

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 387

*An Act to amend and reenact §§ 3.1-796.108 and 3.1-796.115 of the Code of Virginia, relating to seizure and disposition of animals.*

[H 566]

Approved April 6, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.1-796.108 and 3.1-796.115 of the Code of Virginia are amended and reenacted as follows:**

§ 3.1-796.108. Impoundment; expenses; lien; disposition of animal.

When ~~an approved~~ a humane investigator, any law-enforcement official, ~~or~~ animal warden ~~or~~ licensed veterinarian finds that an apparent violation of this chapter has rendered an animal in such a condition as to constitute a direct and immediate threat to its life, safety or health which the owner or custodian has failed or refuses to remedy, such ~~approved~~ humane investigator, animal warden, ~~or~~ law-enforcement official ~~or~~ licensed veterinarian may impound the animal pursuant to § 3.1-796.115 in a facility which will provide the elements of good care as set forth in § 3.1-796.68 and shall then proceed to take such steps as are required to dispose of the animal pursuant to § 3.1-796.115.

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

A. Any humane investigator, ~~or any law-enforcement official, or~~ animal warden as defined in § 3.1-796.66, may lawfully take charge of ~~seize and impound~~ any animal found abandoned, neglected, ~~or that has been abandoned, has been~~ cruelly treated, or ~~unfit for use, and 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.~~ Upon seizing or impounding the animal, such person shall petition ~~any~~ the general district court in the city or county, wherein the animal is found, ~~seized~~ for a hearing which shall be in the nature of a criminal proceeding. The hearing shall be set not more than ten business days from the date of the seizure of the animal. ~~The hearing shall be to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.~~

B. The humane investigator, ~~or law-enforcement official, or~~ animal warden, shall cause to be served upon the ~~owner, if 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 found seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If ~~the owner~~ such person or the custodian is known but residing out of the jurisdiction where such animal is found seized, written notice by any method or service of process as is provided by the Code of Virginia, shall be given. If ~~the owner~~ such person or the custodian is not known, the humane investigator, law-enforcement official, ~~or animal warden~~ shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is found 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, ~~or law-enforcement official, or~~ animal warden, ~~may~~ shall provide for such animal until the owner is adjudged by the court able to adequately provide for such animal and a fit person to own the animal, in which case court has concluded the hearing. 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 owner is adjudged by the court unable to adequately provide for the animal ~~or not a fit person to own the animal~~ determines that the animal has been abandoned, cruelly treated, or deprived of adequate care, then the court shall order that the animal be: (i) sold by a local governing body; (ii) 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; ~~or~~ (iii) 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 found 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) delivered to the person with a right of property in the animal as provided in subsection E.

E. In no case shall the person adjudged unable to adequately provide for the animal ~~or~~ adjudged an unfit person to own the animal owner be allowed to purchase, adopt, or otherwise obtain the animal at

*the sale 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 ~~may~~ shall order ~~any~~ the owner ~~adjudged unable to adequately provide for his animal or not a fit person to own the animal~~ 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 ~~in determining whether the owner is able to adequately provide for the animal or is a fit person to own the animal~~ 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 ~~among other things~~ the owner's past record of convictions under this chapter ~~or one similar thereto~~ 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 subsections 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. ~~In case of~~ When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the ~~previously~~ 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 official, animal warden, or licensed veterinarian.~~*

*L. The provisions of this section which address whether an animal has been provided with or deprived of adequate care shall apply only with respect to companion animals.*