

SENATE BILL 271

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Carrie Hamblen

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LIVESTOCK; DEFINING "EQUINE" AND SUBSTITUTING THAT TERM FOR "HORSE"; REVISING PROCEDURES FOR EQUINE ESTRAYS; AMENDING THE LIVESTOCK CODE AND OTHER SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2-30.7 NMSA 1978 (being Laws 2013, Chapter 49, Section 2) is amended to read:

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"7-2-30.7. OPTIONAL DESIGNATION OF TAX REFUND

CONTRIBUTION--~~[HORSE]~~ EQUINE SHELTER RESCUE FUND.--

A. Any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the ~~[horse]~~ equine shelter rescue fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"~~[Horse]~~ Equine Shelter Rescue Fund - Check [] if you wish to contribute a part or all of your tax refund to the ~~[horse]~~ equine shelter rescue fund. Enter here \$ _____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act, and any designation made under the provisions of this section to such refunds is void."

SECTION 2. Section 30-18-1.2 NMSA 1978 (being Laws 1999, Chapter 107, Section 3, as amended) is amended to read:

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"30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the New Mexico livestock board, animal control agency,

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animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the New Mexico livestock board, animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section 77-18-2 NMSA 1978.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.

H. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a

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farm or ranch and exotic animals in captivity and includes
[horses, asses, mules] equines as defined in Section 77-2-1.1
NMSA 1978, cattle, sheep, goats, swine, bison, poultry,
ostriches, emus, rheas, camelids and farmed cervidae but does
not include canine or feline animals."

SECTION 3. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
Chapter 248, Section 2, as amended) is amended to read:

"77-2-1.1. DEFINITIONS.--As used in The Livestock Code:

A. "animals" or "livestock" means all domestic or
domesticated animals that are used or raised on a farm or
ranch, including the carcasses thereof, and exotic animals in
captivity and includes [horses, asses, mules] equines, cattle,
sheep, goats, swine, bison, poultry, ostriches, emus, rheas,
camelids and farmed cervidae upon any land in New Mexico.

"Animals" or "livestock" does not include canine or feline
animals;

B. "bill of sale" means an instrument in
substantially the form specified in The Livestock Code by which
the owner or the owner's authorized agent transfers to the
buyer the title to animals described in the bill of sale;

C. "bison" or "buffalo" means a bovine animal of
the species bison;

D. "board" means the New Mexico livestock board;

E. "bond" means cash or an insurance agreement from
a New Mexico licensed surety or insurance corporation pledging

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surety for financial loss caused to another, including certificate of deposit, letter of credit or other surety as may be approved by the grain inspection, packers and stockyards administration of the United States department of agriculture or the board;

F. "brand" means a symbol or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other livestock;

G. "brand inspector" means an inspector who is not certified as a peace officer;

H. "carcasses" means dead or dressed bodies of livestock or parts thereof;

I. "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock;

J. "dairy cattle" means animals of the genus bos raised not for consumption but for dairy products and distinguished from meat breed cattle;

K. "director" means the executive director of the board;

L. "disease" means a communicable, infectious or contagious disease;

M. "district" means a livestock inspection district;

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N. "equine" means a horse, pony, mule, donkey or hinny;

[N-] O. "estray" means livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

[O-] P. "inspector" means a livestock or brand inspector;

[P-] Q. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code and other criminal laws relating to livestock;

[Q-] R. "mark" means an ear tag or ownership mark that is not a brand;

[R-] S. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;

[S-] T. "mule" means a hybrid resulting from the cross of a horse and an ass; and

[T-] U. "person" means an individual, firm, partnership, association, corporation or similar legal entity."

SECTION 4. Section 77-2-30 NMSA 1978 (being Laws 2005, Chapter 236, Section 1) is amended to read:

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"77-2-30. [~~HORSE~~] EQUINE RESCUE OR RETIREMENT FACILITY--
REGISTRATION--BOARD POWERS AND DUTIES--FEES.--

A. As used in this section, "facility" means [~~a horse~~] an equine rescue or retirement facility, including a private reserve or private preserve, that advertises [~~of~~] or solicits for [~~horses~~] equines and provides lifelong care or finds new owners for [~~horses~~] equines that are unwanted or have been neglected or abused or captured wild [~~horses~~] equines that cannot be returned to their range.

B. A facility shall not operate in New Mexico unless registered by the board.

C. The board shall:

- (1) register facilities that meet the requirements of this section;
- (2) annually consult with representatives from the equine industry, equine rescue organizations and veterinarians on facility standards; and

(3) after consideration of recommendations by national organizations for the care of unwanted [~~horses~~] equines and equine rescue and retirement facilities, promulgate rules for facilities, including:

- (a) health and sanitary requirements;
- (b) standards for barns, paddocks, pastures and ranges;
- (c) qualifications of the facility

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staff;

- (d) provision of veterinary care;
- (e) feeding and watering requirements;
- (f) transportation; ~~and~~
- (g) a process to issue a temporary

capacity waiver to a facility for the purpose of transferring equines in the custody of the board to a facility; and

~~(g)~~ (h) other requirements necessary to ensure the humane care of ~~[horses]~~ equines.

D. The board may charge the following fees:

- (1) an initial inspection and registration fee of not more than two hundred fifty dollars (\$250);
- (2) an annual inspection and registration fee of not more than one hundred dollars (\$100); and
- (3) reinspection fees of not more than one hundred dollars (\$100).

E. Fees collected pursuant to this section shall be deposited in the New Mexico livestock board general fund and may be used to carry out the provisions of ~~[Sections 1 and 2 of this act]~~ this section and Section 77-2-31 NMSA 1978."

SECTION 5. Section 77-2-31 NMSA 1978 (being Laws 2005, Chapter 236, Section 2) is amended to read:

"77-2-31. ~~[HORSE]~~ EQUINE RESCUE OR RETIREMENT FACILITIES--INSPECTIONS--REINSPECTION.--

A. Prior to annual registration, each facility

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shall be inspected in accordance with board rules.

B. The board or its agents may enter the premises of a facility to conduct unannounced inspections.

C. If, following an inspection, the board determines that the facility does not meet the board's minimum facility requirements, it shall give the registrant written notice of the deficiencies and schedule a reinspection, allowing a reasonable time for the registrant to correct the deficiencies.

D. The registrant shall remedy the deficiencies and submit evidence to the board demonstrating compliance with board rules for the facility.

E. If on reinspection the board determines that the facility is still deficient in those areas for which it has been given written notice, the [~~horses~~] equines may be impounded in accordance with the provisions of Section 77-18-2 NMSA 1978 and the board shall hold a hearing as provided in the Uniform Licensing Act to determine if the registration should be suspended or revoked.

F. If a facility's registration is suspended or revoked, the board shall place the [~~horses~~] equines in another facility."

SECTION 6. Section 77-2-32 NMSA 1978 (being Laws 2013, Chapter 49, Section 1) is amended to read:

"77-2-32. [~~HORSE~~] EQUINE SHELTER RESCUE FUND--CREATED.--

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A. The "~~[horse]~~ equine shelter rescue fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section ~~[2 of this 2013 act]~~ 7-2-30.7 NMSA 1978. The board shall administer the fund, and money in the fund is appropriated to the board to carry out the intent of aiding ~~[horse]~~ equine rescues and homeless ~~[horses]~~ equines in the state.

B. The board shall establish by rule the distribution of funds from the ~~[horse]~~ equine shelter rescue fund to ~~[horse]~~ equine rescue and retirement facilities registered by the board pursuant to Section 77-2-30 NMSA 1978, taking into consideration the number of ~~[horses]~~ equines being cared for in each facility and the need of each facility."

SECTION 7. Section 77-13-4 NMSA 1978 (being Laws 1907, Chapter 80, Section 4, as amended) is amended to read:

"77-13-4. OWNER UNKNOWN--PUBLICATION AND POSTING OF NOTICE.--

A. If the director ~~[of the New Mexico livestock board]~~ is unable to determine from the records and description who is the owner or probable owner of ~~[such]~~ an estray, ~~[or estrays, he]~~ the director shall publish at least once in some publication in general circulation in the county in which the estray animal was picked up, ~~[said]~~ the publication to be designated by the ~~[New Mexico livestock]~~ board, a notice of

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[~~such~~] the estray [~~which~~].

B. For an estray that is not an equine, the notice shall give a description of the animal [~~or animals~~], shall state when and where [~~the same were~~] the animal was impounded and shall give notice that unless the animal [~~or animals are~~] is claimed by the legal owner within five days after the publication of the notice, the [~~same~~] animal shall be sold by the [~~New Mexico livestock~~] board for the benefit of the owner when found.

C. For an estray that is an equine, the notice shall give a description of the equine and shall:

(1) state when and where the equine was impounded and shall give notice that, unless the equine is claimed by the legal owner within five days after publication of the notice, a registered equine rescue or retirement facility shall be given the right of first refusal to purchase the equine for an ownership transfer fee equal to all actual costs incurred by the impounding agency in caring for the equine while the equine was impounded; and

(2) give notice that if a registered equine rescue or retirement facility is unable or unwilling to purchase the equine, the board shall auction the equine through a sealed-bid process administered by the board and established in rule and that if the equine is not purchased through the sealed-bid process, the board may pursue an alternative

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placement for care with a last resort option to humanely euthanize the equine by a licensed veterinarian."

SECTION 8. Section 77-13-5 NMSA 1978 (being Laws 1907, Chapter 80, Section 5, as amended) is amended to read:

"77-13-5. [~~SALE~~] DISPOSITION OF UNCLAIMED ESTRAYS--BILL OF SALE--EFFECT--SALE WITHOUT ADVERTISEMENT--CONDITIONS.--

A. If an estray that is not an equine is not claimed within five days after SJC→~~the last~~←SJC publication of notice, it may be sold by the board through an inspector in such manner as the board may direct. The inspector making the sale shall give a bill of sale to the purchaser from the board, signed by [~~himself as~~] the inspector. The bill of sale shall be legal evidence of the ownership of the livestock by the purchaser and shall be a legal title to the livestock. Where the director determines that it is impractical to publish notice, the estray may be sold immediately without notice. In such case, the board shall publish notice of the proceeds from the sale of the estray in the same manner and for the same length of time as provided for the notice of the sale and shall hold and distribute the proceeds from the sale in the same manner as if the sale were made after notice.

B. If the estray is an equine and the equine is not claimed within five days after SJC→~~the last~~←SJC publication of notice:

(1) the board shall give a registered equine

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rescue or retirement facility the right of first refusal to purchase the equine for an ownership transfer fee;

(2) the ownership transfer fee shall be equal to all actual costs incurred by the impounding agency in caring for the equine while the equine was impounded;

(3) the board shall provide a bill of sale to the registered equine rescue or retirement facility that purchases the equine;

(4) the bill of sale shall be legal evidence of the ownership of the equine by the registered equine rescue or retirement facility and shall be legal title to the equine;

(5) if a registered equine rescue or retirement facility is unable or unwilling to purchase the equine, the board shall auction the equine through a sealed-bid process administered by the board and established in rule; and

(6) if the equine is not purchased through the sealed-bid process, the board may pursue an alternative placement for care with a last resort option to humanely euthanize the equine by a licensed veterinarian."

SECTION 9. Section 77-14-7 NMSA 1978 (being Laws 1909, Chapter 146, Section 4, as amended) is amended to read:

"77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--IMPOUNDING--~~[SALE]~~ DISPOSITION--SUIT FOR DAMAGES.--

A. It is unlawful for the owners of livestock to willfully allow the livestock to run at large within the town,

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conservancy district, irrigation district or military reservation or enclave. An owner who willfully allows livestock to run at large is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

B. For livestock that is not an equine, the sheriff or other peace officer or proper military authority or the board shall impound livestock found running at large and sell the livestock at public auction to the highest bidder for cash after giving notice of the time and place of sale in some newspaper published in the county where the violation occurred three days prior to the day of sale; provided that in the case of a military reservation or enclave, the sale shall be conducted by the board pursuant to the procedure set forth in Section 77-14-36 NMSA 1978. The proceeds up to ten dollars (\$10.00) per day for each animal shall be retained by the impounding authority to cover its expense and fees. The balance, if any, shall be paid to the general fund.

C. For livestock that is an equine, the sheriff, other peace officer, proper military authority or the board shall impound the equine running at large and give notice in some newspaper published in the county where the violation occurred SJC→of←SJC SJC→three days prior to the day of disposition. The notice shall include←SJC a description of the equine and state when and where the equine was impounded and

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that:

(1) unless the equine is redeemed by the legal owner within three days after publication of the notice, a registered equine rescue or retirement facility shall be given the right of first refusal to purchase the equine for an ownership transfer fee equal to all actual costs incurred by the impounding agency in caring for the equine while the equine was impounded;

(2) if a registered equine rescue or retirement facility is unable or unwilling to purchase the equine, the board shall auction the equine through a sealed-bid process administered by the board and established in rule;

(3) if the equine is not purchased through the sealed-bid process, the board may pursue an alternative placement for care with a last resort option to humanely euthanize the equine by a licensed veterinarian; and

(4) any proceeds from the sale of an equine pursuant to this subsection shall be retained by the impounding authority to cover its expenses and costs, and the balance, if any, shall be paid to the general fund.

~~[G.]~~ D. The owner of livestock impounded may redeem the livestock at any time prior to ~~[sale]~~ disposition by paying the impound fees and costs incurred for each day or portion of a day that the livestock has been in custody; provided that in the case of a military reservation or enclave, redemption shall

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be allowed pursuant to Section 77-14-36 NMSA 1978.

~~[D-]~~ E. A person claiming damages for violation of the ~~[order]~~ provisions of Subsection A of this section may file suit to recover damages as in other civil cases; provided that such damages, in the case of a violation involving a military reservation or enclave, shall include direct, indirect, incidental and consequential damages."

SECTION 10. Section 77-14-36 NMSA 1978 (being Laws 1975, Chapter 329, Section 1, as amended) is amended to read:

"77-14-36. IMPOUNDMENT OF TRESPASS LIVESTOCK.--

A. Any livestock found to be in trespass upon the lands of another or running at large upon any public highway ~~[which]~~ that is fenced on both sides or running at large within the limits of any municipality, town or village, whether incorporated or not, or within a military reservation or enclave ~~[whether incorporated or not]~~ is subject to impoundment by an agent of the ~~[New Mexico livestock]~~ board. The place of impoundment shall be at the nearest or most convenient location from where the trespass occurred.

B. Any livestock impounded under the provisions of this section ~~[will]~~ shall be released to the owner or ~~[his]~~ the owner's representative upon the payment by the owner of a fee set by regulation of the ~~[New Mexico livestock]~~ board not to exceed amounts prescribed by law for impounding ~~[if any incurred]~~.

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C. The [~~New Mexico livestock~~] board shall designate [~~the person~~] a custodian and a place of impoundment and allow a reasonable fee to be charged by the custodian of the impounded livestock; provided that in case of a controversy as to what constitutes a reasonable charge, the board shall set the amount of the charge.

D. This section shall not be construed to affect the obligation of a property owner of meeting the requirements of Section 77-16-1 NMSA 1978 for fencing against such trespasses.

E. Any cost charged against trespass livestock will be a lien on the livestock. If the owner does not pay the charges and reclaim possession of the livestock within five days after receipt of notification by the owner, the livestock shall be considered unclaimed estrays and may be [~~sold~~] disposed of in accordance with the provisions of Section 77-13-5 NMSA 1978."

SECTION 11. Section 77-18-2 NMSA 1978 (being Laws 1987, Chapter 151, Section 1, as amended) is amended to read:

"77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED LIVESTOCK.--

A. If a livestock inspector or other peace officer has reason to believe that livestock [~~is~~] are being cruelly treated, the inspector or peace officer may apply to a court in the county where the livestock [~~is~~] are located for a warrant

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to seize the allegedly cruelly treated livestock.

B. On a showing of probable cause to believe that the livestock [~~is~~] are being cruelly treated, the court shall issue a warrant for the seizure of the livestock and set the matter for hearing as expeditiously as possible within thirty days unless good cause for a later time is demonstrated by the state. Seizure as authorized by this section shall be restricted to only those livestock allegedly being cruelly treated. The board by rule shall establish procedures for preserving evidence of alleged cruel treatment of livestock.

C. If criminal charges are filed against the owner, the court shall, upon proper petition, proceed to determine if security is required to be posted pursuant to Section 30-18-1.2 NMSA 1978. Otherwise, the judge or magistrate executing the warrant shall notify the board, have the livestock impounded and give written notice to the owner of the livestock of the time and place of a hearing to determine disposition of the livestock. All interested parties, including the district attorney, shall be given an opportunity to present evidence at the hearing.

D. [~~All interested parties, including the district attorney, shall be given an opportunity to present evidence at the hearing, and~~] For livestock that is not an equine:

(1) if the court finds that the owner has cruelly treated the livestock, the court shall order the sale

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of the livestock at fair market value or order humane destruction; provided that if the livestock [~~is~~] are ordered sold, the sale shall occur within ten days of the order; and further provided that if the court does not find that the owner has cruelly treated the livestock, the court shall order the livestock returned to the owner;

[~~E.~~] (2) if the court orders the sale of the livestock, the board shall take proper action to ensure that the livestock [~~is~~] are sold at fair market value, including acceptance of reasonable bids or sale at auction; provided that a bid by the owner of the livestock or the owner's representative shall not be accepted; and

[~~F.~~] (3) proceeds from the sale of the livestock shall be forwarded to the court ordering the sale; provided that from these proceeds, the court shall pay all expenses incurred in caring for the livestock while [~~it was~~] they were impounded and any expenses involved in [~~its~~] their sale; and further provided that any excess proceeds of the sale shall be forwarded to the former owner; and further provided that if the expenses incurred in caring for and selling the livestock exceed the amount received from the sale, the court shall order the former owner to pay the additional cost.

E. For livestock that is an equine:

(1) if the court finds that the owner has cruelly treated the equine, the court shall give a registered

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equine rescue or retirement facility the right of first refusal to purchase the equine for an ownership transfer fee equal to all actual costs incurred by the impounding agency in caring for the equine while the equine was impounded; provided that:

(a) the board shall provide a bill of sale to the registered equine rescue or retirement facility that purchases the equine; and

(b) the bill of sale shall be legal evidence of the ownership of the equine by the registered equine rescue or retirement facility and shall be legal title to the equine;

(2) if the court finds that the owner has cruelly treated the equine and a registered equine rescue or retirement facility has been given the right of first refusal but the registered equine rescue or retirement facility is unable or unwilling to purchase the equine:

(a) the board shall auction the equine through a sealed-bid process administered by the board and established by rule;

(b) any proceeds from the sale less expenses incurred in caring for the equine while the equine was impounded shall be forwarded to the former owner;

(c) if the expenses incurred in caring for the equine exceed the proceeds from the sale, the court shall order the former owner to pay the additional costs; and

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(d) if the equine is not purchased through the sealed-bid process, the board may pursue an alternative placement for care with a last resort option to humanely euthanize the equine by a licensed veterinarian; and

(3) if the court does not find that the owner cruelly treated the equine, the court shall order the equine returned to the owner."

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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