



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/04/04, by Kevin Joyce

SYNOPSIS AS INTRODUCED:

510 ILCS 70/3.04
510 ILCS 70/3.05

Amends the Humane Care for Animals Act. Provides that the State's Attorney shall, at anytime prior to trial, file a "petition for forfeiture prior to trial" asking for permanent forfeiture of a seized companion animal (now within 14 days after seizure). Eliminates a provision that states that a court may waive the posting of security in cases regarding companion animals and animals used for fighting purposes for good cause shown. Effective January 1, 2005.

LRB093 20195 RAS 45940 b

1 AN ACT concerning animals.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Humane Care for Animals Act is amended by
5 changing Sections 3.04 and 3.05 as follows:

6 (510 ILCS 70/3.04)

7 Sec. 3.04. Arrests and seizures.

8 (a) Any law enforcement officer making an arrest for an
9 offense involving one or more companion animals under Section
10 3.01, 3.02, or 3.03 of this Act may lawfully take possession of
11 some or all of the companion animals in the possession of the
12 person arrested. The officer, after taking possession of the
13 companion animals, must file with the court before whom the
14 complaint is made against any person so arrested an affidavit
15 stating the name of the person charged in the complaint, a
16 description of the condition of the companion animal or
17 companion animals taken, and the time and place the companion
18 animal or companion animals were taken, together with the name
19 of the person from whom the companion animal or companion
20 animals were taken and name of the person who claims to own the
21 companion animal or companion animals if different from the
22 person from whom the companion animal or companion animals were
23 seized. He or she must at the same time deliver an inventory of
24 the companion animal or companion animals taken to the court of
25 competent jurisdiction. The officer must place the companion
26 animal or companion animals in the custody of an animal control
27 or animal shelter and the agency must retain custody of the
28 companion animal or companion animals subject to an order of
29 the court adjudicating the charges on the merits and before
30 which the person complained against is required to appear for
31 trial. The State's Attorney shall, at anytime prior to trial
32 ~~may, within 14 days after the seizure,~~ file a "petition for

1 forfeiture prior to trial" before the court having criminal
2 jurisdiction over the alleged charges, asking for permanent
3 forfeiture of the companion animals seized. The petition shall
4 be filed with the court, with copies served on the impounding
5 agency, the owner, and anyone claiming an interest in the
6 animals. In a "petition for forfeiture prior to trial", the
7 burden is on the prosecution to prove by a preponderance of the
8 evidence that the person arrested violated Section 3.01, 3.02,
9 3.03, or 4.01 of this Act or Section 26-5 of the Criminal Code
10 of 1961.

11 (b) An owner whose companion animal or companion animals
12 are removed by a law enforcement officer under this Section
13 must be given written notice of the circumstances of the
14 removal and of any legal remedies available to him or her. The
15 notice must be posted at the place of seizure, or delivered to
16 a person residing at the place of seizure or, if the address of
17 the owner is different from the address of the person from whom
18 the companion animal or companion animals were seized,
19 delivered by registered mail to his or her last known address.

20 (Source: P.A. 92-454, eff. 1-1-02; 92-650, eff. 7-11-02.)

21 (510 ILCS 70/3.05)

22 Sec. 3.05. Security for companion animals and animals used
23 for fighting purposes.

24 (a) In the case of companion animals as defined in Section
25 2.01a or animals used for fighting purposes in violation of
26 Section 4.01 of this Act or Section 26-5 of the Criminal Code
27 of 1961, the animal control or animal shelter having custody of
28 the animal or animals may file a petition with the court
29 requesting that the person from whom the animal or animals are
30 seized, or the owner of the animal or animals, be ordered to
31 post security. The security must be in an amount sufficient to
32 secure payment of all reasonable expenses expected to be
33 incurred by the animal control or animal shelter in caring for
34 and providing for the animal or animals pending the disposition
35 of the charges. Reasonable expenses include, but are not

1 limited to, estimated medical care and boarding of the animal
2 or animals for 30 days. The amount of the security shall be
3 determined by the court after taking into consideration all of
4 the facts and circumstances of the case, including, but not
5 limited to, the recommendation of the impounding organization
6 having custody and care of the seized animal or animals and the
7 cost of caring for the animal or animals. If security has been
8 posted in accordance with this Section, the animal control or
9 animal shelter may draw from the security the actual costs
10 incurred by the agency in caring for the seized animal or
11 animals.

12 (b) Upon receipt of a petition, the court must set a
13 hearing on the petition, to be conducted within 5 business days
14 after the petition is filed. The petitioner must serve a true
15 copy of the petition upon the defendant and the State's
16 Attorney for the county in which the animal or animals were
17 seized. The petitioner must also serve a true copy of the
18 petition on any interested person. For the purposes of this
19 subsection, "interested person" means an individual,
20 partnership, firm, joint stock company, corporation,
21 association, trust, estate, or other legal entity that the
22 court determines may have a pecuniary interest in the animal or
23 animals that are the subject of the petition. The court must
24 set a hearing date to determine any interested parties. ~~The~~
25 ~~court may waive for good cause shown the posting of security.~~

26 (c) If the court orders the posting of security, the
27 security must be posted with the clerk of the court within 5
28 business days after the hearing. If the person ordered to post
29 security does not do so, the animal or animals are forfeited by
30 operation of law and the animal control or animal shelter
31 having control of the animal or animals must dispose of the
32 animal or animals through adoption or must humanely euthanize
33 the animal. In no event may the defendant or any person
34 residing in the defendant's household adopt the animal or
35 animals.

36 (d) The impounding organization may file a petition with

1 the court upon the expiration of the 30-day period requesting
2 the posting of additional security. The court may order the
3 person from whom the animal or animals were seized, or the
4 owner of the animal or animals, to post additional security
5 with the clerk of the court to secure payment of reasonable
6 expenses for an additional period of time pending a
7 determination by the court of the charges against the person
8 from whom the animal or animals were seized.

9 (e) In no event may the security prevent the impounding
10 organization having custody and care of the animal or animals
11 from disposing of the animal or animals before the expiration
12 of the 30-day period covered by the security if the court makes
13 a final determination of the charges against the person from
14 whom the animal or animals were seized. Upon the adjudication
15 of the charges, the person who posted the security is entitled
16 to a refund of the security, in whole or in part, for any
17 expenses not incurred by the impounding organization.

18 (f) Notwithstanding any other provision of this Section to
19 the contrary, the court may order a person charged with any
20 violation of this Act to provide necessary food, water,
21 shelter, and care for any animal or animals that are the basis
22 of the charge without the removal of the animal or animals from
23 their existing location and until the charges against the
24 person are adjudicated. Until a final determination of the
25 charges is made, any law enforcement officer, animal control
26 officer, Department investigator, or an approved humane
27 investigator may be authorized by an order of the court to make
28 regular visits to the place where the animal or animals are
29 being kept to ascertain if the animal or animals are receiving
30 necessary food, water, shelter, and care. Nothing in this
31 Section prevents any law enforcement officer, Department
32 investigator, or approved humane investigator from applying
33 for a warrant under this Section to seize any animal or animals
34 being held by the person charged pending the adjudication of
35 the charges if it is determined that the animal or animals are
36 not receiving the necessary food, water, shelter, or care.

1 (g) Nothing in this Act shall be construed to prevent the
2 voluntary, permanent relinquishment of any animal by its owner
3 to an animal control or animal shelter in lieu of posting
4 security or proceeding to a forfeiture hearing. Voluntary
5 relinquishment shall have no effect on the criminal charges
6 that may be pursued by the appropriate authorities.

7 (h) If an owner of a companion animal is acquitted by the
8 court of charges made pursuant to this Act, the court shall
9 further order that any security that has been posted for the
10 animal shall be returned to the owner by the impounding
11 organization.

12 (i) The provisions of this Section only pertain to
13 companion animals and animals used for fighting purposes.

14 (Source: P.A. 92-454, eff. 1-1-02; 92-650, eff. 7-11-02.)

15 Section 99. Effective date. This Act takes effect January
16 1, 2005.