

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 243

Introduced by Assembly Member Nava
(Coauthors: Assembly Members Lieu and Portantino)
(Coauthors: Senators DeSaulnier and Florez)

February 10, 2009

An act to amend Section 597.1 of, and to add Section 597.8 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, as amended, Nava. Animal abuse: penalties.

Existing law provides that upon the conviction of a person charged with animal abuse, as specified, the court is authorized to prohibit the defendant, as a condition of probation, from owning, possessing, caring for, or having any contact with; animals, as specified.

This bill would instead make it a misdemeanor, punishable as specified, for any person convicted ~~for~~ of animal abuse to own, possess, maintain, have custody of, reside with, or care for any animal within a specified period after conviction, and would make ~~relating~~ *related* changes. *The bill would provide that the court may, in the interest of justice, exempt a defendant from these provisions 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

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

3 597.1. (a) Every owner, driver, or keeper of any animal who
4 permits the animal to be in any building, enclosure, lane, street,
5 square, or lot of any city, county, city and county, or judicial district
6 without proper care and attention is guilty of a misdemeanor. Any
7 peace officer, humane society officer, or animal control officer
8 shall take possession of the stray or abandoned animal and shall
9 provide care and treatment for the animal until the animal is
10 deemed to be in suitable condition to be returned to the owner.
11 When the officer has reasonable grounds to believe that very
12 prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer shall
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). The cost of caring for and treating any animal
17 properly seized under this subdivision shall constitute a lien on
18 the animal and the animal shall not be returned to its owner until
19 the charges are paid, if the seizure is upheld pursuant to this section.

20 (b) Every sick, disabled, infirm, or crippled animal, except a
21 dog or cat, that is abandoned in any city, county, city and county,
22 or judicial district may be killed by the officer if, after a reasonable
23 search, no owner of the animal can be found. It shall be the duty
24 of all peace officers, humane society officers, and animal control
25 officers to cause the animal to be killed or rehabilitated and placed
26 in a suitable home on information that the animal is stray or

1 abandoned. The officer may likewise take charge of any animal,
2 including a dog or cat, that by reason of lameness, sickness,
3 feebleness, or neglect, is unfit for the labor it is performing, or that
4 in any other manner is being cruelly treated, and provide care and
5 treatment for the animal until it is deemed to be in a suitable
6 condition to be returned to the owner. When the officer has
7 reasonable grounds to believe that very prompt action is required
8 to protect the health or safety of an animal or the health or safety
9 of others, the officer shall immediately seize the animal and comply
10 with subdivision (f). In all other cases, the officer shall comply
11 with subdivision (g). The cost of caring for and treating any animal
12 properly seized under this subdivision shall constitute a lien on
13 the animal and the animal shall not be returned to its owner until
14 the charges are paid.

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

22 If the owner does not redeem the animal within the locally
23 prescribed waiting period, the veterinarian may personally perform
24 euthanasia on the animal. If the animal is treated and recovers from
25 its injuries, the veterinarian may keep the animal for purposes of
26 adoption, provided the responsible animal control agency has first
27 been contacted and has refused to take possession of the animal.

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

32 If the veterinarian determines that the animal shall be hospitalized
33 under proper care and given emergency treatment, the costs of any
34 services that are provided pending the owner's inquiry to the
35 responsible agency, department, or society shall be paid from the
36 dog license fees, fines, and fees for impounding dogs in the city,
37 county, or city and county in which the animal was licensed or, if
38 the animal is unlicensed, shall be paid by the jurisdiction in which
39 the animal was found, subject to the provision that this cost be
40 repaid by the animal's owner. The cost of caring for and treating

1 any animal seized under this subdivision shall constitute a lien on
2 the animal and the animal shall not be returned to the owner until
3 the charges are paid. No veterinarian shall be criminally or civilly
4 liable for any decision that he or she makes or for services that he
5 or she provides pursuant to this subdivision.

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

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

19 (f) Whenever an officer authorized under this section seizes or
20 impounds an animal based on a reasonable belief that prompt action
21 is required to protect the health or safety of the animal or the health
22 or safety of others, the officer shall, prior to the commencement
23 of any criminal proceedings authorized by this section, provide
24 the owner or keeper of the animal, if known or ascertainable after
25 reasonable investigation, with the opportunity for a postseizure
26 hearing to determine the validity of the seizure or impoundment,
27 or both.

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

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

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

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

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

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

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

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

25 (4) The agency, department, or society employing the person
26 who directed the seizure shall be responsible for the costs incurred
27 for caring and treating the animal, if it is determined in the
28 postseizure hearing that the seizing officer did not have reasonable
29 grounds to believe very prompt action, including seizure of the
30 animal, was required to protect the health or safety of the animal
31 or the health or safety of others. If it is determined the seizure was
32 justified, the owner or keeper shall be personally liable to the
33 seizing agency for the cost of the seizure and care of the animal,
34 the charges for the seizure and care of the animal shall be a lien
35 on the animal, and the animal shall not be returned to its owner
36 until the charges are paid and the seizing agency or hearing officer
37 has determined that the animal is physically fit or the owner
38 demonstrates to the seizing agency's or the hearing officer's
39 satisfaction that the owner can and will provide the necessary care.

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

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

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

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

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

25 (D) A statement that, in order to receive a hearing prior to any
26 seizure, the owner or person authorized to keep the animal, or his
27 or her agent, shall request the hearing by signing and returning the
28 enclosed declaration of ownership or right to keep the animal to
29 the officer providing the notice within two days, excluding
30 weekends and holidays, of the date of the notice.

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

38 (2) The preseizure hearing shall be conducted within 48 hours,
39 excluding weekends and holidays, after receipt of the request. The
40 seizing agency may authorize its own officer or employee to

1 conduct the hearing if the hearing officer is not the same person
2 who requests the seizure or impoundment of the animal and is not
3 junior in rank to that person. The agency may utilize the services
4 of a hearing officer from outside the agency for the purposes of
5 complying with this section.

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

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

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

24 (i) If the animal requires veterinary care and the humane society
25 or public agency is not assured, within 14 days of the seizure of
26 the animal, that the owner will provide the necessary care, the
27 animal shall not be returned to its owner and shall be deemed to
28 have been abandoned and may be disposed of by the impounding
29 officer. A veterinarian may humanely destroy an impounded animal
30 without regard to the prescribed holding period when it has been
31 determined that the animal has incurred severe injuries or is
32 incurably crippled. A veterinarian also may immediately humanely
33 destroy an impounded animal afflicted with a serious contagious
34 disease unless the owner or his or her agent immediately authorizes
35 treatment of the animal by a veterinarian at the expense of the
36 owner or agent.

37 (j) No animal properly seized under this section shall be returned
38 to its owner until, in the determination of the seizing agency or
39 hearing officer, the animal is physically fit or the owner can

1 demonstrate to the seizing agency's or hearing officer's satisfaction
2 that the owner can and will provide the necessary care.

3 (k) Upon the conviction of a person charged with a violation of
4 this section, or Section 597 or 597a, all animals lawfully seized
5 and impounded with respect to the violation shall be adjudged by
6 the court to be forfeited and shall thereupon be transferred to the
7 impounding officer or appropriate public entity for proper adoption
8 or other disposition. A person convicted of a violation of this
9 section shall be personally liable to the seizing agency for all costs
10 of impoundment from the time of seizure to the time of proper
11 disposition. Upon conviction, the court shall order the convicted
12 person to make payment to the appropriate public entity for the
13 costs incurred in the housing, care, feeding, and treatment of the
14 seized or impounded animals. Each person convicted in connection
15 with a particular animal may be held jointly and severally liable
16 for restitution for that particular animal. The payment shall be in
17 addition to any other fine or sentence ordered by the court.

18 The court may also order the convicted person to immediately
19 deliver all animals in his or her possession to a designated public
20 entity for adoption or other lawful disposition or provide proof to
21 the court that the person no longer has possession, care, or control
22 of any animals. In the event of the acquittal or final discharge
23 without conviction of the arrested person, the court shall, on
24 demand, direct the release of seized or impounded animals upon
25 a showing of proof of ownership. Any questions regarding
26 ownership shall be determined in a separate hearing by the court
27 where the criminal case was finally adjudicated and the court shall
28 hear testimony from any persons who may assist the court in
29 determining ownership of the animal. If the owner is determined
30 to be unknown or the owner is prohibited or unable to retain
31 possession of the animals for any reason, the court shall order the
32 animals to be released to the appropriate public entity for adoption
33 or other lawful disposition. This section is not intended to cause
34 the release of any animal, bird, reptile, amphibian, or fish; seized
35 or impounded pursuant to any other statute, ordinance, or municipal
36 regulation. This section shall not prohibit the seizure or
37 impoundment of animals as evidence as provided for under any
38 other provision of law.

39 (l) It shall be the duty of all peace officers, humane society
40 officers, and animal control officers to use all currently acceptable

1 methods of identification, both electronic and otherwise, to
2 determine the lawful owner or caretaker of any seized or
3 impounded animal. It shall also be their duty to make reasonable
4 efforts to notify the owner or caretaker of the whereabouts of the
5 animal and any procedures available for the lawful recovery of the
6 animal and, upon the owner's and caretaker's initiation of recovery
7 procedures, retain custody of the animal for a reasonable period
8 of time to allow for completion of the recovery process. Efforts to
9 locate or contact the owner or caretaker and communications with
10 persons claiming to be the owner or caretaker shall be recorded
11 and maintained and be made available for public inspection.

12 SEC. 2. Section 597.8 is added to the Penal Code, to read:

13 597.8. (a) Any person who has been convicted of a
14 misdemeanor violation of subdivision (a) or (b) of Section 597, or
15 Section 597a, 597b, 597h, 597j, 597s, or 597.1, and who, within
16 five years after the conviction, owns, possesses, maintains, has
17 custody of, resides with, or cares for any animal is guilty of a public
18 offense, which shall be punishable by imprisonment in a county
19 jail not exceeding one year, by a fine not exceeding one thousand
20 dollars (\$1,000), or by both that imprisonment and fine.

21 (b) Any person who has been convicted of a felony violation
22 of subdivision (a) or (b) of Section 597, or Section 597b or 597.5,
23 and who, within 10 years after the conviction, owns, possesses,
24 maintains, has custody of, resides with, or cares for any animal is
25 guilty of a public offense, which shall be punishable by
26 imprisonment in a county jail not exceeding one year, by a fine
27 not exceeding one thousand dollars (\$1,000), or by both that
28 imprisonment and fine.

29 (c) *A court may, in the interest of justice, exempt a defendant*
30 *from the provisions of this section if the defendant files a petition*
31 *with the court requesting a hearing in which the defendant shall*
32 *have the burden of establishing that (1) imposition of the provisions*
33 *of the section would result in severe or undue economic hardship*
34 *to the defendant's livelihood, and (2) the defendant has the ability*
35 *to properly care for all animals in his or her possession.*

36 *The petitioner shall serve a true copy of the petition upon the*
37 *court and the prosecuting attorney 10 calendar days prior to the*
38 *requested hearing. Upon petition from the defendant, the court*
39 *shall set a hearing on the petition. The hearing shall be conducted*
40 *within 30 days after the filing of the petition.*

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for certain
3 costs that may be incurred by a local agency or school district
4 because, in that regard, this act creates a new crime or infraction,
5 eliminates a crime or infraction, or changes the penalty for a crime
6 or infraction, within the meaning of Section 17556 of the
7 Government Code, or changes the definition of a crime within the
8 meaning of Section 6 of Article XIII B of the California
9 Constitution.
10 However, if the Commission on State Mandates determines that
11 this act contains other costs mandated by the state, reimbursement
12 to local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.