

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REDRAFT
12.21.10

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 11-0078.01 Jane Ritter

SENATE BILL

SENATE SPONSORSHIP

Steadman, Guzman

HOUSE SPONSORSHIP

Fischer,

SHORT TITLE: "Costs Of Animal Impoundment"

DEADLINES: Finalize by: 04 JAN 2011 File by: 07 JAN 2011

A BILL FOR AN ACT

101 CONCERNING PROCEDURAL REQUIREMENTS FOR PAYMENT OF COSTS
102 RELATED TO IMPOUNDED ANIMALS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill modifies procedural requirements related to the payment of impoundment, care, and provision costs for an animal that has been impounded because of alleged neglect or abuse or other criminal acts involving animals. The owner or custodian (owner) of the impounded animal may request a hearing, which shall be held no later than 30 days

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

after the request. Failure by the owner to pay the costs of impoundment, care, and provision shall result in the loss of any right of ownership to the animal.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-9-202.5 (1), Colorado Revised Statutes, is amended to read:

18-9-202.5. Procedural requirements - impoundment, care, and provision costs for impounded animals. (1) (a) The owner or

custodian of an animal that has been impounded by an impound agency because of alleged neglect or abuse, or because of investigation of charges of cruelty to animals pursuant to section 18-9-202, animal

fighting pursuant to section 18-9-204, mistreatment, neglect, or abandonment under article 42 of title 35, C.R.S., or unlawful ownership of a dangerous dog as described in section 18-9-204.5, may prevent disposition of the animal by an impound agency by posting a bond

PAYMENT FOR IMPOUNDMENT, CARE, AND PROVISION COSTS with the court in an amount sufficient to provide for the animal's care and provision at the impound agency for at least thirty days, including the day on which the animal was taken into custody. ~~The owner or custodian of any~~

~~impounded animal may request a hearing in a court of competent jurisdiction within ten days after impoundment to determine whether the costs associated with the bond are fair and reasonable for the care of and provision for the impounded animal. Such bond shall be filed with the court within ten days after the animal is impounded. At the end of the time for which expenses are covered by the bond, if the owner or custodian desires to prevent disposition of the animal, the owner or custodian shall post a new bond with the court within ten days after the~~

New terminology to describe the payment ("bond") that is already required in statute.

Paragraph moved down to new section (b) and amended to bond language (inserts "payment for" language)

1 ~~prior bond's expiration. However, if, in the opinion of a licensed~~
2 ~~veterinarian, the animal is experiencing extreme pain or suffering or is~~
3 ~~severely injured past recovery, severely disabled past recovery, or~~
4 ~~severely diseased past recovery, the animal may be euthanized without a~~
5 ~~court order.~~

Existing language
moved down from
previous paragraph

6 (b) ~~THE OWNER OR CUSTODIAN OF THE IMPOUNDED ANIMAL SHALL~~
7 ~~FILE THE IMPOUNDMENT, CARE, AND PROVISION PAYMENT WITH THE~~
8 ~~COURT WITHIN TEN DAYS AFTER THE IMPOUNDMENT. AT THE END OF THE~~
9 ~~TIME FOR WHICH EXPENSES ARE COVERED BY THE INITIAL IMPOUNDMENT,~~
10 ~~CARE, AND PROVISION PAYMENT, IF THE OWNER OR CUSTODIAN DESIRES TO~~
11 ~~PREVENT DISPOSITION OF THE ANIMAL, THE OWNER OR CUSTODIAN SHALL~~
12 ~~POST AN ADDITIONAL PAYMENT FOR THE IMPOUNDMENT, CARE, AND~~
13 ~~PROVISION COSTS WITH THE COURT WITHIN TEN DAYS AFTER THE PRIOR~~
14 ~~PAYMENT'S EXPIRATION. At the end of the time for which expenses are~~
15 ~~covered by the bond~~ PAYMENT FOR IMPOUNDMENT, CARE, AND PROVISION
16 COSTS, the impound agency may determine disposition of the animal
17 unless there is a court order prohibiting such disposition. ~~HOWEVER, IF,~~
18 ~~IN THE OPINION OF A LICENSED VETERINARIAN, THE ANIMAL IS~~
19 ~~EXPERIENCING EXTREME PAIN OR SUFFERING OR IS SEVERELY INJURED~~
20 ~~PAST RECOVERY, SEVERELY DISABLED PAST RECOVERY, OR SEVERELY~~
21 ~~DISEASED PAST RECOVERY, THE ANIMAL MAY BE EUTHANIZED WITHOUT A~~
22 ~~COURT ORDER.~~ The owner or custodian shall be liable for the cost of the
23 care of, provision for, or disposal of the animal.

Existing language
moved down from
previous paragraph

Existing language
moved down from
paragraph (a)

24 (c) ~~THE OWNER OR CUSTODIAN OF ANY IMPOUNDED ANIMAL MAY~~
25 ~~REQUEST A HEARING IN A CRIMINAL COURT OF COMPETENT JURISDICTION~~
26 ~~WITHIN TEN DAYS AFTER IMPOUNDMENT. IF A CONTINUANCE IS~~
27 ~~REQUESTED, IT SHALL NOT EXCEED TWENTY DAYS. THE OWNER OR~~

New language provides
clarity in response to
ambiguity in existing
language. Clearly
places hearing in
criminal court.

New language clarifies
the intent of existing
language to provide
urgent hearing and
places an endpoint on
continuances

New language added at request of DAs so they will receive notice when a defendant opts to request a hearing and raise the arguments referenced in (d)

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1 ~~CUSTODIAN OF THE IMPOUNDED ANIMAL SHALL PROVIDE NOTICE TO THE~~
2 DISTRICT ATTORNEY OF HIS OR HER REQUEST FOR A HEARING.

New language (as referenced above) to put an endpoint on continuances. Reflects the intent of the existing language to set and hold hearing quickly.

3 (d) ~~IF THE OWNER OR CUSTODIAN OF AN IMPOUNDED ANIMAL~~
4 ~~REQUESTS A HEARING, THE COURT SHALL HOLD THE HEARING AT THE~~
5 ~~EARLIEST POSSIBLE TIME, BUT IN NO INSTANCE SHALL THE HEARING BE~~
6 ~~HELD LATER THAN THIRTY DAYS AFTER THE IMPOUNDMENT. THE GENERAL~~
7 ~~ASSEMBLY INTENDS THAT THE HEARING BE HELD WITHIN TEN DAYS AFTER~~
8 ~~THE IMPOUNDMENT WHENEVER POSSIBLE. AT THE HEARING, THE COURT~~
9 ~~SHALL DETERMINE, AS APPROPRIATE:~~

Existing language. These are the only grounds for requesting a hearing under the current language.

Ten days for hearing is reflected in existing language, but in practice is rarely followed. This paragraph clarifies and highlight the assembly's original intent for the hearing to be held quickly.

10 (I) ~~WHETHER COSTS ASSOCIATED WITH THE IMPOUNDMENT, CARE,~~
11 ~~AND PROVISION ARE FAIR AND REASONABLE FOR THE CARE OF AND~~
12 ~~PROVISION FOR THE IMPOUNDED ANIMAL;~~

New language that provides due process to owners in advance of trial and shortens the amount of time impounded animals wait in "limbo" if there are issues of probable cause surrounding the impound that need to be addressed before the animals can be dispositioned.

Already allowed and existing practice based on current language. Separate section highlights for court that the release is a component of the hearing since it is not immediately clear in existing language and may lead to disposition of animals being postponed beyond the time intended by the existing language.

13 (II) ~~WHETHER THERE WAS SUFFICIENT PROBABLE CAUSE FOR THE~~
14 ~~IMPOUNDMENT; AND~~

15 (III) ~~RELEASE OF THE ANIMAL TO THE IMPOUND AGENCY FOR~~
16 ~~DISPOSITION IF THE OWNER ELECTS NOT TO PAY IMPOUNDMENT, CARE, OR~~
17 ~~PROVISION COSTS THAT WOULD OTHERWISE PREVENT DISPOSITION.~~

Based on current language, moved and rephrased to make very clear the consequences envisioned by the statute when owners fail to pay cost of care bond.

18 (e) ~~FAILURE TO PAY THE IMPOUNDMENT, CARE, AND PROVISION~~
19 ~~COSTS AT THE HEARING DESCRIBED IN PARAGRAPHS (b) AND (d) OF THIS~~
20 ~~SUBSECTION (1) SHALL RESULT IN THE FORFEITURE OF THE RIGHT TO~~
21 ~~CONTEST THE COST OF THE IMPOUNDMENT, CARE, AND PROVISION AND~~
22 ~~ANY OWNERSHIP RIGHTS TO THE ANIMAL IN QUESTION.~~

23 (f) ~~PROVISION OF A WARRANT ISSUED IN ACCORDANCE WITH RULE~~
24 ~~41 (b) OF THE COLORADO RULES OF CRIMINAL PROCEDURE AUTHORIZING~~
25 ~~SEIZURE OF THE IMPOUNDED ANIMAL SHALL BE PRIMA FACIE EVIDENCE OF~~
26 ~~SUFFICIENT CAUSE FOR IMPOUNDMENT.~~

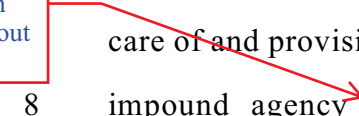
27 (b) (g) A dog that is not claimed by its owner within five days

New language. Inserted to streamline procedures when impounding agency has obtained a valid warrant to search for and seize animals. Recognizes a rebuttable presumption that the probable cause offered as the basis of the warrant was sufficient to allow for seizure of the animals. e.g., If a judge issues a warrant to allow for the seizure of the animals, unless the defendant can show otherwise, there was sufficient cause to seize the animals.

1 after being eligible for release from impoundment for investigation of a
2 charge of unlawful ownership of a dangerous dog as described in section
3 18-9-204.5 shall be deemed abandoned and may be disposed of as the
4 impound agency deems proper.

5 (c) (h) (I) With respect to the sale of an animal, the proceeds shall
first be applied to the costs of the sale and then to the expenses for the
care of and provision for the animal, including expenses incurred by the
impound agency **THAT HAVE NOT BEEN PAID BY THE OWNER OR**
6 **CUSTODIAN.** If the owner of the animal is convicted of cruelty to animals
7 under section 18-9-202, animal fighting under section 18-9-204, or
8 unlawful ownership of a dangerous dog under section 18-9-204.5 or is
9 found by court order to have mistreated, neglected, or abandoned the
10 animal under article 42 of title 35, C.R.S., the remaining proceeds, if any,
11 shall be paid to the impound agency. If the owner of the animal is not
12 convicted of such charges or is not found by court order to have so
13 mistreated, neglected, or abandoned the animal, the remaining proceeds,
14 if any, shall be paid over to the owner of the animal.

Housekeeping to carry
this concept (in existing
statute) and maintain
consistency throughout
section.



18 (II) If the impound agency is the department of agriculture,
19 moneys credited to the department of agriculture for expenses shall be
20 transmitted to the state treasurer and credited to the animal protection
21 fund, created in section 35-42-113, C.R.S. If the department of
22 agriculture is not the impound agency, moneys for expenses shall be paid
23 to such other impound agency as the court orders.

24 (III) If the owner of the animal cannot be found, any remaining
25 proceeds after all other expenses have been paid shall be paid into the
26 animal protection fund or, if the impound agency is not the department of
27 agriculture, to such other impound agency as the court orders. Any claim

1 for such remaining proceeds by the owner of the animal shall be made
2 within one year after the payment thereof to the impound agency and,
3 unless so presented to the court, shall be forever barred unless the court
4 by proper order made in any case otherwise decrees. Any refund ordered
5 by court decree shall be paid to the claimant by the impound agency.

6 (IV) At least six days prior to sale of the animal, the impound
7 agency shall provide written notice to the owner, at the owner's
8 last-known address, of the time and place of the sale of the animal.

9 (V) If the owner of the animal is unknown, the impound agency
10 shall cause to be published for one week, in a newspaper of general
11 circulation in the jurisdiction wherein such animal is found, notice of sale
12 of the animal, and shall further cause notice of the sale of the animal to
13 be posted at a place provided for public notices in the jurisdiction wherein
14 such sale will take place, at least five days prior to the sale.

15 (VI) The provisions of this ~~paragraph (c)~~ PARAGRAPH (h) shall not
16 apply to the disposition of an animal for a fee by:

- 17 (A) Adoption of an animal;
- 18 (B) Release of an animal to a rescue group licensed pursuant to
19 article 80 of title 35, C.R.S.;

20 (C) Release of an animal to another pet animal facility licensed
21 pursuant to article 80 of title 35, C.R.S.; or

22 ~~(C.5) RELEASE OF AN ANIMAL TO AN EQUINE RESCUE FACILITY; OR~~

23 (D) Release of an animal to a rehabilitator licensed by the division
24 of wildlife or the United States fish and wildlife service.

25 **SECTION 2.** 18-9-201 (2.5), Colorado Revised Statutes, is
26 amended to read:

27 **18-9-201. Definitions.** As used in sections 18-9-201.5, 18-9-202,

New language inserted to assist impounding agencies in transferring horses after they have been relinquished or removed from owner. Under current language, horses must be "adopted" horse by rescue facilities instead of transferred to them. This creates additional paperwork and expense in the form of at least two brand inspections required just to transfer the horses to the agency that will ultimately be finding a home for the animal.

1 18-9-202.5, and 18-9-204.5, unless the context otherwise requires:

2 (2.5) "Disposal" or "disposition" means adoption of an animal;
3 return of an animal to the owner; sale of an animal under section
4 18-9-202.5 ~~(+)(c)~~ (1) (h); release of an animal to a rescue group licensed
5 pursuant to article 80 of title 35, C.R.S.; release of an animal to another
6 pet animal facility licensed pursuant to article 80 of title 35, C.R.S.; ~~or~~
7 RELEASE OF AN ANIMAL TO AN EQUINE RESCUE FACILITY; RELEASE OF AN
8 ANIMAL to a rehabilitator licensed by the division of wildlife or the United
9 States fish and wildlife service; or euthanasia.

Existing language that
was moved to
accommodate the
insertion of equine
language.

10 SECTION 3. 35-42-113 (1), Colorado Revised Statutes, is
11 amended to read:

12 35-42-113. Animal protection fund - creation. (1) There is
13 hereby created an animal protection fund. Any donations collected for
14 animal protection, any net proceeds from the sale of an animal pursuant
15 to section 18-9-202.5 ~~(+)(c)~~ (1) (h), C.R.S., and any moneys from
16 restitution ordered for the expenses of the department of agriculture in
17 selling and providing for the care of and provision for ~~animals~~ AN ANIMAL
18 disposed of under the animal cruelty laws in accordance with part 2 of
19 article 9 of title 18, C.R.S., or this article shall be transmitted to the state
20 treasurer, who shall credit the same to the animal protection fund. The
21 general assembly shall make annual appropriations from such fund to the
22 department of agriculture to aid in carrying out the purposes of this
23 article. Such appropriations shall not be made for personal services.

New language inserted
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Under current language,
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two brand inspections
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the horses to the agency
that will ultimately be
finding a home for the
animal.

24 SECTION 4. Effective date - applicability. This act shall take
25 effect September 1, 2011, and shall apply to offenses committed on or
26 after September 1, 2011.

27 SECTION 5. Act subject to petition - effective date. This act

Housekeeping to create
consistency throughout
section.

1 shall take effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly (August
3 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
4 referendum petition is filed pursuant to section 1 (3) of article V of the
5 state constitution against this act or an item, section, or part of this act
6 within such period, then the act, item, section, or part shall not take effect
7 unless approved by the people at the general election to be held in
8 November 2012 and shall take effect on the date of the official
9 declaration of the vote thereon by the governor.