

Assembly Bill No. 243

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 597.1 of, and to add Section 597.9 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Nava. Animal abuse: penalties.

Existing law provides that upon the conviction of a person for a violation of a specified law regarding the failure to care for animals, the court is authorized to make an order prohibiting the defendant, as a condition of probation, from owning, possessing, caring for, or having any contact with animals of any kind and to order the convicted person to immediately deliver all animals in his or her possession to a designated public entity, as specified. Existing law requires the court, in the event of acquittal or final discharge of a person arrested pursuant to these provisions, to direct the release of the seized or impounded animals, on demand, upon a showing of proof of ownership.

This bill would instead require the court to make the orders above regarding ownership and forfeiture, as specified. The bill would require the owner to make additional showings in order for the court to direct the release of seized or impounded animals.

Existing law provides that the cost of seizing, caring for, and treating any animal seized pursuant to specified provisions regarding the failure to care for animals shall constitute a lien on the animal and that the animal shall not be returned to its owner until the charges are paid. Existing law provides that no animal properly seized pursuant to these provisions shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit, or the owner can demonstrate that the owner can and will provide the necessary care.

This bill would additionally apply these provisions to animals seized pursuant to a search warrant. The bill would, in the event that the owner has satisfied the lien, provide a process for the seizing agency or prosecuting attorney to file a petition seeking forfeiture of any animal, as specified.

Existing law establishes various other crimes regarding cruelty to animals and the failure to care for animals.

This bill would require the court, upon conviction of a person for certain of these crimes, in addition to any other sentence or penalty, to enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal within a specified period after conviction, and would make related changes. The bill would make a violation of this order a misdemeanor, as specified. The bill would provide that the court may, in the interest of justice, reduce the duration of, or, in the case of livestock owners, exempt a defendant from, these restrictions under specified circumstances. By creating a new crime and by increasing the duties of local humane officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 597.1 of the Penal Code is amended to read:

597.1. (a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the

animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) Any peace officer, humane society officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of

adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The cost of caring for and treating any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure

hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred

for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning the

enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(h) If any animal is properly seized under this section or pursuant to a search warrant, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

(i) If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to

have been abandoned and may be disposed of by the impounding officer. A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(j) No animal properly seized under this section or pursuant to a search warrant shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the necessary care.

(k) (1) In the event that the owner has satisfied the lien provided for in this section for the cost of caring for or treating an animal, prior to final disposition of any criminal charges, the seizing agency or prosecuting attorney may file a petition in the criminal action requesting that the court issue an order forfeiting the animal to the county or seizing agency prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of a petition, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days after the filing of the petition, or as soon as practicable.

(3) The petitioner shall have the burden of establishing probable cause to believe that even in the event of acquittal, the owner cannot and will not provide the necessary care for, or that the owner will not legally be permitted to retain, any of the animals in question. If the court finds probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner.

(l) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper

disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

If probation is granted, the court shall also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind. Regardless of whether probation is granted, the court shall require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, if any of the animals are still impounded because the animal or animals have not previously been deemed abandoned pursuant to Section 597.1(h) or the lien has been satisfied and the court has not previously ordered that any of the animals be forfeited, the court shall, on demand, direct the release of seized or impounded animals upon a showing of all of the following:

- (1) Proof of ownership.
- (2) Proof that all charges for the cost of seizure and care of the animals for the entire duration of the matter have been paid.
- (3) Proof that the animals are physically fit and that the owner has demonstrated to the seizing agency or the court that the owner can and will provide the necessary care.
- (4) Proof that the owner can legally retain and possess all animals in question.

Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish seized or impounded pursuant to

any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(m) It shall be the duty of all peace officers, humane society officers, and animal control officers to use all currently acceptable methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

SEC. 2. Section 597.9 is added to the Penal Code, to read:

597.9. (a) Except as provided in subdivision (d) or (e), the court shall, upon a conviction for a misdemeanor violation of subdivision (a) or (b) of Section 597, or of Section 597a, 597b, 597h, 597j, 597s, or 597.1, in addition to any other sentence or penalty imposed, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of not less than five years.

(b) Except as provided in subdivision (d) or (e), the court shall, upon a conviction of a person for a felony violation of subdivision (a) or (b) of Section 597, or of Section 597b or 597.5, in addition to any other sentence or penalty imposed, enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal for a period of not less than 10 years.

(c) Any person who is convicted of violating an order issued under this section is guilty of a public offense, which shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) In cases of owners of livestock, as defined in Section 14205 of the Food and Agricultural Code, a court may, in the interest of justice, exempt a defendant from the injunction required under subdivision (a) or (b), as it would apply to livestock, if the

defendant files a petition with the court establishing that the imposition of the provisions of this section would result in substantial or undue economic hardship to the defendant's livelihood and that the defendant has the ability to properly care for all livestock in his or her possession.

The petitioner shall serve a true copy of the petition upon the court and the prosecuting attorney 10 calendar days prior to the requested hearing. Upon petition from the defendant, the court shall set a hearing on the petition. The hearing shall be conducted within 30 days after the filing of the petition. The court shall grant the petition for exemption from subdivision (a) or (b) unless the prosecuting attorney shows by a preponderance of the evidence that either or both of the criteria for exemption under subdivision (d) are untrue.

(e) A defendant may petition the court to reduce the duration of the mandatory ownership prohibition. The petitioner shall serve a true copy of the petition upon the court and the prosecuting attorney 10 calendar days prior to the requested hearing. Upon a petition from the defendant, the court shall set a hearing on the petition. The hearing shall be conducted within 30 days after the filing of the petition. At the hearing, the petitioner shall have the burden of establishing probable cause to believe all of the following:

- (1) He or she does not present a danger to animals.
- (2) He or she has the ability to properly care for all animals in his or her possession.
- (3) He or she has successfully completed all classes or counseling ordered by the court.

If the petitioner has met his or her burden, the court may reduce the mandatory ownership prohibition and may order that the defendant comply with reasonable and unannounced inspections by animal control agencies or law enforcement.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the

meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2009

Governor