

## No. 2013-50

## AN ACT

## HB 82

Providing for actions for costs of care of seized animals.

The General Assembly finds and declares that:

- (1) Owners of animals have a duty of care.
- (2) Because of this duty of care, owners of animals are responsible for the costs of caring for those animals and that responsibility continues if those animals are duly seized.
- (3) The General Assembly has enacted 18 Pa.C.S. § 5511 (relating to cruelty to animals) relating to cruelty to animals which can lead to seizure of animals.
- (4) Neither 18 Pa.C.S. § 5511 nor this act pertains to activity undertaken in normal agricultural operation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Costs of Care of Seized Animals Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Costs order." A court order under section 5(e) to pay filing fees and reasonable costs of care.

"Defendant." A person charged with a violation of 18 Pa.C.S. § 5511 (relating to cruelty to animals).

"Normal agricultural operation." As defined under 18 Pa.C.S. § 5511(q) (relating to cruelty to animals).

"Owner." In relation to an animal seized under 18 Pa.C.S. § 5511 (relating to cruelty to animals), a person who can prove legal title to or ownership of an animal at issue on the date of the seizure.

"Petition." A petition for reasonable costs of care for any animal seized under 18 Pa.C.S. § 5511 (relating to cruelty to animals).

"Petitioner." A person or entity that files a petition under this act.

"Reasonable costs of care." As follows:

(1) The reasonable costs of caring for seized animals, including the provision of food, water, shelter and medical care, beginning at the date of the seizure and continuing until the earlier of one of the following:

- (i) At least 30 days following a hearing on a petition for costs of care.
- (ii) The seized animals are no longer under the control of the petitioner.

(iii) The owner and defendant have relinquished all interests in the seized animals.

(2) Reasonable costs of care shall be limited to \$15 per day per animal, in addition to necessary medical care, as determined by a licensed veterinarian and documented by invoices.

"Society or association." A nonprofit society or association duly incorporated under 15 Pa.C.S. Ch. 53 Subch. A (relating to incorporation generally) for the purpose of the prevention of cruelty to animals.

Section 3. Petition for reasonable costs of care.

(a) Filing.—If animals are seized under 18 Pa.C.S. § 5511 (relating to cruelty to animals), a petition may be filed, with the court of common pleas in the county where related criminal charges have been filed, by any of the following:

(1) A county or municipal official.

(2) A society or association or other incorporated nonprofit organization providing care for the animals.

(b) Time.—A petition may not be filed later than seven days after the entry of final judgment on the related criminal charge for a violation of 18 Pa.C.S. § 5511.

Section 4. Service of petition.

(a) Defendant.—Not later than seven days after filing a petition under section 3, the petitioner shall serve the petition on the defendant by personal service or by registered mail to any of the following:

(1) The defendant's mailing address.

(2) The place of business of the defendant's counsel.

(3) The detention facility where the defendant is incarcerated.

(b) Owner.—The petitioner shall serve the petition on the owner of a seized animal if all of the following apply:

(1) The petitioner is aware that the defendant is not the owner of the seized animals.

(2) The petitioner is aware of the owner's location.

Section 5. Hearing.

(a) Date.—Upon receipt of a petition, the court shall set a date for a hearing to determine the responsibility of a defendant for reasonable costs of care.

(b) Time.—A hearing under subsection (a) shall be scheduled not less than 14 days but not more than 21 days from the service of the petition. The petitioner shall serve notice of the hearing date upon the defendant and, if required to be served under section 4(b), the owner.

(c) Evidence.—At the hearing, the petitioner shall present evidence that demonstrates:

(1) the amount of reasonable costs of care for the seized animal;

(2) that the seizure was warranted; and

(3) if the owner is required to be served under section 4(b), that a copy of the petition has been mailed to the owner's last known address.

(d) Objection.—The defendant and, if required to be served under section 4(b), the owner<sup>1</sup> shall have the opportunity at the hearing to object to the petition.

(e) Costs order.—

(1) Not later than five days after the commencement of the hearing, the court shall issue an order granting or denying the petition. If the court grants the petition, the order shall include any filing fees paid by the petitioner to file the petition under section 3 and the amount of reasonable costs of care, both of which shall be paid by the defendant.

(2) The costs order shall include a schedule of monthly payments for costs of care to be paid by the defendant beginning 30 days after the initial payment designated in the order under paragraph (1). Payments shall continue until termination under section 7. The defendant's ability to pay shall not affect the court's determination as to the amount of the reasonable costs of care.

Section 6. Payment of reasonable costs of care.

(a) General rule.—Not later than seven days after service of the costs order, the defendant shall make payments to the petitioner in accordance with the costs order. The defendant shall make payments thereafter under the costs order until termination under section 7.

(b) Nonpayment.—If a defendant subject to a costs order fails to timely pay any of the amounts ordered, the following shall apply:

(1) A seized animal for which reasonable costs of care were ordered shall be automatically forfeited, by operation of law, to the petitioner.

(2) The petitioner shall obtain all rights and privileges in and over the animals.

(3) If any owner was required to be served under section 4(b) and the defendant was ordered to pay costs under section 5(e), the petitioner shall provide the owner with notice of the nonpayment by certified mail at the owner's last known address. The notice shall inform the owner that the forfeiture described in this section shall occur without further notice if the payment default is not remedied in full within ten days of the mailing of the notice. If the owner pays the amount past due, the obligation to pay costs under section 5(e) shall be considered a joint obligation of the defendant and the owner, and no further notice of any other default shall be required prior to forfeiture.

(c) Adjustment.—The court, upon motion by a petitioner or respondent and after a hearing consistent with section 5, may adjust the amount of reasonable costs of care.

(d) Payment.—Payment of reasonable costs of care under subsection (a) shall not prevent the petitioner from doing any of the following:

(1) Providing necessary medical care, including euthanizing any seized animal. The petitioner may euthanize a seized animal if the petitioner obtains a written opinion from a licensed veterinarian who states it is necessary to alleviate the animal's suffering.

(2) Transferring to another facility or caretaker a seized animal if any of the following apply:

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<sup>1</sup>section 4(b), owner" in enrolled bill.

(i) The court orders the transfer.

(ii) The owner of the animal surrenders all rights to the animal.

(3) Filing with the court that entered the costs order a request seeking permission to return a seized animal to an owner who is not charged under 18 Pa.C.S. § 5511 (relating to cruelty to animals).

(e) Reproductive health.—A petitioner may not spay, neuter or otherwise affect the reproductive health of the seized animal under any circumstances unless the owner surrenders all rights of ownership of the animal in writing, forfeits the animal pursuant to subsection (b), consents to the surgery in writing or if the petitioner obtains a written opinion from a licensed veterinarian who states that the procedure is medically necessary for the health of the animal.

(f) Unnecessary medical care.—Under no circumstances may a petitioner be reimbursed for costs of care for which the defendant or owner provides medical records, signed by a licensed veterinarian, that show that such costs are unnecessary.

#### Section 7. Termination of costs order.

(a) Time.—A costs order shall be terminated upon the occurrence of any of the following:

(1) The issuance of a final judgment on the criminal charge for a violation of 18 Pa.C.S. § 5511 (relating to cruelty to animals).

(2) The defendant or owner of the animals surrendering all rights to the animals.

(3) The seized animals being no longer under the control of the petitioner.

(b) Remittance.—As follows:

(1) No earlier than the issuance of the final order on the related criminal charge for a violation of 18 Pa.C.S. § 5511, any unused portion of reasonable costs of care remaining after full payment in accordance with a costs order shall be remitted to the person who paid the costs of care of the seized animal.

(2) If no related criminal charge for a violation of 18 Pa.C.S. § 5511 results in any conviction and if all costs ordered to be paid under sections 5(e) and 6 have been timely paid, the owner shall have the right to repossession of the animal and to a return of all reasonable costs of care.

#### Section 8. Examination.

Notwithstanding any other rights under 18 Pa.C.S. § 5511 (relating to cruelty to animals) and not later than the commencement of the hearing under section 5, the defendant or owner of the animal shall have one opportunity to examine the seized animal for the purposes of preserving evidence. The examination shall be completed in the presence of a law enforcement officer.

#### Section 9. Immunity.

A petitioner shall be immune from civil liability for damages alleged by a defendant or owner concerning the care provided by the petitioner, except for intentional misconduct or gross negligence resulting in the death of an animal.

#### Section 10. Applicability.

(a) Normal agricultural operation.—Nothing in this act shall apply to animals used for activities undertaken in a normal agricultural operation.

(b) Indigency.—

(1) In a case under 18 Pa.C.S. § 5511 (relating to cruelty to animals) in which only one animal was seized from the defendant and the defendant is able to prove indigency and the inability to pay the reasonable costs of care assessed under this act by the court for that animal, the court in its discretion may waive the requirement for the defendant to pay the costs of care for that animal.

(2) A defendant seeking a waiver under this subsection must submit an affidavit in the form provided for in Rule 240(h) of the Pennsylvania Rules of Civil Procedure.

Section 11. Effective date.

This act shall take effect in 60 days.

APPROVED—The 9th day of July, A.D. 2013

TOM CORBETT