

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1117

Introduced by Assembly Member Smyth
(Coauthor: Assembly Member Solorio)
(Coauthors: Senators Hancock, Lieu, and Strickland)

February 18, 2011

An act to amend Section 597.1 of, *and* to add Section 597.9 to, ~~and to repeal Section 597f of,~~ the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1117, as amended, Smyth. 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, *and would require the order prohibiting ownership to also prohibit the person from possessing, maintaining, having custody of, residing with, or caring for animals of*

any kind. 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. ~~Existing law provides a process for a postseizure hearing, as specified, and makes the agency, department, or society employing the person who directed the seizure responsible for the costs incurred for caring and treating the animal, if it is determined that the seizing officer did not have reasonable grounds for the seizure.~~

~~This bill would instead provide that the full cost of housing, feeding, caring for, and treating an animal shall constitute a lien on an animal and additionally apply these provisions to animals seized pursuant to a search warrant, as specified. 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. In regards to seizures determined justified by a postseizure hearing, the bill would provide that the animal shall not be returned until the charges are paid and the owner demonstrates that the owner can and will provide the necessary care for, and that the owner does not present a danger to, the animal. The bill would make other conforming changes and delete a duplicate provision.~~

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 *and in the interest of justice*, 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.

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 *or pursuant to a search*
18 *warrant* shall constitute a lien on the animal and the animal shall
19 not be returned to its owner until the charges are paid, if the seizure
20 is upheld pursuant to this section.

21 (b) Every sick, disabled, infirm, or crippled animal, except a
22 dog or cat, that is abandoned in any city, county, city and county,
23 or judicial district may be killed by the officer if, after a reasonable
24 search, no owner of the animal can be found. It shall be the duty

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

18 (c) (1) Any peace officer, humane society officer, or animal
19 control officer shall convey all injured cats and dogs found without
20 their owners in a public place directly to a veterinarian known by
21 the officer to be a veterinarian who ordinarily treats dogs and cats
22 for a determination of whether the animal shall be immediately
23 and humanely destroyed or shall be hospitalized under proper care
24 and given emergency treatment.

25 If

26 (2) *If* the owner does not redeem the animal within the locally
27 prescribed waiting period, the veterinarian may personally perform
28 euthanasia on the animal. If the animal is treated and recovers from
29 its injuries, the veterinarian may keep the animal for purposes of
30 adoption, provided the responsible animal control agency has first
31 been contacted and has refused to take possession of the animal.

32 ~~Whenever~~

33 (3) *Whenever* any animal is transferred to a veterinarian in a
34 clinic, such as an emergency clinic that is not in continuous
35 operation, the veterinarian may, in turn, transfer the animal to an
36 appropriate facility.

37 If

38 (4) *If* the veterinarian determines that the animal shall be
39 hospitalized under proper care and given emergency treatment,
40 the costs of any services that are provided pending the owner's

1 inquiry to the responsible agency, department, or society shall be
2 paid from the dog license fees, fines, and fees for impounding dogs
3 in the city, county, or city and county in which the animal was
4 licensed or, if the animal is unlicensed, shall be paid by the
5 jurisdiction in which the animal was found, subject to the provision
6 that this cost be repaid by the animal's owner. The cost of caring
7 for and treating any animal seized under this subdivision shall
8 constitute a lien on the animal and the animal shall not be returned
9 to the owner until the charges are paid. No veterinarian shall be
10 criminally or civilly liable for any decision that he or she makes
11 or for services that he or she provides pursuant to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

30 (4) The agency, department, or society employing the person
31 who directed the seizure shall be responsible for the costs incurred
32 for caring and treating the animal, if it is determined in the
33 postseizure hearing that the seizing officer did not have reasonable
34 grounds to believe very prompt action, including seizure of the
35 animal, was required to protect the health or safety of the animal
36 or the health or safety of others. If it is determined the seizure was
37 justified, the owner or keeper shall be personally liable to the
38 seizing agency for the cost of the seizure and care of the animal,
39 the charges for the seizure and care of the animal shall be a lien
40 on the animal, and the animal shall not be returned to its owner

1 until the charges are paid and the seizing agency or hearing officer
2 has determined that the animal is physically fit or the owner
3 demonstrates to the seizing agency's or the hearing officer's
4 satisfaction that the owner can and will provide the necessary care.

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

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

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

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

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

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

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

1 may properly be seized and that the owner shall be liable for the
2 charges.

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

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

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

19 (h) If any animal is properly seized under this section *or*
20 *pursuant to a search warrant*, the owner or keeper shall be
21 personally liable to the seizing agency for the cost of the seizure
22 and care of the animal. Furthermore, if the charges for the seizure
23 or impoundment and any other charges permitted under this section
24 are not paid within 14 days of the seizure, or, if the owner, within
25 14 days of notice of availability of the animal to be returned, fails
26 to pay charges permitted under this section and take possession of
27 the animal, the animal shall be deemed to have been abandoned
28 and may be disposed of by the impounding officer.

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

1 treatment of the animal by a veterinarian at the expense of the
2 owner or agent.

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

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

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

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

26 ~~(k)~~

27 (l) (1) Upon the conviction of a person charged with a violation
28 of this section, or Section 597 or 597a, all animals lawfully seized
29 and impounded with respect to the violation shall be adjudged by
30 the court to be forfeited and shall thereupon be transferred to the
31 impounding officer or appropriate public entity for proper adoption
32 or other disposition. A person convicted of a violation of this
33 section shall be personally liable to the seizing agency for all costs
34 of impoundment from the time of seizure to the time of proper
35 disposition. Upon conviction, the court shall order the convicted
36 person to make payment to the appropriate public entity for the
37 costs incurred in the housing, care, feeding, and treatment of the
38 seized or impounded animals. Each person convicted in connection
39 with a particular animal may be held jointly and severally liable

1 for restitution for that particular animal. The payment shall be in
 2 addition to any other fine or sentence ordered by the court.

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

20 *(A) Proof of ownership.*

21 *(B) Proof that all charges for the cost of seizure and care of the*
 22 *animals for the entire duration of the matter have been paid.*

23 *(C) Proof that the animals are physically fit and that the owner*
 24 *has demonstrated to the seizing agency or the court that the owner*
 25 *can and will provide the necessary care.*

26 *(D) Proof that the owner can legally retain and possess all*
 27 *animals in question.*

28 ~~The court may also order, as a condition of probation, that the~~
 29 ~~convicted person be prohibited from owning, possessing, caring~~
 30 ~~for, or having any contact with, animals of any kind and require~~
 31 ~~the convicted person to immediately deliver all animals in his or~~
 32 ~~her possession to a designated public entity for adoption or other~~
 33 ~~lawful disposition or provide proof to the court that the person no~~
 34 ~~longer has possession, care, or control of any animals. In the event~~
 35 ~~of the acquittal or final discharge without conviction of the arrested~~
 36 ~~person, the court shall, on demand, direct the release of seized or~~
 37 ~~impounded animals upon a showing of proof of ownership. Any~~

38 *(3) Any questions regarding ownership shall be determined in*
 39 *a separate hearing by the court where the criminal case was finally*
 40 *adjudicated and the court shall hear testimony from any persons*

1 who may assist the court in determining ownership of the animal.
2 If the owner is determined to be unknown or the owner is
3 prohibited or unable to retain possession of the animals for any
4 reason, the court shall order the animals to be released to the
5 appropriate public entity for adoption or other lawful disposition.
6 This section is not intended to cause the release of any animal,
7 bird, reptile, amphibian, or fish; seized or impounded pursuant to
8 any other statute, ordinance, or municipal regulation. This section
9 shall not prohibit the seizure or impoundment of animals as
10 evidence as provided for under any other provision of law.

11 ~~(t)~~
12 (m) It shall be the duty of all peace officers, humane society
13 officers, and animal control officers to use all currently acceptable
14 methods of identification, both electronic and otherwise, to
15 determine the lawful owner or caretaker of any seized or
16 impounded animal. It shall also be their duty to make reasonable
17 efforts to notify the owner or caretaker of the whereabouts of the
18 animal and any procedures available for the lawful recovery of the
19 animal and, upon the owner's and caretaker's initiation of recovery
20 procedures, retain custody of the animal for a reasonable period
21 of time to allow for completion of the recovery process. Efforts to
22 locate or contact the owner or caretaker and communications with
23 persons claiming to be the owner or caretaker shall be recorded
24 and maintained and be made available for public inspection.

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

26 *597.9. (a) Except as provided in subdivision (d) or (e), the*
27 *court shall, upon a conviction for a misdemeanor violation of*
28 *subdivision (a) or (b) of Section 597, or of Section 597a, 597b,*
29 *597h, 597j, 597s, or 597.1, in addition to any other sentence or*
30 *penalty imposed, enter an order enjoining the person from owning,*
31 *possessing, maintaining, having custody of, residing with, or caring*
32 *for any animal for a period of five years.*

33 *(b) Except as provided in subdivision (d) or (e), the court shall,*
34 *upon a conviction of a person for a felony violation of subdivision*
35 *(a) or (b) of Section 597, or of Section 597b or 597.5, in addition*
36 *to any other sentence or penalty imposed, enter an order enjoining*
37 *the person from owning, possessing, maintaining, having custody*
38 *of, residing with, or caring for any animal for a period of 10 years.*

39 *(c) Any person who is convicted of violating an order issued*
40 *under this section is guilty of a public offense, which shall be*

1 *punishable by imprisonment in a county jail not exceeding one*
2 *year, or by a fine not exceeding one thousand dollars (\$1,000), or*
3 *by both that imprisonment and fine.*

4 *(d) (1) In cases of owners of livestock, as defined in Section*
5 *14205 of the Food and Agricultural Code, a court may, in the*
6 *interest of justice, exempt a defendant from the injunction required*
7 *under subdivision (a) or (b), as it would apply to livestock, if the*
8 *defendant files a petition with the court to establish that the*
9 *imposition of the provisions of this section would result in*
10 *substantial or undue economic hardship to the defendant's*
11 *livelihood and that the defendant has the ability to properly care*
12 *for all livestock in his or her possession.*

13 *(2) Upon receipt of a petition from the defendant, the court shall*
14 *set a hearing to be conducted within 30 days after the filing of the*
15 *petition. The petitioner shall serve a copy of the petition upon the*
16 *prosecuting attorney 10 calendar days prior to the requested*
17 *hearing. The court shall grant the petition for exemption from*
18 *subdivision (a) or (b) unless the prosecuting attorney shows by a*
19 *preponderance of the evidence that either or both of the criteria*
20 *for exemption under subdivision (d) are untrue.*

21 *(e) (1) A defendant may petition the court to reduce the duration*
22 *of the mandatory ownership prohibition. Upon receipt of a petition*
23 *from the defendant, the court shall set a hearing to be conducted*
24 *within 30 days after the filing of the petition. The petitioner shall*
25 *serve a copy of the petition upon the prosecuting attorney 10*
26 *calendar days prior to the requested hearing. At the hearing, the*
27 *petitioner shall have the burden of establishing probable cause to*
28 *believe all of the following:*

29 *(A) He or she does not present a danger to animals.*

30 *(B) He or she has the ability to properly care for all animals in*
31 *his or her possession.*

32 *(C) He or she has successfully completed all classes or*
33 *counseling ordered by the court.*

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

38 *SEC. 3. No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution for certain*
40 *costs that may be incurred by a local agency or school district*

1 *because, in that regard, this act creates a new crime or infraction,*
2 *eliminates a crime or infraction, or changes the penalty for a crime*
3 *or infraction, within the meaning of Section 17556 of the*
4 *Government Code, or changes the definition of a crime within the*
5 *meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 *However, if the Commission on State Mandates determines that*
8 *this act contains other costs mandated by the state, reimbursement*
9 *to local agencies and school districts for those costs shall be made*
10 *pursuant to Part 7 (commencing with Section 17500) of Division*
11 *4 of Title 2 of the Government Code.*

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

14 ~~597.1. (a) Every owner, driver, or keeper of any animal who~~
15 ~~permits the animal to be in any building, enclosure, lane, street,~~
16 ~~square, or lot of any city, county, city and county, or judicial district~~
17 ~~without proper care and attention is guilty of a misdemeanor. Any~~
18 ~~peace officer, humane society officer, or animal control officer~~
19 ~~shall take possession of the stray or abandoned animal and shall~~
20 ~~provide care and treatment for the animal until the animal is~~
21 ~~deemed to be in suitable condition to be returned to the owner.~~
22 ~~When the officer has reasonable grounds to believe that very~~
23 ~~prompt action is required to protect the health or safety of the~~
24 ~~animal or the health or safety of others, the officer shall~~
25 ~~immediately seize the animal and comply with subdivision (f). In~~
26 ~~all other cases, the officer shall comply with the provisions of~~
27 ~~subdivision (g). The full cost of housing, feeding, caring for, and~~
28 ~~treating any animal properly seized under this subdivision or~~
29 ~~pursuant to a search warrant shall constitute a lien on the animal~~
30 ~~and the animal shall not be returned to its owner until the charges~~
31 ~~are paid, if the seizure is upheld pursuant to this section.~~

32 ~~(b) Every sick, disabled, infirm, or crippled animal, except a~~
33 ~~dog or cat, that is abandoned in any city, county, city and county,~~
34 ~~or judicial district may be killed by the officer if, after a reasonable~~
35 ~~search, no owner of the animal can be found. It shall be the duty~~
36 ~~of all peace officers, humane society officers, and animal control~~
37 ~~officers to cause the animal to be killed or rehabilitated and placed~~
38 ~~in a suitable home on information that the animal is stray or~~
39 ~~abandoned. The officer may likewise take charge of any animal,~~
40 ~~including a dog or cat, that by reason of lameness, sickness,~~

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

14 (e) (1) Any peace officer, humane society officer, or animal
15 control officer shall convey all injured cats and dogs found without
16 their owners in a public place directly to a veterinarian known by
17 the officer to be a veterinarian who ordinarily treats dogs and cats
18 for a determination of whether the animal shall be immediately
19 and humanely destroyed or shall be hospitalized under proper care
20 and given emergency treatment.

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

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

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

1 this subdivision shall constitute a lien on the animal and the animal
2 shall not be returned to the owner until the charges are paid. No
3 veterinarian shall be criminally or civilly liable for any decision
4 that he or she makes or for services that he or she provides pursuant
5 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 euthanize 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 full cost of housing, feeding, caring~~
9 ~~for, and treating any animal properly seized under this section is~~
10 ~~a lien on the animal and that the animal shall not be returned to~~
11 ~~the owner until the charges are paid, and that failure to request or~~
12 ~~to attend a scheduled 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 housing, feeding, caring for, and treating the animal, if it is~~
28 ~~determined in the postseizure hearing that the seizing officer did~~
29 ~~not have reasonable grounds to believe very prompt action,~~
30 ~~including seizure of the animal, was required to protect the health~~
31 ~~or safety of the animal or the health or safety of others. If it is~~
32 ~~determined the seizure was justified, the owner or keeper shall be~~
33 ~~personally liable to the seizing agency for the cost of the seizure~~
34 ~~and the full cost of housing, feeding, caring for, and treating the~~
35 ~~animal. The full cost for the housing, feeding, care, and treatment~~
36 ~~of the animal shall be a lien on the animal and the animal shall not~~
37 ~~be returned to its owner until the cost is paid and the owner~~
38 ~~demonstrates, to the satisfaction of the seizing agency or the~~
39 ~~hearing officer, that he or she can and will provide the necessary~~
40 ~~care, and that he or she does not present a danger, to the animal.~~

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 or pursuant
15 to a search warrant, the owner or keeper shall be personally liable
16 to the seizing agency for the full cost of housing, feeding, caring
17 for, and treating the animal. A statement of charges shall be
18 presented to the owner or keeper at the time of the postseizure
19 hearing. If the animal is seized pursuant to a search warrant, a
20 statement of charges shall be sent by certified mail or personal
21 delivery to the owner or keeper not later than 10 days, including
22 weekends and holidays, of the date of the notice provided pursuant
23 to paragraph (1) of subdivision (f), otherwise if no postseizure
24 hearing is requested, a statement of charges shall be sent by
25 certified mail or personal delivery to the owner or keeper upon
26 expiration of the time to request a hearing pursuant to subparagraph
27 (D) of paragraph (1) of subdivision (f) as permitted under this
28 section. If the charges are not paid within 14 days of presenting
29 or sending the statement of charges, or, if the owner, within 14
30 days of notice of availability of the animal to be returned, fails to
31 pay charges permitted under this section and take possession of
32 the animal, the animal shall be deemed to have been abandoned
33 and shall become the property of the seizing agency. If the owner
34 satisfies payment of the charges that accrued during the first 14
35 days after seizure and the animal remains impounded, the seizing
36 agency shall continue to regularly send statements of charges that
37 outline all new charges that have accrued. The time period for
38 sending the statements shall be at the discretion of the seizing
39 agency, but shall not exceed 14 days from the date the last
40 statement is sent. Statements of charges shall state that if the owner~~

1 fails to pay the new charges within 14 days of the date of the
2 statement, the animal shall be deemed to have been abandoned
3 and shall become the property of the seizing agency.

4 (i) If the animal requires veterinary care and the humane society
5 or public agency is not assured, within 14 days of the seizure of
6 the animal, that the owner will provide the necessary care, the
7 animal shall not be returned to its owner and shall be deemed to
8 have been abandoned and shall become the property of the seizing
9 agency. A veterinarian may humanely destroy an impounded
10 animal without regard to the prescribed holding period when it has
11 been determined that the animal has incurred severe injuries or is
12 incurably crippled. A veterinarian also may immediately humanely
13 destroy an impounded animal afflicted with a serious contagious
14 disease unless the owner or his or her agent immediately authorizes
15 treatment of the animal by a veterinarian at the expense of the
16 owner or agent.

17 (j) No animal properly seized under this section or pursuant to
18 a search warrant shall be returned to its owner until the owner
19 demonstrates to the satisfaction of the seizing agency or the hearing
20 officer that the owner can and will provide the necessary care, and
21 that the owner does not present a danger, to the animal.

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

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

34 (3) At the hearing, if the court finds that the petitioner has
35 established, by a preponderance of the evidence, that, even in the
36 event of acquittal, the owner will not legally be permitted to retain
37 the animal, the court shall order immediate forfeiture of the animal
38 to the petitioner.

39 (l) (1) Upon the conviction of a person charged with a violation
40 of this section, or Section 597 or 597a, all animals lawfully seized

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

14 (2) Unless a modification has been granted pursuant to
15 subdivision (d) or (e) of Section 597.9, if probation is granted, the
16 court shall also order, as a condition of probation, that the convicted
17 person be prohibited from owning, possessing, caring for, or
18 residing with, animals of any kind. Regardless of whether probation
19 is granted, the court shall require the convicted person to
20 immediately deliver all animals in his or her possession to a
21 designated public entity for adoption or other lawful disposition
22 or provide proof to the court that the person no longer has
23 possession, care, or control of any animals. In the event of the
24 acquittal or final discharge without conviction of the person
25 charged, if any of the animals are still impounded and the animal
26 or animals have not previously been deemed abandoned pursuant
27 to subdivision (h) or the lien has been satisfied and the court has
28 not previously ordered that any of the animals be forfeited, the
29 court shall, on demand, direct the release of seized or impounded
30 animals to the person charged upon a showing of all of the
31 following:

32 (A) Proof of ownership.

33 (B) Proof that all charges for the cost of seizure and the full cost
34 of housing, feeding, care, and treatment of the animals for the
35 entire duration of the matter have been paid.

36 (C) Proof that the animals are physically fit and that the owner
37 has demonstrated to the seizing agency and the court that the owner
38 can and will provide the necessary care.

39 (D) Proof that the owner can legally retain and possess all
40 animals in question.

1 ~~(3) Any questions regarding ownership shall be determined in~~
2 ~~a separate hearing by the court where the criminal case was finally~~
3 ~~adjudicated and the court shall hear testimony from any persons~~
4 ~~who may assist the court in determining ownership of the animal.~~
5 ~~If the owner is determined to be unknown or the owner is~~
6 ~~prohibited or unable to retain possession of the animals for any~~
7 ~~reason, the court shall order the animals to be released to the~~
8 ~~appropriate public entity for adoption or other lawful disposition.~~
9 ~~This section is not intended to cause the release of any animal,~~
10 ~~bird, reptile, amphibian, or fish seized or impounded pursuant to~~
11 ~~any other statute, ordinance, or municipal regulation. This section~~
12 ~~shall not prohibit the seizure or impoundment of animals as~~
13 ~~evidence as provided for under any other provision of law.~~

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

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

28 ~~597.9. (a) Except as provided in subdivision (d) or (e), the~~
29 ~~court shall, upon a conviction for a misdemeanor violation of~~
30 ~~subdivision (a) or (b) of Section 597, or of Section 597a, 597b,~~
31 ~~597h, 597j, 597s, or 597.1, in addition to any other sentence or~~
32 ~~penalty imposed, enter an order enjoining the person from owning,~~
33 ~~possessing, maintaining, having custody of, residing with, or caring~~
34 ~~for any animal for a period of not less than five years.~~

35 ~~(b) Except as provided in subdivision (d) or (e), the court shall,~~
36 ~~upon a conviction of a person for a felony violation of subdivision~~
37 ~~(a) or (b) of Section 597, or of Section 597b or 597.5, in addition~~
38 ~~to any other sentence or penalty imposed, enter an order enjoining~~
39 ~~the person from owning, possessing, maintaining, having custody~~

1 of, residing with, or caring for any animal for a period of not less
2 than 10 years.

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

8 ~~(d) (1) In cases of owners of livestock, as defined in Section~~
9 ~~14205 of the Food and Agricultural Code, a court may, in the~~
10 ~~interest of justice, exempt a defendant from the injunction required~~
11 ~~under subdivision (a) or (b), as it would apply to livestock, if the~~
12 ~~defendant files a petition with the court establishing that the~~
13 ~~imposition of the provisions of this section would result in~~
14 ~~substantial or undue economic hardship to the defendant's~~
15 ~~livelihood and that the defendant has the ability to properly care~~
16 ~~for all livestock in his or her possession.~~

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

26 ~~(e) (1) A defendant may petition the court to reduce the duration~~
27 ~~of the mandatory ownership prohibition. The petitioner shall serve~~
28 ~~a true copy of the petition upon the court and the prosecuting~~
29 ~~attorney 10 calendar days prior to the requested hearing. Upon a~~
30 ~~petition from the defendant, the court shall set a hearing on the~~
31 ~~petition. The hearing shall be conducted within 30 days after the~~
32 ~~filing of the petition. At the hearing, the petitioner shall have the~~
33 ~~burden of establishing probable cause to believe all of the~~
34 ~~following:~~

35 ~~(A) He or she does not present a danger to animals.~~

36 ~~(B) He or she has the ability to properly care for all animals in~~
37 ~~his or her possession.~~

38 ~~(C) He or she has successfully completed all classes or~~
39 ~~counseling ordered by the court.~~

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

5 ~~SEC. 3. Section 597f of the Penal Code is repealed.~~

6 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution for certain~~
8 ~~costs that may be incurred by a local agency or school district~~
9 ~~because, in that regard, this act creates a new crime or infraction,~~
10 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
11 ~~or infraction, within the meaning of Section 17556 of the~~
12 ~~Government Code, or changes the definition of a crime within the~~
13 ~~meaning of Section 6 of Article XIII B of the California~~
14 ~~Constitution.~~

15 ~~However, if the Commission on State Mandates determines that~~
16 ~~this act contains other costs mandated by the state, reimbursement~~
17 ~~to local agencies and school districts for those costs shall be made~~
18 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
19 ~~4 of Title 2 of the Government Code.~~