

CHAPTER 200
FORMERLY
HOUSE BILL NO. 242
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLES 3, 11, AND 16 OF THE DELAWARE CODE RELATING TO ANIMALS, ANIMAL CRUELTY, AND AUTHORITY OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 79, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~CHAPTER 79. MISCELLANEOUS PROVISIONS CONCERNING ANIMALS~~

~~§ 7901 Delaware Society for the Prevention of Cruelty to Animals.~~

~~(a) Incorporation.—The Delaware Society for the Prevention of Cruelty to Animals is a Delaware corporation.~~

~~(b) Objects.—The objects of the Society are to provide effective means for the prevention of cruelty to animals throughout the State and to conduct educational or other programs as specified in its bylaws.~~

~~(c) Powers.—The Society shall have the power to enforce all laws enacted for the protection of animals; to purchase, print and circulate books and publications designed to promote the objects of the Society; to appoint or employ such agents or employees as the Board of Directors may from time to time deem necessary; to sue and be sued, in its corporate name, in any court in this State or elsewhere; to exercise all of the legal incidents common to a body corporate, including the right to use a seal, to receive legacies and donations, to acquire by purchase and transfer by sale, lease or mortgage real estate or any interest therein; to make and perform contracts of every kind with any person, corporation, government, state, county or municipality which are designed to promote the objects of the Society.~~

~~(d) Offices.—The principal office of the Society shall be located in the County of New Castle, but the Society is authorized and empowered to establish branch offices at any place or places within the State.~~

~~(e) Existence.—The Society shall have perpetual existence.~~

~~(f) Management.—The affairs of the Society shall be conducted by a Board of Directors, the size, selection, and tenure of which shall be prescribed in the Society's bylaws, and whose powers and duties are as described in the bylaws and as otherwise given by the laws of this State to corporate directors.~~

~~(g) Membership.—Membership in the Society shall be open to all persons interested in the objects of the Society; provided, however, that the bylaws may prescribe conditions of membership, including an annual dues or assessment. The private property of the members of the Society shall not be subject to the payment of Society debts to any extent whatsoever.~~

~~(h) Officers.—The officers of the Society shall be selected by the Board of Directors and shall be those officers provided for in the bylaws.~~

~~(i) Bylaws.—The Society shall have the power to adopt a code of bylaws and said bylaws shall be binding upon the Society and its members until modified or rescinded as provided for in its bylaws.~~

~~§ 7902 Enforcement of laws for protection of animals.~~

~~The constables of the several counties of this State, and the police force of the City of Wilmington, as well as all other places in the State where police organizations exist, shall, as occasion requires, assist the Kent County Society for the Prevention of Cruelty to Animals or The Delaware Society for the Prevention of Cruelty to Animals, their members or agents, in the enforcement of all laws which are enacted for the protection of dumb animals.~~

~~§ 7903 Fines and penalties in certain cases; disposition.~~

~~All fines, penalties and forfeitures, imposed and collected in any county of the State under every act relating to or affecting cruelty to animals, in every case where the prosecution shall be instituted and conducted by the Kent County Society for the Prevention of Cruelty to Animals and The Delaware Society for the Prevention of Cruelty to Animals, shall enure to such Society in aid of the purposes for which they were incorporated.~~

~~§ 7904 Service of process.~~

~~Any warrant of arrest, or other process, issued under or by virtue of the several laws in relation to cruelty to animals may be directed to and executed by any agent so appointed by either the Delaware or Kent County Society for the Prevention of Cruelty to Animals of this State. No compensation shall be paid to the agent except by the societies.~~

~~§ 7905 Impoundment.~~

~~(a) Any agent in Sussex and New Castle Counties of this State, so appointed by the Delaware Society for the Prevention of Cruelty to Animals, or in Kent County of this State, so appointed by the Kent County Society for the Prevention of Cruelty to Animals, or any law enforcement officer as defined in § 222 of Title 11, may, in instances of alleged acts of animal cruelty and as provided for by the laws of Delaware relating to seizure of property, impound in the appropriate S.P.C.A. shelter or, if required, in an appropriate veterinarian facility, any animal subjected to cruel mistreatment or cruel neglect. Should the owner or custodian of an animal not be available at or near the premises where the animal is located, upon taking an animal under this section the agent shall leave in an appropriate place written notice to the animal's owner or custodian of such action. Societies for the prevention of cruelty to animals shall take all reasonable action to insure that owners or custodians of an animal, impounded under this section, shall have received notice of such action as soon as possible and no later than 24 hours after the impoundment.~~

~~(b) An animal impounded under this section shall not remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals longer than 48 hours and shall be returned to its owner or custodian unless a complaint is filed within the 48 hour period in the appropriate court under the animal cruelty laws against the owner or custodian, except that upon good cause shown a court may permit a reasonable extension of the 48 hour period not to exceed 30 days. When a complaint is filed in the appropriate court, the impounded animal shall remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals pending the outcome of the action. If the owner or custodian is found to be in violation of the animal cruelty laws the court shall make a final determination as to the disposition of the animal. Should the complaint be withdrawn, prior to a court hearing, the animal shall be immediately made available to its owner or custodian.~~

~~(c) Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have been violated by the owner or custodian of any impounded animal, the State and/or the appropriate Society for the Prevention of Cruelty to Animals shall have the right to recover the costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Upon impoundment, the State or appropriate Society for the Prevention of Cruelty to Animals shall submit a detailed billing to the owner or custodian of the animal, listing the monthly costs of boarding, evaluation, veterinary and other costs associated with care. Notwithstanding any provision of this section or any other law to the contrary, failure of the animal's owner or custodian to pay these costs within 30 days of the receipt of a detailed monthly billing will result in ownership of the animal reverting to the State or to the appropriate Society for the Prevention of Cruelty to Animals. The provisions of this subsection shall be applicable notwithstanding the final disposition of the criminal charges.~~

~~(d) An owner or custodian of an animal impounded under this section who is found guilty of cruelty to the animal, and the court orders the animal returned to such owner or custodian, shall, prior to taking the animal, reimburse the appropriate Society for the Prevention of Cruelty to Animals its regular standard fees charged for the care of animals while in the Society's custody plus any veterinary fees incurred for the animal during the period of impoundment. Failure of the animal's owner or custodian to pay such fees within 5 days after a finding of guilty will result in ownership of the animal reverting to the appropriate S.P.C.A. The S.P.C.A. may then dispose of the animal in accord with its procedures for such disposition.~~

~~(e) Should an animal which has been impounded under this section expire while in the custody of the Society for the Prevention of Cruelty to Animals, the animal shall, as soon as possible, be turned over to the State Veterinarian at the Department of Agriculture. The State Veterinarian shall take whatever action necessary, including autopsy if required, to determine cause of the animal's death and shall record such cause. The cause of death shall, if requested, be furnished to the animal's owner and to the court handling the complaint relative to the~~

~~animal. Disposition of the animal's remains shall be coordinated with the animal's owner and, provided a complaint has been filed, with the court handling the complaint.~~

Section 2. Amend Chapter 30F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 30 F. ANIMALS HELD IN SHELTER ANIMAL WELFARE

Subchapter III. Enforcement of Animal Welfare Laws.

§ 3031F. Powers, duties, and functions of animal welfare officers of the Department of Health and Social Services and the Department of Agriculture.

(a) The Office of Animal Welfare within the Department of Health and Social Services shall enforce all animal cruelty laws in the State of Delaware, except in cases of domestic agricultural animals specified in § 101(8) of Title 3, where the Department of Agriculture shall have primary enforcement authority. In cases of imminent danger, the Office of Animal Welfare and the Department of Agriculture shall have concurrent jurisdiction to seize and impound an animal and take any other necessary step to alleviate the imminent danger or preserve evidence.

(b) The Office of Animal Welfare is a law-enforcement agency for purposes of § 8901(b) of Title 11 and any other purpose relating to communication and access to criminal justice information.

(c) Animal welfare officers of the Office of Animal Welfare or Department of Agriculture shall be trained and certified pursuant to § 122(3)bb. of this title and must meet the qualification and training requirements of § 2703 of Title 10.

(d) Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall have the power to investigate, search, and seize when investigating and enforcing animal cruelty laws. Animal welfare officers of the Office of Animal Welfare shall additionally have the power to detain and arrest when investigating and enforcing animal cruelty laws. Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall have no police powers to investigate or enforce laws other than those related to animal cruelty.

(e) Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall not be permitted to carry firearms while on duty as such.

§ 3032F. Enforcement of laws for protection of animals.

The constables of the several counties of this State, and the police force of the City of Wilmington, as well as all other places in the State where police organizations exist, shall, as occasion requires, assist the Office of Animal Welfare and the Department of Agriculture in the enforcement of all laws which are enacted for the protection of animals.

§ 3033F. Fines and penalties in certain cases; disposition.

All fines, penalties and forfeitures, imposed and collected in any county of the State under every act relating to or affecting cruelty to animals, shall be remitted to the enforcing agency.

§ 3034F. Service of process.

Any warrant, subpoena, summons, or other process issued in relation to animal cruelty laws may be directed to and executed by any trained and certified animal welfare officer of the Office of Animal Welfare.

§ 3035F. Impoundment.

(a) Any trained and certified animal welfare officer working for the Office of Animal Welfare or the Department of Agriculture, or any law enforcement officer as defined in § 222 of Title 11, may, in instances of alleged acts of animal cruelty and as provided for by the laws of Delaware relating to seizure of property, impound in an appropriate shelter, animal rescue or, if required, in an appropriate veterinarian facility, any animal subjected to cruel mistreatment or cruel neglect. Should the owner or custodian of an animal not be available at or near the premises where the animal is located, upon taking an animal under this section the agent shall leave in an appropriate place written notice to the animal's owner or custodian of such action. The officer shall take all reasonable action to insure that owners or custodians of an animal, impounded under this section, shall have received notice of such action as soon as possible and no later than 24 hours after the impoundment.

(b) An animal impounded under this section shall not remain in the custody of the state longer than 48 hours and shall be returned to its owner or custodian unless a complaint is filed within the 48-hour period in the

appropriate court under the animal cruelty laws against the owner or custodian, except that upon good cause shown a court may permit a reasonable extension of the 48-hour period not to exceed 30 days. When a complaint is filed in the appropriate court, the impounded animal shall remain in the custody of the state pending the outcome of the action. If the owner or custodian is found to be in violation of the animal cruelty laws the court shall make a final determination as to the disposition of the animal. Should the complaint be withdrawn, prior to a court hearing, the animal shall be immediately made available to its owner or custodian.

(c) Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have been violated by the owner or custodian of any impounded animal, the State or its agent shall have the right to recover the costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Upon impoundment, the State shall submit a detailed billing to the owner or custodian of the animal, listing the monthly costs of boarding, evaluation, veterinary and other costs associated with care. Notwithstanding any provision of this section or any other law to the contrary, failure of the animal's owner or custodian to pay these costs within 30 days of the receipt of a detailed monthly billing will result in ownership of the animal reverting to the State. The provisions of this subsection shall be applicable notwithstanding the final disposition of the criminal charges.

(d) An owner or custodian of an animal impounded under this section who is found guilty of cruelty to the animal, and the court orders the animal returned to such owner or custodian, shall, prior to taking the animal, reimburse the state or its agent its regular standard fees charged for the care of animals while in the state's custody plus any veterinary fees incurred for the animal during the period of impoundment. Failure of the animal's owner or custodian to pay such fees within 5 days after a finding of guilty will result in ownership of the animal reverting to the state. The state may then dispose of the animal in accord with its procedures for such disposition.

(e) Should an animal which has been impounded under this section expire while in the custody of the state, the animal shall, as soon as possible, be turned over to the State Veterinarian at the Department of Agriculture. The State Veterinarian shall take whatever action necessary, including necropsy if required, to determine cause of the animal's death and shall record such cause. The cause of death shall, if requested, be furnished to the animal's owner and to the court handling the complaint relative to the animal. Disposition of the animal's remains shall be coordinated with the animal's owner and, provided a complaint has been filed, with the court handling the complaint.

Section 3. Amend § 1325, Title 11 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1325. Cruelty to animals; class A misdemeanor; class F felony.

(e) Any agent of the Delaware Society for the Prevention of Cruelty to Animals, or, in Kent County of this State, of the Kent County Society for the Prevention of Cruelty to Animals, trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 7904 of Title 3 3035F of Title 16.

Section 5. Amend Chapter 84, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8401. Definitions.

As used in this chapter:

(5) "Police officer" means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State.

b. For purposes of this chapter this term shall not include the following:

1. A sheriff, regular deputy sheriff or constable;
2. A security force for a state agency or other governmental unit; or, a seasonal, temporary or part-time law-enforcement officer of the Department of Natural Resources and Environmental Control;
3. A person holding police power by virtue of occupying any other position or office.

4. An animal welfare officer of the Office of Animal Welfare or the Department of Agriculture.

Section 6. Amend § 8502, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8502. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(5) "Criminal justice agency" shall mean:

b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police;~~;~~
2. All law-enforcement agencies and police departments of any political subdivision of this State;~~;~~
3. The State Department of Justice;~~;~~
4. The Office of the Solicitor of the City of Wilmington;~~;~~
5. The Delaware Criminal Justice Information System, Office of the Director;~~;~~
6. The Department of Correction;~~;~~
7. The Division of Youth Rehabilitative Services;~~;~~
8. The Division of Family Services;~~;~~
9. The Division of Alcohol and Tobacco Enforcement;~~;~~
10. The Federal Bureau of Investigation; ~~and~~
11. The Division of Professional Regulation.
12. The Office of Animal Welfare.

(10) "Law-enforcement officer" shall include police officers, special investigators pursuant to § 9016 of Title 29, the Attorney General and the Attorney General's deputies, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, animal welfare officers of the Office of Animal Welfare, and constables. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

Section 7. For 180 days following the effective date of this Act, the Department of Agriculture may authorize the Office of Animal Welfare to enforce animal cruelty laws in the State of Delaware in cases of domestic agricultural animals specified in § 101(8) of Title 3.

Approved February 03, 2016