

Introduced by Senator Hayden

February 18, 1998

An act to amend Sections 1815, 1816, 1834, 1840, 1845, 1846, 1847, and 2080 of the Civil Code, to amend Sections 31108, 31752, and 32001 of, and to add Sections 32002 and 32003 to, the Food and Agricultural Code, and to amend Sections 597 and 597t of the Penal Code, relating to stray animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 1785, as introduced, Hayden. Stray animals: duties of pounds and shelters.

Existing law specifies the rights and duties of persons who find lost property of another or who, either voluntarily or involuntarily, are the depositaries of the property of another. Existing law provides that involuntary depositaries are entitled to no reward for the thing deposited; however, finders are entitled to reasonable compensation for saving and taking care of the property. Existing law requires finders of lost property that has a value in excess of \$100 to turn the property over to the police or sheriff and file an affidavit if the owner is unknown or the property is unclaimed within a reasonable time, and specifies procedures to be followed by the police or sheriff regarding the further disposition of the property.

This bill would (1) provide that (a) a public or private entity that holds a stray, live animal shall be deemed an involuntary depositary; and (b) all depositaries and finders of live animals have a duty to provide them with food and shelter, and to treat them kindly and failure to do so may

subject the depositary or finder to civil and criminal penalties, as specified; (2) exclude depositaries of live animals from the provision that involuntary depositaries are entitled to no consideration; and (3) specify that the provisions regarding the delivery of lost property to the police or sheriff and the further disposition by them shall not apply to live animals.

Existing law provides that no dog or cat impounded by a public pound or specified shelter shall be killed before 72 hours have elapsed from the time of impounding.

This bill would expand this minimum impound time to 5 business days and would require that the animal be released to a nonprofit animal rescue or adoption organization in specified circumstances.

Existing law requires public pounds and specified shelters to provide owners and finders of lost animals with specified services to restore the lost animals to their owners. Existing law specifies that these requirements are not mandatory duties and do not create a cause of action against public entities or employees.

This bill would declare that the duty to provide these services is a mandatory duty and creates a cause of action against public entities or employees. The bill would require public pounds and specified agencies to provide impounded animals with, food, shelter, exercise, and veterinary care, and to treat them kindly, and would specify that these duties are mandatory and any entity or employee that fails these duties may be subject to civil and criminal penalties, as specified. The bill would also require these pounds and shelters to keep specified records regarding impounded animals.

Because this bill would expand the scope of an existing crime and impose new duties on local officials, it would create 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



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 1815 of the Civil Code is
2 amended to read:

3 1815. An involuntary deposit is made:

4 ~~1.~~

5 (a) By the accidental leaving or placing of personal
6 property in the possession of any person, without
7 negligence on the part of its owner; ~~or,~~

8 ~~2.~~

9 (b) In cases of fire, shipwreck, inundation,
10 insurrection, riot, or like extraordinary emergencies, by
11 the owner of personal property committing it, out of
12 necessity, to the care of any person.

13 (c) *By the delivery to, or pick-up by, and the holding*
14 *of, a stray live animal by any public or private entity.*

15 SEC. 2. Section 1816 of the Civil Code is amended to
16 read:

17 1816. The person *or public or private entity* with
18 whom a thing is deposited in the manner described in ~~the~~
19 ~~last section~~ *Section 1815* is bound to take charge of it, if
20 able to do so.

21 SEC. 3. Section 1834 of the Civil Code is amended to
22 read:

23 1834. A depositary of living animals ~~must~~ *shall* provide
24 them with suitable food and shelter, and treat them
25 kindly. *Any depositary that fails to perform these duties*
26 *may, in addition to any other liability or penalty*
27 *permitted by law, be liable for civil damages, including,*



1 *but not limited to, damages for the loss of a companion*
2 *animal, and may also be subject to criminal prosecution*
3 *for cruelty to animals as provided in Section 597 of the*
4 *Penal Code.*

5 SEC. 4. Section 1840 of the Civil Code is amended to
6 read:

7 ~~1840.] Section Eighteen Hundred and Forty.—The~~

8 *1840. Except as provided in Section 1834, the liability*
9 *of a depositary for negligence cannot may not exceed the*
10 *amount—~~which~~—~~he~~ *the depositary is informed by the*
11 *depositor, or has reason to suppose, that the thing*
12 *deposited to be is worth.**

13 SEC. 5. Section 1845 of the Civil Code is amended to
14 read:

15 *1845. An involuntary deposit is gratuitous, the*
16 *depositary being entitled to no reward. However, this*
17 *section does not apply to the involuntary deposit of any*
18 *live animal.*

19 SEC. 6. Section 1846 of the Civil Code is amended to
20 read:

21 *1846. (a) A gratuitous depositary must use, at least,*
22 *slight care for the preservation of the thing deposited.*

23 *(b) A gratuitous depositary of a living animal shall*
24 *provide the animal with suitable food and shelter and*
25 *treat it kindly and, if the animal has any identification,*
26 *make reasonable attempts to notify the owner of the*
27 *animal's location.*

28 *(c) If the gratuitous depositary of a living animal is a*
29 *public pound, shelter operated by a society for the*
30 *prevention of cruelty to animals, or humane shelter, the*
31 *depositary shall, in addition to the duties set forth in*
32 *subdivision (b), comply with all other requirements of*
33 *the Food and Agricultural Code regarding the*
34 *impounding of live animals. Any of these entities that fails*
35 *to perform the duties specified in this subdivision may, in*
36 *addition to any other liability or penalty permitted by*
37 *law, be liable for civil damages, including, but not limited*
38 *to, damages for the loss of a companion animal, and may*
39 *also be subject to criminal prosecution for cruelty to*
40 *animals as provided in Section 597 of the Penal Code.*



1 SEC. 7. Section 1847 of the Civil Code is amended to
2 read:

3 1847. The duties of a gratuitous depositary cease:

4 1.

5 (a) Upon ~~his restoring~~ *restoration by the depositary of*
6 *the thing deposited to its owner; or,*

7 2.

8 (b) Upon ~~his giving~~ *reasonable notice given by the*
9 *depositary to the owner to remove it, and the owner*
10 *failing to do so within a reasonable time. But an*
11 *involuntary depositary, under ~~Subdivision 2~~ subdivision*
12 *(b) of Section 1815, cannot may not give such notice until*
13 *the emergency ~~which~~ that gave rise to the deposit is past.*
14 *This subdivision shall not apply to a public pound, a*
15 *shelter operated by a society for the prevention of cruelty*
16 *to animals, or a humane shelter.*

17 SEC. 8. Section 2080 of the Civil Code is amended to
18 read:

19 2080. (a) Any person who finds a thing lost is not
20 bound to take charge of it, ~~but unless the person is~~
21 *otherwise required to do so by contract or law, and if ~~he~~*
22 *the person does ~~so~~ take charge of it he or she is*
23 *thenceforward a depositary for the owner, with the rights*
24 *and obligations of a depositary for hire. Any person ~~who~~*
25 *or any public or private entity that finds and takes*
26 *possession of any money, goods, things in action, or other*
27 *personal property, or saves any domestic animal from*
28 *harm, neglect, drowning, or starvation, shall, within a*
29 *reasonable time, inform the owner, if known, and make*
30 *restitution without compensation, except a reasonable*
31 *charge for saving and taking care of the property. The*
32 *finder of a live domestic animal shall provide for kind*
33 *treatment of the animal as provided in Section 1846.*

34 (b) *Except as provided in this section, the provisions*
35 *of this article shall not apply to any person who finds a live*
36 *domestic animal.*

37 SEC. 9. Section 31108 of the Food and Agricultural
38 Code is amended to read:

39 31108. (a) No dog ~~which~~ *that is impounded pursuant*
40 *to this division shall be killed before ~~72 hours~~ five business*



1 days have elapsed from the time of the taking up of the
2 dog.

3 (b) Any dog that is impounded pursuant to this
4 division shall, upon expiration of the holding period
5 described in subdivision (a), be released without cost to
6 a nonprofit animal rescue or adoption organization if
7 requested by the organization prior to the expiration of
8 that holding period.

9 SEC. 10. Section 31752 of the Food and Agricultural
10 Code is amended to read:

11 31752. (a) No stray cat—~~which~~ that has been
12 impounded by a public pound, society for the prevention
13 of cruelty to animals shelter, or humane shelter shall be
14 killed before—~~72 hours~~ five business days have elapsed
15 from the time of the capture of the stray cat.

16 (b) Any stray cat that has been impounded pursuant
17 to subdivision (a) shall, upon expiration of the holding
18 period described in that subdivision, be released without
19 cost to a nonprofit animal rescue or adoption organization
20 if requested by the organization prior to the expiration of
21 that holding period.

22 (c) This section shall not apply to cats—~~which~~ that are
23 severely injured or seriously ill, or to newborn cats unable
24 to feed themselves.

25 SEC. 11. Section 32001 of the Food and Agricultural
26 Code is amended to read:

27 32001. All public pounds, ~~society~~ shelters operated by
28 societies for the prevention of cruelty to animals—~~shelters~~,
29 and humane shelters, that contract with animal control
30 agencies, shall provide the owners of lost animals and
31 those who find lost animals with all of the following:

32 (a) Ability to list the animals they have lost or found on
33 “Lost and Found” lists maintained by the pound or
34 shelter.

35 (b) Referrals to animals listed that may be the animals
36 the owners or finders have lost or found.

37 (c) The telephone numbers and addresses of other
38 pounds and shelters in the same vicinity.

39 (d) Advice as to means of publishing and
40 disseminating information regarding lost animals.



1 (e) The telephone numbers and addresses of
2 volunteer groups—~~which~~ *that* may be of assistance in
3 locating lost animals.

4 Notwithstanding Section 9, a violation of this section is
5 not a misdemeanor. —~~Furthermore,~~ *However* the duty
6 imposed by this section is—~~not~~ a mandatory duty for
7 purposes of Division 3.6 (commencing with Section 810)
8 of Title 1 of the Government Code, and—~~no~~ a cause of
9 action for damages is created by this section against a
10 public entity or employee or against any other person.

11 SEC. 12. Section 32002 is added to the Food and
12 Agricultural Code, to read:

13 32002. (a) All public pounds, shelters operated by
14 societies for the prevention of cruelty to animals, and
15 humane shelters, that contract with animal control
16 agencies, shall treat the animals in their care kindly and
17 shall provide them with all of the following:

18 (1) Adequate amounts of food appropriate to the age,
19 species, and particular health needs of the animal.

20 (2) Adequate amounts of clear water, ventilation, and
21 exercise.

22 (3) Housing appropriate to the size and safety needs of
23 the animal and protection from increment weather and
24 extreme heat and cold.

25 (4) Protection from accidents and injuries caused by
26 people, other animals, or inadequate housing or
27 treatment.

28 (5) Veterinary care as needed.

29 (b) The duties imposed by this section are mandatory
30 duties for purposes of Division 3.6 (commencing with
31 Section 810) of Title 1 of the Government Code and any
32 of the entities subject to this section, or their employees,
33 that fail to perform these duties may, in addition to any
34 other liability or penalty permitted by law, be liable for
35 civil damages, including, but not limited to, damages for
36 the loss of a companion animal, and may also be subject
37 to criminal prosecution for cruelty to animals as provided
38 in Section 597 of the Penal Code.

39 SEC. 13. Section 32003 is added to the Food and
40 Agricultural Code, to read:



1 32003. All public pounds, shelters operated by
2 societies for the prevention of cruelty to animals, and
3 humane shelters, that contract with animal control
4 agencies, shall keep accurate records on each animal
5 taken up, medically treated, or impounded. The records
6 shall include all of the following information:

7 (a) The date the animal was taken up, medically
8 treated, or impounded.

9 (b) The names of the personnel who took up,
10 medically treated, or impounded the animal.

11 (c) A description of any medical treatment provided
12 to the animal.

13 (d) The disposition of the animal.

14 SEC. 14. Section 597 of the Penal Code is amended to
15 read:

16 597. (a) Except as provided in subdivision (c) of this
17 section or Section 599c, every person, *including, but not*
18 *limited to, every employee of a public pound, shelter*
19 *operated by a society for the prevention of cruelty to*
20 *animals, or humane shelter,* who maliciously and
21 intentionally maims, mutilates, tortures, or wounds a
22 living animal, or maliciously and intentionally kills an
23 animal, is guilty of an offense punishable by
24 imprisonment in the state prison, or by a fine of not more
25 than twenty thousand dollars (\$20,000), or by both the
26 fine and imprisonment, or, alternatively, by
27 imprisonment in ~~the~~ a county jail for not more than one
28 year, or by a fine of not more than twenty thousand
29 dollars (\$20,000), or by both the fine and imprisonment.

30 (b) Except as otherwise provided in subdivision (a) or
31 (c), every person who overdrives, overloads, drives when
32 overloaded, overworks, tortures, torments, deprives of
33 necessary sustenance, drink, or shelter, cruelly beats,
34 mutilates, or cruelly kills any animal, or causes or procures
35 any animal to be so overdriven, overloaded, driven when
36 overloaded, overworked, tortured, tormented, deprived
37 of necessary sustenance, drink, shelter, or to be cruelly
38 beaten, mutilated, or cruelly killed; and whoever, having
39 the charge or custody of any animal, either as owner or
40 otherwise, subjects any animal to needless suffering, or



1 inflicts unnecessary cruelty upon the animal, or in any
2 manner abuses any animal, or fails to provide the animal
3 with proper food, drink, or shelter or protection from the
4 weather, or who drives, rides, or otherwise uses the
5 animal when unfit for labor, is, for every ~~such offense~~ *one*
6 *of those offenses*, guilty of a crime punishable as a
7 misdemeanor or as a felony or alternatively punishable as
8 a misdemeanor or a felony and by a fine of not more than
9 twenty thousand dollars (\$20,000).

10 (c) Every person who maliciously and intentionally
11 maims, mutilates, or tortures any mammal, bird, reptile,
12 amphibian, or fish as described in subdivision (d), is guilty
13 of an offense punishable by imprisonment in the state
14 prison, or by a fine of not more than twenty thousand
15 dollars (\$20,000), or by both the fine and imprisonment,
16 or, alternatively, by imprisonment in ~~the~~ *a* county jail for
17 not more than one year, by a fine of not more than twenty
18 thousand dollars (\$20,000), or by both the fine and
19 imprisonment.

20 (d) Subdivision (c) applies to any mammal, bird,
21 reptile, amphibian, or fish ~~which~~ *that* is a creature
22 described as follows:

23 (1) Endangered species or threatened species as
24 described in Chapter 1.5 (commencing with Section
25 2050) of Division 3 of the Fish and Game Code.

26 (2) Fully protected birds described in Section 3511 of
27 the Fish and Game Code.

28 (3) Fully protected mammals described in Chapter 8
29 (commencing with Section 4700) of Part 3 of Division 4
30 of the Fish and Game Code.

31 (4) Fully protected reptiles and amphibians described
32 in Chapter 2 (commencing with Section 5050) of Division
33 5 of the Fish and Game Code.

34 (5) Fully protected fish as described in Section 5515 of
35 the Fish and Game Code.

36 This subdivision does not supersede or affect any
37 provisions of law relating to taking of the described
38 species, including, but not limited to, Section 12008 of the
39 Fish and Game Code.



1 (e) For the purposes of subdivision (c), each act of
2 malicious and intentional maiming, mutilating, or
3 torturing a separate specimen of a creature described in
4 subdivision (d) is a separate offense. If any person is
5 charged with a violation of subdivision (c), the
6 proceedings shall be subject to Section 12157 of the Fish
7 and Game Code.

8 (f) Upon the conviction of a person charged with a
9 violation of this section by causing or permitting an act of
10 cruelty, as defined in Section 599b, all animals lawfully
11 seized and impounded with respect to the violation by a
12 peace officer, officer of a humane society, or officer of a
13 pound or animal regulation department of a public
14 agency shall be adjudged by the court to be forfeited and
15 shall thereupon be awarded to the impounding officer for
16 proper disposition. A person convicted of a violation of
17 this section by causing or permitting an act of cruelty, as
18 defined in Section 599b, shall be liable to the impounding
19 officer for all costs of impoundment from the time of
20 seizure to the time of proper disposition.

21 Mandatory seizure or impoundment shall not apply to
22 animals in properly conducted scientific experiments or
23 investigations performed under the authority of the
24 faculty of a regularly incorporated medical college or
25 university of this state.

26 SEC. 15. Section 597t of the Penal Code is amended
27 to read:

28 597t. Every person—~~who~~ keeps, *public pound, or*
29 *public shelter keeping* an animal confined in an enclosed
30 area shall provide it with an adequate exercise area. If the
31 animal is restricted by a leash, rope, or chain, the leash,
32 rope, or chain shall be affixed in ~~such~~ a manner that it will
33 prevent the animal from becoming entangled or injured
34 and permit the animal's access to adequate shelter, food,
35 and water. Violation of this section constitutes a
36 misdemeanor.

37 This section shall not apply to an animal—~~which~~ *that* is
38 in transit, in a vehicle, or in the immediate control of a
39 person.



1 SEC. 16. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution for certain costs that may be incurred by a
4 local agency or school district because in that regard this
5 act creates a new crime or infraction, eliminates a crime
6 or infraction, or changes the penalty for a crime or
7 infraction, within the meaning of Section 17556 of the
8 Government Code, or changes the definition of a crime
9 within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

11 However, notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains other costs mandated by
14 the state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

