

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 578  
3 entitled “An act relating to penalties and procedures for animal cruelty  
4 offenses” respectfully reports that it has considered the same and recommends  
5 that the Senate propose to the House that the bill be amended by striking out all  
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 351 is amended to read:

8 § 351. DEFINITIONS

9 As used in this chapter:

10 \* \* \*

11 (21) “Sexual conduct” means:

12 (A) any act between a person and animal that involves contact  
13 between the mouth, sex organ, or anus of a person and the mouth, sex organ, or  
14 anus of an animal; ~~or~~

15 (B) without a bona fide veterinary or animal husbandry purpose, the  
16 insertion, however slight, of any part of a person’s body or of any instrument,  
17 apparatus, or other object into the vaginal or anal opening of an animal;

18 (C) without a bona fide veterinary or animal husbandry purpose, a  
19 person touching or fondling a sex organ or anus of an animal, either directly or  
20 through clothing; or



1           (3) Ties, tethers, or restrains an animal, either a pet or livestock, in a  
2           manner that is inhumane or is detrimental to its welfare. Livestock and poultry  
3           husbandry practices are exempted.

4           (4) Deprives an animal that a person owns, possesses, or acts as an agent  
5           for of adequate food, water, shelter, rest, sanitation, or necessary medical  
6           attention or transports an animal in overcrowded vehicles.

7           (5)(A) Owns, possesses, keeps, or trains an animal engaged in an  
8           exhibition of fighting; possesses, keeps, or trains any animal with intent that it  
9           be engaged in an exhibition of fighting; or permits any such act to be done on  
10          premises under ~~his or her~~ the person's charge or control.

11          (B) Owns, possesses, ships, transports, delivers, or keeps a device,  
12          equipment, or implement for the purpose of training or conditioning an animal  
13          for participation in animal fighting or enhancing an animal's fighting  
14          capability.

15          (6) Acts as judge or spectator at events of animal fighting or bets or  
16          wagers on the outcome of such fight.

17          (7) As poundkeeper, officer, or agent of a humane society or as an  
18          owner or employee of an establishment for treatment, board, or care of an  
19          animal, knowingly receives, sells, transfers, or otherwise conveys an animal in  
20          ~~his or her~~ the person's care for the purpose of research or vivisection.

1           (8) Intentionally torments or harasses an animal owned or engaged by a  
2 police department or public agency of the State or its political subdivisions or  
3 interferes with the lawful performance of a police animal.

4           (9) Knowingly sells, offers for sale, barter, or displays living baby  
5 chicks, ducklings, or other fowl that have been dyed, colored, or otherwise  
6 treated so as to impart to them an artificial color or fails to provide poultry with  
7 proper brooder facilities.

8           (10) Uses a live animal as bait or lure in a race, game, or contest or in  
9 training animals in a manner inconsistent with 10 V.S.A. Part 4 or the rules  
10 adopted thereunder.

11           (11)(A) Engages in sexual conduct with an animal.

12           (B) Possesses, sells, transfers, purchases, or otherwise obtains an  
13 animal with the intent that it be used for sexual conduct.

14           (C) Organizes, promotes, conducts, aids, abets, or participates in as  
15 an observer an act involving any sexual conduct with an animal.

16           (D) Causes, aids, or abets another person to engage in sexual conduct  
17 with an animal.

18           (E) Permits sexual conduct with an animal to be conducted on  
19 premises under ~~his or her~~ the person's charge or control.

20           (F) Advertises, offers, or accepts the offer of an animal with the  
21 intent that it be subject to sexual conduct in this State.

1           (G) Knowingly possesses, films, or distributes obscene visual images  
2           of sexual conduct with an animal.

3           (12) Possesses, owns, cares for, resides with, has custody of, or works  
4           with an animal while the person is prohibited from possessing owning, caring  
5           for, having custody of, or working with an animal by a court order.

6           (13) Knowingly refuses to comply with a court order issued pursuant to  
7           subdivision 353(b)(1)(E) of this title to permit periodic unannounced visits by  
8           a humane officer or the Director of Animal Welfare.

9           Sec. 3. 13 V.S.A. § 352a is amended to read:

10          § 352a. AGGRAVATED CRUELTY TO ANIMALS

11          A person commits the crime of aggravated cruelty to animals if the person:

12               (1) kills an animal by intentionally causing the animal undue pain or  
13               suffering;

14               (2) intentionally, maliciously, and without just cause tortures, mutilates,  
15               or cruelly beats an animal; ~~or~~

16               (3) intentionally injures or kills an animal that is in the performance of  
17               official duties while under the supervision of a law enforcement officer; or

18               (4)(A) engages in sexual conduct with an animal in the presence of a  
19               minor or in which a minor is a participant;

1           (B) possesses, sells, transfers, purchases, or otherwise obtains an  
2           animal with the intent that it be used for sexual conduct in the presence of a  
3           minor or in which a minor is a participant;

4           (C) organizes, promotes, conducts, aids, abets, or participates in an  
5           act involving any sexual conduct with an animal in the presence of a minor or  
6           in which a minor is a participant as an observer;

7           (D) causes, aids, or abets another person to engage in sexual conduct  
8           with an animal in the presence of a minor or in which the minor is a  
9           participant;

10           (E) permits sexual conduct with an animal in the presence of a minor  
11           or in which a minor is a participant that is conducted on premises under the  
12           person’s charge or control;

13           (F) advertises, offers, or accepts the offer of an animal with the intent  
14           that it be subject to sexual conduct in this State in the presence of a minor or in  
15           which the minor participates; or

16           (G) knowingly possesses, films, or distributes obscene visual images  
17           of sexual conduct with an animal in the presence of a minor or in which the  
18           minor participates.

1 Sec. 4. 13 V.S.A. § 353 is amended to read:

2 § 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

3 (a) Penalties.

4 (1) Except as provided in subdivision (3), (4), or (5) of this subsection,  
5 cruelty to animals under section 352 of this title shall be punishable by a  
6 sentence of imprisonment of not more than one year or a fine of not more than  
7 \$2,000.00, or both. Second and subsequent convictions shall be punishable by  
8 a sentence of imprisonment of not more than two years or a fine of not more  
9 than \$5,000.00, or both.

10 (2) Aggravated cruelty under section 352a of this title shall be  
11 punishable by a sentence of imprisonment of not more than five years or a fine  
12 of not more than \$5,000.00, or both. Second and subsequent offenses shall be  
13 punishable by a sentence of imprisonment of not more than ~~ten~~ 10 years or a  
14 fine of not more than \$7,500.00, or both.

15 (3) An offense committed under subdivision 352(5) or (6) of this title  
16 shall be punishable by a sentence of imprisonment of not more than five years  
17 or a fine of not more than \$5,000.00, or both.

18 (4)(A) Except as provided in subdivision (B) of this subdivision (4), a  
19 person found in violation of subdivision 352(3), (4), or (9) of this title pursuant  
20 to this subdivision (A) shall be imprisoned not more than one year or fined not  
21 more than \$2,000.00, or both. Second and subsequent convictions shall be

1 punishable by a sentence of imprisonment of not more than two years or a fine  
2 of not more than \$5,000.00, or both.

3 (B) In lieu of a criminal citation or arrest, a law enforcement officer  
4 may issue a civil citation to a person who violates subdivision 352(3), (4), or  
5 (9) of this title if the person has not been previously adjudicated in violation of  
6 this chapter. A person adjudicated in violation of subdivision 352(3), (4), or  
7 (9) of this title pursuant to this subdivision (B) shall be assessed a civil penalty  
8 of not more than \$500.00. At any time prior to the person admitting the  
9 violation and paying the assessed penalty, the State’s Attorney may withdraw  
10 the complaint filed with the Judicial Bureau and file an information charging a  
11 violation of subdivision 352(3), (4), or (9) of this title in the Criminal Division  
12 of the Superior Court.

13 (C) Nothing in this subdivision (4) shall be construed to require that a  
14 civil citation be issued prior to a criminal charge of violating subdivision  
15 352(3), (4), or (9) of this title.

16 (5) A person who violates subdivision 352(1) of this title by  
17 intentionally killing or attempting to kill an animal belonging to another or  
18 subdivision 352(2) of this title by torturing, administering poison to, or cruelly  
19 harming or mutilating an animal shall be imprisoned not more than two years  
20 or fined not more than \$5,000.00, or both.

1           (b)(1) In addition to any other sentence the court may impose, the court  
2 may require a defendant convicted of a violation under section 352 or 352a of  
3 this title to:

4           ~~(1)(A) Forfeit~~ For a first violation, forfeit any rights to the animal  
5 subjected to cruelty, and to any other animal, ~~except livestock or poultry~~  
6 owned, possessed, residing or domiciled with, or in the custody of the  
7 defendant. Livestock or poultry shall not be subject to forfeiture under this  
8 subdivision (A) unless the person was convicted of abusing livestock or  
9 poultry.

10           ~~(2)(B)~~ Repay the reasonable costs incurred by any person, municipality,  
11 or agency for providing care for the animal prior to judgment. ~~If the court does~~  
12 ~~not order a defendant to pay all the applicable costs incurred or orders only~~  
13 ~~partial payment, it shall state on the record the reasons for that action.~~

14           ~~(3)(C)(i) Forfeit~~ For a first violation of section 352 of this title, forfeit  
15 any future right to own, possess, ~~or~~ care for, reside with, have custody of, or  
16 work with any animal for a period ~~that the court deems appropriate~~ of up to  
17 five years.

18           (ii) For a first violation of section 352a of this title, forfeit any  
19 future right to own, possess, care for, reside with, have custody of, or work  
20 with any animal for a period of up to 10 years.

1                    (iii) A person shall not be required to forfeit any future right to  
2                    own, possess, care for, have custody of, or work with livestock or poultry  
3                    under this subdivision (C) unless the person was convicted of abusing  
4                    livestock or poultry.

5                    ~~(4)(D)(i)(I)~~ Participate in complete an available animal cruelty  
6                    prevention ~~programs~~ program that is approved by the Director of Animal  
7                    Welfare;

8                    ~~(II) or educational programs, or both, or~~ complete an animal  
9                    abuse education accountability program, if any are approved by the Director of  
10                    Animal Welfare; and

11                    ~~(III) obtain~~ undergo a psychiatric or psychological counseling,  
12                    evaluation, and, if the screening indicates that therapy is needed, obtain  
13                    psychiatric, psychological, or mental health treatment with a licensed clinician,  
14                    remotely or within a reasonable distance from the defendant’s residence. If a  
15                    ~~juvenile is adjudicated delinquent under section 352 or 352a of this title, the~~  
16                    ~~court may order the juvenile to undergo a psychiatric or psychological~~  
17                    ~~evaluation and to participate in treatment that the court determines to be~~  
18                    ~~appropriate after due consideration of the evaluation. The court may impose~~  
19                    ~~the costs of such programs or counseling upon the defendant when appropriate.~~

20                    (ii) The court may impose the costs of programs or counseling  
21                    ordered pursuant to this subdivision (D) upon the defendant when appropriate.

1           ~~(5)(E)~~ Permit periodic unannounced visits ~~for a period up to one year~~ by  
2 a humane officer or the Director of Animal Welfare to inspect the care and  
3 condition of any animal ~~permitted by the court to remain~~ in the care, custody,  
4 or possession of the defendant during the period, and for up to one year after  
5 expiration of the period, that the defendant is prohibited from owning,  
6 possessing, caring for, residing with, having custody of, or working with an  
7 animal by an order issued pursuant to subdivision (C) of this subdivision (b)(1)  
8 or subdivision (2) of this subsection (b). Such period may be ~~extended~~  
9 modified by the court upon motion made by the State.

10           (2) In addition to any other sentence the court may impose, the court  
11 shall require a defendant convicted of a violation under section 352 or 352a of  
12 this title to:

13           (A) For a second or subsequent violation, forfeit any rights to the  
14 animal subjected to cruelty, and to any other animal possessed, residing or  
15 domiciled with, or in the custody of the defendant. Livestock or poultry shall  
16 not be subject to forfeiture under this subdivision (A) unless the person was  
17 convicted of abusing livestock or poultry.

18           (B)(i) For a second or subsequent violation of section 352 of this  
19 title, forfeit any future right to own, possess, care for, reside with, have custody  
20 of, or work with any animal for a period of not less than five years.

1                   (ii) For a second or subsequent violation of section 352a of this  
2 title, forfeit any future right to own, possess, care for, reside with, have custody  
3 of, or work with any animal for a period of not less than 10 years.

4                   (iii) A person shall not be required to forfeit any future right to  
5 own, possess, care for, have custody of, or work with livestock or poultry  
6 under this subdivision (B) unless the person was convicted of abusing  
7 livestock or poultry.

8           (c) Upon an order of forfeiture of an animal under this section or section  
9 354 of this title, the court shall order custody of the animal remanded to a  
10 humane society or other individual deemed appropriate by the court, for further  
11 disposition in accordance with accepted practices for humane treatment of  
12 animals. A transfer of rights under this section constitutes a transfer of  
13 ownership and shall not constitute or authorize any limitation upon the right of  
14 the humane society, individual, or other entity, to whom rights are granted to  
15 dispose of the animal.

16           (d)(1) A person who is prohibited from owning, possessing, caring for,  
17 residing with, having custody of, or working with an animal by an order issued  
18 pursuant to subdivision (b)(1)(C) or (b)(2) of this section may petition the  
19 court for an order that the person be relieved from the prohibition imposed by  
20 that section. When the petition is filed, the petitioner shall provide notice and  
21 a copy of the petition to the office that prosecuted the case, who shall be the

1 respondent in the matter. The petition shall be filed in the Criminal Division of  
2 the unit where the offense or the adjudication occurred.

3 (2) The court may grant a petition filed under this section without  
4 hearing if neither the State’s Attorney nor the Attorney General files an  
5 objection within 30 days after receiving notice of the petition or if the  
6 petitioner and the respondent stipulate to the granting of the petition.

7 (3) In determining a petition filed under this section, unless the petition  
8 is granted pursuant to subdivision (2) of this subsection, the court may  
9 consider any relevant factors, including:

10 (A) whether the person committed any subsequent animal cruelty  
11 offenses or other criminal offenses;

12 (B) whether the person successfully completed any required  
13 conditions of probation;

14 (C) whether the person completed animal cruelty prevention  
15 programs or educational programs, and whether the programs were approved  
16 by the Director of Animal Welfare; and

17 (D) whether the person obtained psychiatric, psychological, or mental  
18 health counseling from a licensed clinician.

19 (4) The court shall grant a petition filed under this section if it finds that  
20 the petitioner has demonstrated by a preponderance of the evidence that the  
21 interests of justice are no longer served by prohibiting the petitioner from

1 owning, possessing, caring for, residing with, having custody of, or working  
2 with an animal.

3 (5) If a petition filed under this section is granted, the court shall vacate  
4 the order prohibiting the person from owning, possessing, caring for, residing  
5 with, having custody of, or working with an animal.

6 (6) If the court denies the petition, the petitioner may appeal the denial  
7 to the Vermont Supreme Court. The appeal shall be on the record.

8 (7) If the court denies a petition filed under this section, no further  
9 petition shall be brought for at least two years, unless a shorter duration is  
10 authorized by the court.

11 Sec. 5. 13 V.S.A. § 354 is amended to read:

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

14 (a) The Secretary of Agriculture, Food and Markets shall, if practicable, be  
15 consulted prior to any enforcement action brought pursuant to this chapter that  
16 involves livestock and poultry. Law enforcement may consult with the  
17 Secretary in person or by electronic means, and the Secretary shall assist law  
18 enforcement in determining whether the practice or animal condition, or both,  
19 represent acceptable livestock or poultry husbandry practices. Failure to  
20 conduct the consultation shall not be grounds for dismissal of the enforcement  
21 action or exclusion of evidence.

1 (b) Any humane officer as defined in section 351 of this title may enforce  
2 this chapter. As part of an enforcement action, a humane officer may seize an  
3 animal ~~being cruelly treated in violation of this chapter~~ pursuant to this  
4 subsection.

5 (1) Voluntary surrender. A humane officer may accept animals  
6 voluntarily surrendered by the owner anytime during the cruelty investigation.  
7 The humane officer shall have a surrendered animal examined and assessed  
8 within 72 hours, or as soon as reasonably practicable, by a veterinarian  
9 licensed to practice in the State of Vermont. Failure to have the animal  
10 examined and assessed within 72 hours, or as soon as reasonably practicable,  
11 shall not be grounds for dismissal of the enforcement action or exclusion of  
12 evidence. This shall not prevent the owner from introducing otherwise  
13 admissible evidence, including otherwise admissible evidence of the animal's  
14 condition at the time of the voluntary surrender.

15 (2) Search and seizure using a search warrant. A humane officer having  
16 probable cause to believe an animal is being subjected to cruel treatment in  
17 violation of this subchapter may apply for a search warrant pursuant to the  
18 Vermont Rules of Criminal Procedure to authorize the officer to enter the  
19 premises where the animal is kept and seize the animal. The application and  
20 affidavit for the search warrant shall be reviewed and authorized by an attorney  
21 for the State when sought by an officer other than an enforcement officer

1 defined in 23 V.S.A. § 4(11). A veterinarian licensed to practice in Vermont  
2 ~~must~~ shall, if practicable, accompany the humane officer during the execution  
3 of the search warrant. Failure to be accompanied by a veterinarian during the  
4 execution of the search warrant shall not be grounds for dismissal of the  
5 enforcement action or exclusion of evidence.

6 (3) Seizure without a search warrant. If the humane officer witnesses a  
7 situation in which the humane officer determines that an animal's life is in  
8 jeopardy and immediate action is required to protect the animal's health or  
9 safety, the officer may seize the animal without a warrant. The humane officer  
10 shall immediately take an animal seized under this subdivision to a licensed  
11 veterinarian for medical attention to stabilize the animal's condition and to  
12 assess the health of the animal.

13 (c) A humane officer shall provide suitable care at a reasonable cost for an  
14 animal seized under this section, and have a lien on the animal for all expenses  
15 incurred. A humane officer may arrange for the euthanasia of a severely  
16 injured, diseased, or suffering animal upon the recommendation of a licensed  
17 veterinarian. A humane officer may arrange for euthanasia of an animal seized  
18 under this section when the owner is unwilling or unable to provide necessary  
19 medical attention required while the animal is in custodial care or when the  
20 animal cannot be safely confined under standard housing conditions. An  
21 animal not destroyed by euthanasia shall be kept in custodial care and provided

1 with necessary medical care until final disposition of the criminal charges  
2 except as provided in subsections ~~(d) through (h)~~ (d)–(l) of this section. The  
3 custodial caretaker shall be responsible for maintaining the records applicable  
4 to all animals seized, including identification, residence, location, medical  
5 treatment, and disposition of the animals.

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

15 ~~(e)(1) A preliminary hearing shall be held within 21 days of institution of~~  
16 ~~the civil forfeiture proceeding. If the defendant requests a hearing on the~~  
17 ~~merits, the court shall schedule a final hearing on the merits to be held within~~  
18 ~~21 days of the date of the preliminary hearing. Time limits under this~~  
19 ~~subsection shall not be construed as jurisdictional.~~

20 ~~(2) If the defendant fails to respond to the notice for preliminary hearing,~~  
21 ~~the court shall enter a default judgment ordering the immediate forfeiture of~~

1 ~~the animal in accordance with the provisions of subsection 353(c) of this title.~~  
2 ~~A motion to reopen a default judgment shall be filed in writing with the court~~  
3 ~~no later than 30 days after entry of a default judgment. A default judgment~~  
4 ~~shall not be reopened unless good cause is shown.~~

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

12 (1) Unless a person claiming an ownership interest in the animal  
13 requests a forfeiture hearing pursuant to subdivision (3)(A) of this subsection  
14 and posts security pursuant to subdivision (3)(B) of this subsection or requests  
15 that the security be reduced or waived on the basis of financial hardship, title to  
16 an animal seized pursuant to subsection (b) of this section shall be forfeited  
17 pursuant to subsection 353(c) of this title 14 days after seizure if the  
18 procedures of this subsection are followed.

19 (2) The humane officer who seizes an animal pursuant to this section  
20 shall give notice of this section at the time of the seizure by delivering a copy  
21 of it to a person who is present and claims an ownership interest in the animal.

1 The officer shall also give notice of this section by conspicuously posting a  
2 copy of it at the time of the seizure in a prominent and accessible place at the  
3 location where the animal is seized. For any person who is known to claim an  
4 ownership interest in the animal and who is not present at the time of the  
5 seizure, the humane officer shall make reasonable efforts, within 96 hours  
6 following the seizure, to give notice of this section by personal service or by  
7 registered mail addressed to the last known address of the person. The notice  
8 shall include:

9 (A) a description of the animal seized; the authority and purpose for  
10 the seizure; the time, place, and circumstances under which the animal was  
11 seized; and the contact information for the authority with legal custody of the  
12 animal;

13 (B) a statement that any person claiming an ownership interest in the  
14 animal at the time of seizure may post security and request a forfeiture hearing  
15 concerning the seizure and that failure to do so within 14 days following the  
16 date of the seizure will result in forfeiture of title and disposition of the animal;

17 (C) a statement of the amount due as security and how to pay it;

18 (D) a statement that the security required by this section may be  
19 reduced or waived by the court on the basis of financial hardship to the  
20 defendant; and

1           (E) a form that may be used to request a forfeiture hearing under  
2           subdivision (3)(A) of this subsection (d) and a financial hardship exemption  
3           under subsection (j) of this section.

4           (3)(A) The court shall hold a forfeiture hearing if a request is made  
5           within 14 days after the seizure by a person claiming an ownership interest in  
6           the animal at the time of the seizure. If the defendant has requested that the  
7           security be reduced or waived on the basis of financial hardship, the court shall  
8           grant or deny the request at or before the hearing. The hearing shall be held  
9           within 30 days after the request, unless the 30-day period is extended by the  
10           court for good cause shown, in the territorial unit of the Criminal Division of  
11           the Superior Court where the offense is alleged to have occurred.

12           (B) A person who requests a forfeiture hearing pursuant to this  
13           subdivision (3) shall post security in an amount needed to cover food and  
14           necessary veterinary care for the animal for an initial 40-day period, with an  
15           additional amount equal to the estimated cost of care and keeping of the animal  
16           for a subsequent 30-day period due every 30 days thereafter until the owner  
17           relinquishes the animal or until the court issues an order of forfeiture. The  
18           amount of the security and the payment schedule shall be set in rules adopted  
19           by the Director of Animal Welfare pursuant to 20 V.S.A. § 3202(e). The  
20           initial security shall be posted within 14 days following the seizure unless the  
21           person requests that the security be reduced or waived by the court on the basis

1 of financial hardship. The court shall collect and transfer the security to the  
2 Animal Welfare Fund established pursuant to 20 V.S.A. § 3203. The Director  
3 of Animal Welfare shall make payment, not to exceed the security received, to  
4 the custodial caretaker upon receipt of proof of expenditure of funds by the  
5 caretaker for food and necessary veterinary care for the animal.

6 (C) The State shall have the burden of establishing by a  
7 preponderance of the evidence that the animal was subjected to cruelty,  
8 neglect, or abandonment in violation of section 352 or 352a of this title. The  
9 court shall make findings of fact and conclusions of law and shall issue a final  
10 order promptly. The findings shall include the total amount of all costs  
11 incurred by the custodial caretaker and the amount the person claiming an  
12 interest in the animal is able to pay. If the State meets its burden of proof, the  
13 court shall order the immediate forfeiture of the animal, and any offspring of  
14 the animal that were born while the animal was in custody, in accordance with  
15 the provisions of subsection 353(c) of this title.

16 (D) Notwithstanding subdivision (B) of this subdivision (d)(3), the  
17 court may order the animal returned to the petitioner if the court finds by a  
18 preponderance of the evidence that the petitioner:

19 (i) is not the defendant in a cruelty case involving the animal;

20 (ii) did not participate in or expressly or impliedly consent to the  
21 alleged cruel treatment of the animal;

1                    (iii) did not have any express or implied knowledge that the  
2                    defendant was likely to treat the animal cruelly; and  
3                    (iv) will provide adequate care to the animal if it is returned,  
4                    including any immediately necessary veterinary care or follow-up care needed  
5                    in connection with the reason for seizure.

6                    ~~(2)(E)~~ Affidavits of law enforcement officers, humane officers, animal  
7                    control officers, veterinarians, or expert witnesses of either party shall be  
8                    admissible evidence that may be rebutted by witnesses called by either party.  
9                    The affidavits shall be delivered to the other party at least five business days  
10                   prior to the hearing. Upon request of the other party or the court made at least  
11                   two business days prior to the hearing, the party offering an affidavit shall  
12                   make the affiant available by telephone at the hearing. The court may allow  
13                   any witness to testify ~~by telephone~~ remotely in lieu of a personal appearance  
14                   and shall adopt rules with respect to such testimony.

15                   ~~(3)(F)~~ No testimony or other information presented by the defendant in  
16                   connection with a forfeiture proceeding under this section or any information  
17                   directly or indirectly derived from such testimony or other information may be  
18                   used for any purpose, including impeachment and cross-examination, against  
19                   the defendant in any criminal case, except a prosecution for perjury or giving a  
20                   false statement.

1           (G) The rules of evidence shall apply in the forfeiture hearing unless  
2           otherwise provided by this section.

3           (e) If an order of forfeiture is not entered after the hearing, the animal shall  
4           be returned to the person claiming an interest in the animal upon payment to  
5           the custodial caretaker of all actual costs of care and keeping during the period  
6           of impound, including veterinary care, less any security paid, provided that the  
7           payment of costs shall not be required if the court finds that there was no  
8           reasonable basis for the seizure. If payment of the costs required by this  
9           subsection is not made within 14 days after the final order, the custodial  
10           caretaker’s costs, not to exceed the amount of remaining security posted  
11           pursuant to subdivision (d)(3)(B) of this section, shall be reimbursed from the  
12           Animal Welfare Fund established pursuant to 20 V.S.A. § 3203, and title to the  
13           animal shall be forfeited unless a financial hardship reduction or waiver  
14           request is pending or has been granted.

15           ~~(g)(1)(f) If the defendant is convicted of criminal charges under this chapter~~  
16           ~~or~~ if an order of forfeiture is entered against an owner under this section, the  
17           security posted pursuant to this section shall be applied to the actual costs  
18           incurred by the custodial caretaker in caring and keeping the animal through  
19           the date of forfeiture, including food, boarding, and the cost of any veterinary  
20           services. Any excess shall be returned to the person who posted the security.  
21           The defendant or owner shall be required to repay all reasonable costs incurred

1 by the custodial caretaker for caring for the animal, including veterinary  
2 expenses. The Restitution Unit within the Center for Crime Victim Services is  
3 authorized to collect the funds owed by the defendant or owner on behalf of  
4 the custodial caretaker or a governmental agency that has contracted or paid  
5 for custodial care in the same manner as restitution is collected pursuant to  
6 section 7043 of this title. The restitution order shall include the information  
7 required under subdivision 7043(e)(2)(A) of this title. ~~The court shall make~~  
8 ~~findings with respect to the total amount of all costs incurred by the custodial~~  
9 ~~caregiver.~~

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

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

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

4           ~~(h)(g)(1)~~ A forfeiture order issued under this section may be appealed as a  
5           matter of right to the Supreme Court if a notice of appeal is filed within seven  
6           days after the order is issued and the appellant posts security pursuant to  
7           subdivision (2) of this subsection. The order shall not be stayed pending  
8           appeal.

9           (2) The appellant shall post security in an amount needed to cover food  
10          and necessary veterinary care for the animal for an initial 40-day period from  
11          the date that the forfeiture order was issued, with an additional amount equal to  
12          the estimated cost of care and keeping of the animal for a subsequent 30-day  
13          period due every 30 days thereafter until the owner relinquishes the animal or  
14          until final disposition of the case. Failure to timely pay the full amount shall  
15          result in forfeiture to title to the animal unless a financial hardship reduction or  
16          waiver request is pending or has been granted. The calculation of the security  
17          shall be set in rules adopted by the Director of Animal Welfare pursuant to 20  
18          V.S.A. § 3202(e). The court shall collect and transfer the security to the  
19          Animal Welfare Fund established pursuant to 20 V.S.A. § 3203. The Director  
20          of Animal Welfare shall make payment, not to exceed the security received, to

1 the custodial caretaker upon receipt of proof of expenditure of funds by the  
2 caretaker for food and necessary veterinary care for the animal.

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

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

9 (j) The security required by this section may be reduced or waived by the  
10 court on the basis of financial hardship to the defendant.

11 (k) A humane officer or animal shelter or rescue organization shall be  
12 immune from civil or criminal liability for seizing or providing care or  
13 treatment to an animal in good faith reliance on the provisions of this section.  
14 This subsection shall not apply to gross negligence or intentional misconduct  
15 by the humane officer or animal shelter or rescue organization.

16 (l) This section shall not be construed to limit or infringe upon any other  
17 rights or remedies available under common law or any other provision of law  
18 or rule.

1 Sec. 6. 20 V.S.A. § 3202 is amended to read:

2 § 3202. ESTABLISHMENT OF DIVISION OF ANIMAL WELFARE;

3 POWERS AND DUTIES

4 \* \* \*

5 (e) The Division of Animal Welfare shall adopt rules pursuant to 3 V.S.A.  
6 chapter 25 to:

7 (1) provide for the receipt and management of security posted in animal  
8 forfeiture proceedings and transferred to the Fund by the court pursuant to  
9 13 V.S.A. § 354(d)(3)(B) and 13 V.S.A. § 354(g)(2), including the amount of  
10 security required; and

11 (2) make distributions and reimbursements from the Fund for the  
12 purposes authorized by 13 V.S.A. § 354, including payment schedules.

13 Sec. 7. 20 V.S.A. § 3203 is amended to read:

14 § 3203. ANIMAL WELFARE FUND

15 (a) The Animal Welfare Fund is established within the Department of  
16 Public Safety to fund the expenses incurred by the Division of Animal Welfare  
17 in implementing the requirements of this chapter. The Director of Animal  
18 Welfare shall administer the Fund.

19 (b) The Fund shall consist of:

20 (1) 67 percent of the revenue collected from the surcharge assessed  
21 under subsection 3581(f) of this title; ~~and~~

1           (2) appropriations made by the General Assembly; and  
2           (3) security posted in animal forfeiture proceedings and transferred to  
3 the Fund by the court pursuant to 13 V.S.A. § 354(d)(3)(B) and 13 V.S.A.  
4 § 354(g)(2).

5           (c) All balances in the Fund at the end of the fiscal year shall be carried  
6 forward. Interest earned by the Fund shall remain in the Fund.

7           (d) The Director of Animal Welfare shall have the authority to make  
8 distributions and reimbursements from the Fund for the purposes authorized by  
9 13 V.S.A. § 354.

10       Sec. 8. TRANSITION; SECURITY AMOUNT

11           (a) Until the Director of Animal Welfare adopts rules pursuant to 13 V.S.A.  
12 § 354(d)(3)(B), the amount of security under 13 V.S.A. § 354(d) and (g) shall  
13 be required pursuant to this section.

14           (b) For all animals other than livestock, including domestic pets and  
15 poultry, security shall be required in the amount of:

16                   (1) \$1.00 per animal per day for food; and

17                   (2) if the seizing officer determines that immediate veterinary care is  
18 required to protect the animal’s health or safety, \$250 per animal for veterinary  
19 services.

20           (c) For livestock, security shall be required in the amount of:

