

S.237

Introduced by Senator Ashe

Referred to Committee on Judiciary

Date: January 7, 2014

Subject: Crimes; humane treatment of animals; civil forfeiture proceedings

Statement of purpose of bill as introduced: This bill proposes to revise the civil forfeiture proceedings concerning an animal seized due to alleged abuse.

An act relating to civil forfeiture proceedings in cases of animal cruelty

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 13 V.S.A. § 354 is amended to read:~~

~~§ 354. ENFORCEMENT; POSSESSION OF ABUSED ANIMAL;~~

~~SEARCHES AND SEIZURES; FORFEITURE~~

~~* * *~~

~~(d) If an animal is seized under this section, the state may State shall institute a civil proceeding for forfeiture of the animal in the territorial unit of the Criminal Division of the Superior Court where the offense is alleged to have occurred. The proceeding shall be instituted by a motion for forfeiture, which shall be filed with the Court and served upon the animal's owner.~~

~~(e) The court shall set a hearing to be held within 21 days after institution of a forfeiture proceeding under this section. A preliminary hearing shall be~~

1 ~~held within 21 days of institution of the civil forfeiture proceeding. If the~~
2 defendant requests a hearing on the merits, the Court shall schedule a final
3 hearing on the merits to be held within 21 days of the date of the preliminary
4 hearing. In no event shall a final hearing occur more than 42 days after the
5 date of the commencement of the civil forfeiture proceeding. Time limits
6 under this subsection shall not be construed as jurisdictional.

7 (f)(1) At the hearing on the motion for forfeiture, the State shall have the
8 burden of establishing by ~~clear and convincing evidence~~ a preponderance of
9 the evidence that the animal was subjected to cruelty, neglect, or abandonment
10 in violation of section 352 or 352a of this title. The Court shall make findings
11 of fact and conclusions of law and shall issue a final order. ~~If the state meets~~
12 ~~its burden of proof, the motion shall be granted and the court shall order the~~
13 ~~immediate forfeiture of the animal in accordance with the provisions of~~
14 ~~subsection 353(e) of this title~~ If the Court finds for the petitioner by a
15 preponderance of the evidence, the Court shall order immediate forfeiture of
16 the animal to the petitioner.

17 (2) No testimony or other information presented by the defendant in
18 connection with a forfeiture proceeding under this section or any information
19 directly or indirectly derived from such testimony or other information may be
20 used for any purpose, including impeachment and cross-examination, against

1 ~~the defendant in any criminal case, except a prosecution for perjury or giving a~~
2 ~~false statement.~~

3 (g)(1) If the defendant is convicted of criminal charges under this chapter
4 or if an order of forfeiture is entered against an owner under this section, the
5 defendant or owner shall be required to repay all reasonable costs incurred by
6 the custodial caregiver for caring for the animal, including veterinary expenses.

7 (2)(A) If the defendant is acquitted of criminal charges under this
8 chapter and a civil forfeiture proceeding under this section is not pending, an
9 animal that has been taken into custodial care shall be returned to the defendant
10 unless the ~~state~~ State institutes a civil forfeiture proceeding under this section
11 within seven days of the acquittal.

12 (B) If the Court rules in favor of the owner in a civil forfeiture
13 proceeding under this section and criminal charges against the owner under
14 this chapter are not pending, an animal that has been taken into custodial care
15 shall be returned to the owner unless the State files criminal charges under this
16 section within seven days after the entry of final judgment.

17 (C) If an animal is returned to a defendant or owner under this
18 subdivision, the defendant or owner shall not be responsible for the costs of
19 caring for the animal.

1 ~~(h) An order of the Criminal Division of the Superior Court under this~~
2 section may be appealed as a matter of right to the Supreme Court. The order
3 shall not be stayed pending appeal.

4 (i) The provisions of this section are in addition to and not in lieu of the
5 provisions of section 353 of this title.

6 (j) It is unlawful for a person to interfere with a humane officer or the
7 Secretary of Agriculture, Food and Markets engaged in official duties under
8 this chapter. A person who violates this subsection shall be prosecuted under
9 section 3001 of this title.

10 Sec. 2. EFFECTIVE DATE

11 ~~This act shall take effect on July 1, 2014.~~

Sec. 1. 13 V.S.A. § 354 is amended to read:

*§ 354. ENFORCEMENT; POSSESSION OF ABUSED ANIMAL;
SEARCHES AND SEIZURES; FORFEITURE*

** * **

(c) A humane officer shall provide suitable care at a reasonable cost for an animal seized under this section, and have a lien on the animal for all expenses incurred. A humane officer may arrange for the euthanasia of a severely injured, diseased, or suffering animal upon the recommendation of a licensed veterinarian. A humane officer may arrange for euthanasia of an animal seized under this section when the owner is unwilling or unable to provide necessary medical attention required while the animal is in custodial care or when the animal cannot be safely confined under standard housing conditions. An animal not destroyed by euthanasia shall be kept in custodial care and provided with necessary medical care until final disposition of the criminal charges except as provided in subsections (d) through (h) of this section. The custodial caregiver shall be responsible for maintaining the records applicable to all animals seized, including identification, residence, location, medical treatment, and disposition of the animals.

(d) If an animal is seized under this section, the ~~state~~ State may institute a civil proceeding for forfeiture of the animal in the territorial unit of the Criminal Division of the Superior Court where the offense is alleged to have occurred. The proceeding shall be instituted by a motion for forfeiture, if a criminal charge has been filed, or a petition for forfeiture if no criminal charge has been filed, which shall be filed with the Court and served upon the animal's owner. The civil forfeiture proceeding is intended to run independently from any criminal prosecution and shall not be delayed pending disposition of any criminal proceeding.

(e)(1) ~~The Court shall set a hearing to be held within 21 days after institution of a forfeiture proceeding under this section~~ A preliminary hearing shall be held within 21 days of institution of the civil forfeiture proceeding. If the defendant requests a hearing on the merits, the Court shall schedule a final hearing on the merits to be held within 21 days of the date of the preliminary hearing. Time limits under this subsection shall not be construed as jurisdictional.

(2) If the defendant fails to respond to the notice for preliminary hearing, the Court shall enter a default judgment ordering the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title. A motion to reopen a default judgment shall be filed in writing with the Court no later than 30 days after entry of a default judgment. A default judgment shall not be reopened unless good cause is shown.

(f)(1) At the hearing on the motion for forfeiture, the State shall have the burden of establishing by clear and convincing evidence that the animal was subjected to cruelty, neglect, or abandonment in violation of section 352 or 352a of this title. The Court shall make findings of fact and conclusions of law and shall issue a final order. If the State meets its burden of proof, ~~the motion shall be granted and the court~~ Court shall order the immediate forfeiture of the animal in accordance with the provisions of subsection 353(c) of this title.

(2) Affidavits of law enforcement officers, humane officers, animal control officers, veterinarians, or expert witnesses of either party shall be admissible evidence which may be rebutted by witnesses called by either party. The affidavits shall be delivered to the other party at least five days prior to the hearing. Upon request of the other party or the Court, the party offering an affidavit shall make the affiant available by telephone at the hearing. The Court may allow any witness to testify by telephone in lieu of a personal appearance and shall adopt rules with respect to such testimony.

(3) No testimony or other information presented by the defendant in connection with a forfeiture proceeding under this section or any information directly or indirectly derived from such testimony or other information may be

used for any purpose, including impeachment and cross-examination, against the defendant in any criminal case, except a prosecution for perjury or giving a false statement.

(g)(1) If the defendant is convicted of criminal charges under this chapter or if an order of forfeiture is entered against an owner under this section, the defendant or owner shall be required to repay all reasonable costs incurred by the custodial caregiver for caring for the animal, including veterinary expenses. The Restitution Unit within the Center for Crime Victim Services is authorized to collect the funds owed by the defendant or owner on behalf of the custodial caregiver or a governmental agency that has contracted or paid for custodial care in the same manner as restitution is collected pursuant to section 7043 of this title. The restitution order shall include the information required under subdivision 7043(e)(2)(A) of this title. The Court shall make findings with respect to the total amount of all costs incurred by the custodial caregiver.

(2)(A) If the defendant is acquitted of criminal charges under this chapter and a civil forfeiture proceeding under this section is not pending, an animal that has been taken into custodial care shall be returned to the defendant unless the ~~state~~ State institutes a civil forfeiture proceeding under this section within seven days of the acquittal.

(B) If the Court rules in favor of the owner in a civil forfeiture proceeding under this section and criminal charges against the owner under this chapter are not pending, an animal that has been taken into custodial care shall be returned to the owner unless the State files criminal charges under this section within seven days after the entry of final judgment.

(C) If an animal is returned to a defendant or owner under this subdivision, the defendant or owner shall not be responsible for the costs of caring for the animal.

~~An order of the Criminal Division of the Superior Court~~ A forfeiture order issued under this section may be appealed as a matter of right to the Supreme Court. The order shall not be stayed pending appeal.

(i) The provisions of this section are in addition to and not in lieu of the provisions of section 353 of this title.

(j) It is unlawful for a person to interfere with a humane officer or the Secretary of Agriculture, Food and Markets engaged in official duties under this chapter. A person who violates this subsection shall be prosecuted under section 3001 of this title.

Sec. 2. 26 V.S.A. § 2404 is amended to read:

*§ 2404. IMMUNITY FROM LIABILITY ~~FOR REPORTING SUSPECTED~~;
CASES OF ANIMAL CRUELTY*

** * **

(b) There shall be no monetary liability on the part of, and no cause of action for damages against, a veterinarian licensed to practice in this ~~state~~ State who accompanies a humane officer during the execution of a warrant pursuant to 13 V.S.A. § 354, or evaluates the health of and provides medical attention to, including a decision for euthanasia, an animal brought to that veterinarian for health assessment or necessary medical care, pursuant to 13 V.S.A. § 354.

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Sec. 3. COMMISSIONER OF CORRECTIONS; CARE OF ANIMALS

(a) Many states operate some kind of animal training or adoption program within their correctional system. These programs benefit local communities, teach the offenders responsibility, and provide an incentive to maintain positive behavior while incarcerated.

(b) The Commissioner of Corrections shall examine the feasibility of beginning an animal training or adoption program in Vermont and, specifically, a program that would permit qualified offenders to care for animals that have been relinquished or seized pursuant to a cruelty or neglect investigation. The Commissioner shall consider similar programs in other states and consult with local humane organizations in determining what type of program would be appropriate for Vermont and which facilities would be most appropriate to sponsor such a program. The Commissioner shall report his or her recommendations to the Joint Committee on Corrections Oversight on or before November 1, 2014.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.