

1 H.471

2 Introduced by Representative Wizowaty of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Crimes; cruelty to animals; civil forfeiture proceedings

6 Statement of purpose of bill as introduced: This bill proposes to clarify that
7 certain animal neglect offenses may be addressed through either a civil ticket
8 or a criminal charge and to revise court proceedings regarding the disposition
9 of animals seized by the State in cases involving criminal charges of neglect or
10 cruelty to animals.

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

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

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

15 § 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION

16 (a) Penalties.

17 * * *

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 shall be imprisoned not more than one year or fined not

1 more than \$2,000.00, or both. Second and subsequent convictions shall be
2 punishable by a sentence of imprisonment of not more than two years or a fine
3 of not more than \$5,000.00, or both.

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

15 (C) Nothing in this subdivision shall be construed to require that a
16 civil citation be issued prior to a criminal charge of violating subdivision
17 352(3), (4), or (9) of this title.

18 * * *

1 Sec. 2. 13 V.S.A. § 354 is amended to read:

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

4 * * *

5 (a) The secretary of agriculture, food and markets shall be consulted prior
6 to any enforcement action brought pursuant to this chapter which involves
7 livestock and poultry.

8 (b) Any humane officer as defined in section 351 of this title may enforce
9 this chapter. As part of an enforcement action, a humane officer may seize an
10 animal being cruelly treated in violation of this chapter.

11 (1) Voluntary surrender. A humane officer may accept animals
12 voluntarily surrendered by the owner anytime during the cruelty investigation.
13 The humane officer shall have a surrendered animal examined and assessed
14 within 72 hours by a veterinarian licensed to practice in the state of Vermont.

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 Rules of Criminal Procedure to authorize the officer to enter the premises
19 where the animal is kept and seize the animal. The application and affidavit
20 for the search warrant shall be reviewed and authorized by an attorney for the
21 state when sought by an officer other than an enforcement officer defined in

1 23 V.S.A. § 4(11). A veterinarian licensed to practice in Vermont must
2 accompany the humane officer during the execution of the search warrant.

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

10 (4) If there are exigent circumstances and probable cause to believe that
11 any animal is being impounded or confined without minimum care for more
12 than 24 consecutive hours without medical cause, a humane officer may enter
13 the premises where the animal is being held and provide the animal with water,
14 food, or emergency on-site first aid treatment. The humane officer shall not be
15 liable for any damages for such entry, unless the damages were caused by the
16 unnecessary actions of the humane officer that were intentional or reckless.

17 (c) A humane officer shall provide suitable care at a reasonable cost for an
18 animal seized under this section, and have a lien on the animal for all expenses
19 incurred. A humane officer may arrange for the euthanasia of a severely
20 injured, diseased, or suffering animal upon the recommendation of a licensed
21 veterinarian. A humane officer may arrange for euthanasia of an animal seized

1 under this section when the owner is unwilling or unable to provide necessary
2 medical attention required while the animal is in custodial care or when the
3 animal cannot be safely confined under standard housing conditions. An
4 animal not destroyed by euthanasia shall be kept in custodial care until final
5 disposition of the criminal charges except as provided in subsections (d)
6 through (h) of this section. The custodial caregiver shall be responsible for
7 maintaining the records applicable to all animals seized, including
8 identification, residence, location, medical treatment, and disposition of the
9 animals.

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

16 (e) ~~The court shall set a hearing to be held within 21 days after institution~~
17 ~~of a forfeiture proceeding under this section~~ A preliminary hearing shall be
18 held within 21 days of institution of the civil forfeiture proceeding. If the
19 defendant requests a hearing on the merits, the Court shall schedule a final
20 hearing on the merits to be held within 21 days of the date of the preliminary
21 hearing. In no event shall a final hearing occur more than 42 days after the

1 date of the commencement of the civil forfeiture proceeding. Time limits
2 under this subsection shall not be construed as jurisdictional.

3 (f)(1) At the hearing on the motion for forfeiture, the ~~state~~ State shall have
4 the burden of establishing by ~~clear and convincing evidence~~ a preponderance
5 of the evidence that the animal was subjected to cruelty, neglect, or
6 abandonment in violation of section 352 or 352a of this title. The ~~court~~ Court
7 shall make findings of fact and conclusions of law and shall issue a final order.
8 ~~If the state meets its burden of proof, the motion shall be granted and the court~~
9 ~~shall order the immediate forfeiture of the animal in accordance with the~~
10 ~~provisions of subsection 353(e) of this title~~ If the court finds for the petitioner
11 by a preponderance of the evidence, the Court shall order immediate forfeiture
12 of the animal to the petitioner, unless the defendant, within 72 hours of the
13 hearing, posts a security deposit or bond with the court clerk in an amount
14 determined by the Court to be sufficient to repay all reasonable costs incurred
15 and anticipated to be incurred by the petitioner in caring for the animal from
16 the date of initial seizure to the date of final disposition of the animal in the
17 criminal action.

18 (2) Notwithstanding subdivision (1) of this subsection, the court may
19 waive for good cause shown the requirement that the defendant post a security
20 deposit or bond.

1 (3) If a security deposit or bond has been posted in accordance with this
2 subsection and the criminal trial is continued to a later date, any order of
3 continuance shall require the defendant to post an additional security deposit or
4 bond in an amount determined by the Court that shall be sufficient to repay all
5 additional reasonable costs anticipated to be incurred by the petitioner in caring
6 for the animal until the new date of trial.

7 (4) If a security deposit or bond has been posted in accordance with this
8 section, the petitioner may draw from that security deposit or bond the actual
9 reasonable costs incurred by the petitioner in caring for the seized animal from
10 the date of initial seizure to the date of final disposition of the animal in the
11 criminal action.

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

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

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

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

9 (h) An order of the ~~criminal division of the superior court~~ Criminal
10 Division of the Superior Court under this section may be appealed as a matter
11 of right to the ~~supreme court~~ Supreme Court. The order shall not be stayed
12 pending appeal.

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

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

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2013.