

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 510

An Act to amend and reenact § 3.1-796.115 of the Code of Virginia, relating to seizure and impoundment of animals; posting of bond for animals.

[H 999]

Approved March 10, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 3.1-796.115 of the Code of Virginia is amended and reenacted as follows:

§ 3.1-796.115. Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale.

A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. Before seizing or impounding any agricultural animal, such humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal, provided, however, that the seizure or impoundment of an equine resulting from a violation of subdivision A (iii) or subdivision B (ii) of § 3.1-796.122 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation. The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.

Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the general district court in the city or county wherein the animal is seized for a hearing. The hearing shall be not more than ten business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

B. The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall be held.

C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

D. The humane investigator, law-enforcement officer, or animal control officer shall provide for such animal until the court has concluded the hearing. Any locality may, by ordinance, require the owner of any animal held pursuant to this subsection for more than thirty days to post a bond in surety with the locality for the amount of the cost of boarding the animal for a period of time set in the ordinance, not

to exceed nine months.

In any locality that has not adopted such an ordinance, a court may order the owner of an animal held pursuant to this subsection for more than 30 days to post a bond in surety with the locality for the amount of the cost of boarding the animal for a period of time not to exceed nine months. The bond shall not be forfeited if the owner is found to be not guilty of the violation.

If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been (i) abandoned; or cruelly treated, ~~or~~ (ii) deprived of adequate care, as that term is defined in § 3.1-796.66, or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation of § 3.1-796.124, then the court shall order that the animal be: (i a) sold by a local governing body; (ii b) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the Commonwealth; (iii c) delivered to any local humane society or shelter, or to any person who is a resident of the county or city where the animal is seized or an adjacent county or city in the Commonwealth and who will pay the required license fee, if any, on such animal; or (iv d) delivered to the person with a right of property in the animal as provided in subsection E.

E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care; however, the court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

F. The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of such care.

G. The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

H. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions of violating § 3.1-796.73 or § 3.1-796.122. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

I. Any person who is prohibited from owning or possessing animals pursuant to subsection G or H may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

J. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund of the state treasury.

K. Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement officer, animal control officer, or licensed veterinarian.

L. [Repealed.]