VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 500

An Act to amend and reenact §§ 3.1-796.66, 3.1-796.115, and 3.1-796.122 of the Code of Virginia, and to repeal § 3.1-796.123 of the Code of Virginia, relating to the seizure and impoundment of animals and the soring of horses; penalty.

[S 235]

Approved April 5, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-796.66, 3.1-796.115, and 3.1-796.122 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-796.66. Definitions.

The following words as used in this chapter shall have the following meanings:

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.1-796.68 for a period of five consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food which is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

"Adequate space" means sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature which is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at least once every twelve hours, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles ~~which~~ *that* are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

"Adoption" means the transfer of ownership of a dog or cat from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.1-796.98, animal means any species susceptible to rabies. For the purposes of § 3.1-796.122, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § 3.1-796.104.

"Animal shelter" means a facility ~~which~~ *that* is used to house or contain animals and ~~which~~ *that* is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, animal rescue group, or any other organization devoted to the welfare, protection, and humane treatment of animals.

"Board" means the Board of Agriculture and Consumer Services.

"Boarding establishment" means a place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Companion animal" means any domestic or feral dog, domestic or feral cat, non-human primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal ~~which~~ *that* is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barters companion animals. Any person who transports companion animals in the regular course of business as a common carrier shall not be considered a dealer.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent ~~which~~ *that* causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the United States Department of Agriculture.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.1-796.106.

"Humane society" means any chartered, nonprofit organization incorporated under the laws of this Commonwealth and organized for the purpose of preventing cruelty to animals and promoting humane care and treatment of animals.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office ~~which~~ *that* is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.1-73.6; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"Local ordinance" means any law, rule, regulation, or ordinance promulgated by the governing body

of any county, city, or town.

"Locality" or "local government" means a county, city, or town, as the context may require.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 3.1-796.126:1, and who adopts or receives a dog or cat from a releasing agency.

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any municipality, county, or incorporated town thereof, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who: (i) has a right of property in an animal, (ii) keeps or harbors an animal, (iii) has an animal in his care, or (iv) acts as a custodian of an animal.

"Person" means any individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity.

"Pet shop" means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Pound" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any county, city, town, or incorporated society for the prevention of cruelty to animals.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Properly cleaned" means that carcasses, debris, food waste and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the housing facility, and observation of the animal; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the animal facilities; and to promote the well-being of the animals.

"Releasing agency" means a pound, animal shelter, humane society, animal welfare society, society for the prevention of cruelty to animals, or other similar entity that releases a dog or cat for adoption pursuant to Article 6.1 (§ 3.1-796.126:1 et seq.) of this chapter.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

"State Veterinarian" means the veterinarian employed by the Commissioner of Agriculture and Consumer Services as provided in § 3.1-723.

"State Veterinarian's representative" means an employee of the Department of Agriculture and Consumer Services who is under the direction of the State Veterinarian.

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species, and has ingested such food, without nursing, for a period of at least five days.

§ 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.

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 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; (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 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 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. 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.~~

§ 3.1-796.122. Cruelty to animals; penalty.

A. Any person who (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; ~~or~~ (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment; ~~or~~ (iii) *sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (iv)* willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; ~~or (iv)~~ *(v)* carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or ~~(v)~~ *(vi)* causes any of the above things, or being the owner of such animal permits such acts to be done by another, shall be guilty of a Class 1 misdemeanor.

B. Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; ~~or~~ (ii) *sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii)* instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clause (i) of this subsection; or ~~(iii)~~ *(iv)* causes any of the actions described in ~~subdivisions~~ *clauses* (i) ~~and (ii)~~ *through (iii)* of this subsection, or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, shall be guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this subsection or subsection A.

C. Any person who abandons any dog, cat or other domesticated animal in any public place including the right-of-way of any public highway, road or street or on the property of another shall be

guilty of a Class 3 misdemeanor.

D. Nothing in this section shall be construed to prohibit the dehorning of cattle.

E. For the purposes of this section and §§ 3.1-796.111, 3.1-796.113, 3.1-796.114, 3.1-796.115, and 3.1-796.125, the word animal shall be construed to include birds and fowl.

F. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the Code of Virginia, including, but not limited to Title 29.1, or to farming activities as provided under this title or regulations promulgated thereto.

G. In addition to the penalties provided in subsection A, the court may, in its discretion, require any person convicted of a violation of subsection A to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.

H. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection shall constitute a Class 1 misdemeanor. A second or subsequent violation of this subsection shall constitute a Class 6 felony.

2. That § 3.1-796.123 of the Code of Virginia is repealed.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and $0 for periods of commitment to the custody of the Department of Juvenile Justice.