care,
 including medical care, for at least 30 days.

3 Upon receipt of a petition, the court shall set a hearing on the petition. (b) 4 petition to determine the need to care for and provide for the animal pending the 5 disposition of the litigation. The hearing shall be conducted no less than 10 and no more 6 than 15 business days after the petition is filed. The operator of the animal shelter shall 7 mail written notice of the hearing and a copy of the petition to the defendant at the 8 address contained in the criminal charges. charges or the complaint or summons by 9 which a civil action was initiated. If the defendant is in a local detention facility at the 10 time the petition is filed, the operator of the animal shelter shall also provide notice to 11 the custodian of the detention facility.

12 (c) The court shall set the amount of funds necessary for 30 days' care after 13 taking into consideration all of the facts and circumstances of the case, including the 14 <u>need to care for and provide for the animal pending the disposition of the litigation, the</u> 15 recommendation of the <u>operator of the</u> animal <u>shelter andshelter</u>, the estimated cost of 16 caring for <u>and providing for</u> the <u>dogs animal</u>, <u>as well asand</u> the defendant's ability to 17 pay. If the court determines that the defendant is unable to deposit funds, the court may 18 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.

25 (d) If the court orders that funds be deposited, the amount of funds necessary for 26 30 days shall be posted with the clerk of superior court. The defendant shall also deposit 27 the same amount with the clerk of superior court every 30 days thereafter until the 28 eriminal charges are litigation is resolved, unless the defendant requests a hearing no 29 less than five business days prior to the expiration of a 30-day period. If the defendant 30 fails to deposit the funds within five business days of the initial hearing, or five business 31 days of the expiration of a 30-day period, the dogs are animal is forfeited by operation 32 of law. If funds have been deposited in accordance with this section, the operator of the 33 animal shelter may draw from the funds the actual costs incurred in caring for the dogs. 34 animal.

35 In the event of forfeiture, the animal shelter may determine whether any of the dogs 36 are the animal is suitable for adoption and whether adoption can be arranged for any of 37 the dogs. the animal. The dogs animal may not be adopted by the defendant or by any 38 person residing in the defendant's household, and household. If the adopted animal is a 39 dog used for fighting, the animal shelter shall notify any persons adopting the dogs dog 40 of the liability provisions for owners of dangerous dogs under Article 1A of Chapter 67 41 of the General Statutes. If no adoption can be arranged after the forfeiture, or the dogs 42 are animal is unsuitable for adoption, the shelter shall humanely euthanize the dogs. 43 animal.

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The deposit of funds shall not prevent the animal shelter from disposing of 1 (e) 2 the dogs animal prior to the expiration of the 30-day period covered by the deposit if the 3 court makes a final determination of the charges or claims against the defendant. Upon 4 the adjudication of the charges, determination, the defendant is entitled to a refund for 5 any portion of the deposit not incurred as expenses by the animal shelter. A person who 6 is adjudicated not guilty of the charges under G.S. 14-362.2 shall be entitled to a full 7 refund of the deposit. A person who is acquitted of all criminal charges or not found to 8 have committed animal cruelty in a civil action under Article 1 of this Chapter is 9 entitled to a refund of the deposit remaining after any draws from the deposit in 10 accordance with subsection (d) of this section.

11 Pursuant to subsection (c) of this section, the court may order a defendant to (f)12 provide necessary food, water, shelter, and care, including any necessary medical care, 13 for any dogs that are animal that is the basis of the charges or claims against the 14 defendant without the removal of the dogs animal from the existing location and until 15 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 16 officer to make regular visits to the location to ensure that the dogs are animal is 17 18 receiving necessary food, water, shelter, and care, including any necessary medical care, 19 and to impound the animals if they are animal if it is not receiving those necessities."

20 PART III. CLARIFY THAT THE PROHIBITION AGAINST DOGFIGHTING 21 **INCLUDES FIGHTS BETWEEN DOGS AND OTHER ANIMALS.** 22

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

23 "§ 14-362.2. Dog fighting and baiting.

A person who instigates, promotes, conducts, is employed at, provides a dog 24 (a) 25 for, allows property under his the person's ownership or control to be used for, gambles 26 on, or profits from an exhibition featuring the fighting or baiting of a dog or the 27 fighting of a dog with another dog or with another animal is guilty of a Class H felony. 28 A lease of property that is used or is intended to be used for an exhibition featuring the 29 fighting or baiting of a dog or the fighting of a dog with another dog or with another 30 animal is void, and a lessor who knows this use is made or is intended to be made of his 31 the lessor's property is under a duty to evict the lessee immediately.

32 A person who owns, possesses, or trains a dog with the intent that the dog be (b) 33 used in an exhibition featuring the fighting or baiting of that dog or the fighting of that 34 dog with another dog or with another animal is guilty of a Class H felony.

35 (c) A person who participates as a spectator at an exhibition featuring the 36 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." 37

38 PART IV. EFFECTIVE DATE.

39 **SECTION 4.1.** This act becomes effective December 1, 2006, and applies to 40 actions commenced on or after that date.