~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

March 17, 2009

**S. 223**

Introduced by Senator Lourie

S. Printed 3/17/09--S.

Read the first time January 13, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 47‑1‑145, TO ENACT THE “PROVISIONS FOR COST OF ANIMAL CARE ACT OF 2009”, TO PROVIDE THAT THE CUSTODIAN OF AN ANIMAL TAKEN INTO CUSTODY DUE TO CIVIL OR CRIMINAL VIOLATIONS BY ITS OWNER MAY PETITION THE COURT FOR EXPENSES RELATED TO PROVIDING CARE TO THE ANIMAL, TO ESTABLISH PROCEDURES FOR HEARING SUCH PETITIONS AND FOR THE COLLECTION AND USE OF FUNDS ORDERED TO BE PAID, TO PROVIDE THAT A PERSON WHO FAILS TO PAY SUCH FUNDS FORFEITS RIGHTS OF OWNERSHIP TO THE ANIMAL, TO PROVIDE FOR THE DISPOSITION OF SUCH AN ANIMAL, AND TO PROVIDE FOR THE RETURN OF FUNDS WHEN A PERSON IS NOT FOUND TO BE IN VIOLATION; TO AMEND SECTION 47‑1‑130, RELATING TO CRUELTY TO ANIMALS, TO PROVIDE THAT AGENTS OF THE SOUTH CAROLINA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, OR ANY OTHER SOCIETY DULY INCORPORATED FOR THAT PURPOSE, MAY ASSIST WITH A LAWFUL INVESTIGATION OF THIS CHAPTER, BUT MAY ONLY EFFECTUATE AN ARREST OF A PERSON IF THEY HAVE BEEN VESTED WITH THE POWER TO ARREST BY A SHERIFF OR THE GOVERNING BODY OF A COUNTY OR MUNICIPALITY; AND TO AMEND SECTION 47‑1‑140, RELATING TO NOTICE PROVIDED TO THE OWNER OF ANIMALS WHICH HAVE BEEN SEIZED FROM OTHERS UPON ARREST, TO REMOVE SPECIAL PROVISIONS FOR AGENTS OF THE SOUTH CAROLINA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, OR ANY OTHER SOCIETY DULY INCORPORATED FOR THAT PURPOSE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Provisions for Cost of Animal Care Act of 2009”.

SECTION 2. Chapter 1, Title 47 of the 1976 Code is amended by adding:

“Section 47‑1‑145. (A) Any person, organization, or other entity that is awarded custody of an animal under the provisions of Section 47‑1‑150 because of the arrest of a defendant for a violation of any provision of Chapter 1 of Title 47 or Chapter 24 of Title 16 and that provides services to the animal without compensation, may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred by the custodian in caring for and providing for the animal pending the disposition of the litigation. The court shall order the deposit of a sufficient amount of funds upon a showing that providing reasonable care to the defendant’s animal or animals will create an undue financial burden on the organization that will have a detrimental effect on the person’s, organization’s, or entity’s ability to provide services to other animals. For purposes of this section, ‘reasonable expenses’ includes the cost of providing food, water, shelter, and care, including medical care, for at least thirty days but does not include extraordinary medical procedures.

(B) Upon receipt of a petition, the court shall set a hearing on the petition to determine the need to care for and provide for the animal pending the disposition of the litigation. The hearing shall be conducted no fewer than ten and no more than fifteen business days after the petition is filed. The custodian of the animal shall mail written notice of the hearing and a copy of the petition to the defendant at the address contained in the criminal charges or the complaint or summons by which a civil action was initiated. If the defendant is in a local detention facility at the time the petition is filed, the custodian of the animal also shall provide notice to the custodian of the detention facility.

(C) The court shall set the amount of funds necessary for thirty days’ care after taking into consideration all of the facts and circumstances of the case, including the need to care for and provide for the animal pending the disposition of the litigation, the recommendation of the custodian of the animal, the estimated cost of caring for and providing for the animal, and the defendant’s ability to pay.

(D)(1) Any order for funds to be deposited pursuant to this section must state that if the custodian of the animal files an affidavit with the court, at least two business days before the expiration of a thirty‑day period, stating that, to the best of the custodian’s knowledge, the case against the defendant has not yet been resolved, the order must be automatically renewed every thirty days until the case is resolved.

(2) The court may order that the defendant deposit with the court the amount of funds set by the court pursuant to subsection (C). The defendant also shall deposit the same amount with the court every thirty days thereafter until the litigation is resolved, unless the defendant requests a hearing no fewer than five business days before the expiration of a thirty‑day period. If funds have been deposited in accordance with this subsection, the custodian of the animal may draw from the funds the actual costs incurred in caring for the animal.

(3)(a) If the court makes a final determination of the charges or claims against the defendant in his favor, then the defendant may recover custody of his animal if, within thirty days of the final determination, he satisfies all outstanding obligations concerning court ordered deposits for the care of the animal.

(b) If the defendant fails to satisfy all outstanding obligations concerning court ordered deposits for the care of the animal within thirty days of the final determination, the defendant forfeits all rights of ownership or possession of the animal. The custodian of the animal may then determine whether the animal is suitable for adoption and whether adoption can be arranged for the animal. The animal may not be adopted by the defendant or by any person residing in the defendant’s household. If no adoption can be arranged after the forfeiture, or the animal is unsuitable for adoption, the custodian shall humanely euthanize the animal.

(E) The deposit of funds does not prevent the custodian of the animal from seeking placement of the animal before the expiration of the thirty‑day period covered by the deposit if the court makes a final determination of the charges or claims against the defendant. Upon determination, the defendant is entitled to a refund for any portion of the deposit not incurred as expenses by the custodian of the animal. A person who is acquitted of all criminal charges or not found to have committed animal cruelty in a civil action under Chapter 1 of Title 47 is entitled to a refund of the deposit remaining after any draws from the deposit in accordance with subsection (D).

(F) The remedy provided for in this section is in addition to any other remedy provided in law.”

SECTION 3. Section 47‑1‑130 of the 1976 Code is amended to read:

“Section 47‑1‑130. (A) Any person violating the laws in relation to cruelty to animals may be arrested and held, without warrant, in the same manner as in the case of persons found breaking the peace.

(B) A person acting as an agent of the South Carolina Society for the Prevention of Cruelty to Animals, or any society duly incorporated for that purpose, may assist with a lawful investigation of alleged violations of this chapter, accompany law enforcement officers making arrests for a violation of this chapter, participate with law enforcement officers in the seizure of animals pursuant to a lawful arrest, and take custody of animals pursuant to Section 47‑1‑120.”

SECTION 4. Section 47‑1‑140 of the 1976 Code is amended to read:

“Section 47‑1‑140. The person making the arrest, with or without warrant, shall use reasonable diligence to give notice to the owner of the animals found in the charge or custody of the person arrested, if the person is not the owner, and shall care and provide properly for the animals. The person making such arrest shall have a lien on the animals for the expense of such care and provision. ~~But if such person making the arrest be an agent of the South Carolina Society for the Prevention of Cruelty to Animals, or other society incorporated for that purpose, the provisions of Section 47‑1‑120 shall apply in lieu of the provisions of this section.~~ Notwithstanding any other provision of law, an animal may be seized preceding an arrest and pursuant to Section 47‑1‑150.”

SECTION 5. This act takes effect upon approval by the Governor.

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