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AN ACT  
RELATING TO ANIMALS; CLARIFYING PROVISIONS OF CRIMINAL LAW  
REGARDING TAKING CRUELLY TREATED ANIMALS INTO CUSTODY;  
AMENDING THE LIVESTOCK CODE REGARDING CRUELLY TREATED  
ANIMALS; PROVIDING FOR SECURITY IN AMOUNTS NEEDED FOR THE  
CARE OF ANIMALS SEIZED IN COMMISSION OF CRUELTY TO ANIMALS  
CASES.

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

Section 1. Section 30-18-1.2 NMSA 1978 (being Laws  
1999, Chapter 107, Section 3) is amended to read:

"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

1 been cruelly treated has been placed may petition the court  
2 to request that the animal's owner may be ordered to post  
3 security with the court to indemnify the costs incurred to  
4 care and provide for the seized animal pending the  
5 disposition of any criminal charges of committing cruelty to  
6 animals pending against the animal's owner.

7 D. The court shall determine the amount of  
8 security while taking into consideration all of the  
9 circumstances of the case including the owner's ability to  
10 pay, and may conduct periodic reviews of its order. If the  
11 posting of security is ordered, the animal control agency,  
12 animal shelter or animal welfare organization may, with  
13 permission of the court, draw from the security to indemnify  
14 the costs incurred to care and provide for the seized animal  
15 pending disposition of the criminal charges.

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

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

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

10 H. As used in this section, "livestock" means all  
11 domestic or domesticated animals that are used or raised on a  
12 farm or ranch and exotic animals in captivity and includes  
13 horses, asses, mules, cattle, sheep, goats, swine, bison,  
14 poultry, ostriches, emus, rheas, camelids and farmed cervidae  
15 but does not include canine or feline animals."

16 Section 2. Section 30-18-1.3 NMSA 1978 (being Laws  
17 1999, Chapter 107, Section 4) is amended to read:

18 "30-18-1.3. COSTS.--

19 A. Upon conviction, a defendant shall be liable  
20 for the reasonable cost of boarding the animal and all  
21 necessary veterinary examinations and care provided to the  
22 animal. The amount of these costs shall be offset by the  
23 security posted pursuant to Section 30-18-1.2 NMSA 1978.  
24 Unexpended security funds shall be returned to the defendant.

25 B. In the absence of a conviction, the seizing

1 agency shall bear the costs of boarding the animal and all  
2 necessary veterinary examinations and care of the animal  
3 during the pendency of the proceedings, return the animal, if  
4 not previously relinquished, and all of the security posted  
5 pursuant to Section 30-18-1.2 NMSA 1978."

6 Section 3. Section 77-18-2 NMSA 1978 (being Laws 1987,  
7 Chapter 151, Section 1, as amended) is amended to read:

8 "77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED  
9 LIVESTOCK.--

10 A. If a livestock inspector or other peace officer  
11 has reason to believe that livestock is being cruelly  
12 treated, the inspector or peace officer may apply to a court  
13 in the county where the livestock is located for a warrant to  
14 seize the allegedly cruelly treated livestock.

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

24 C. If criminal charges are filed against the  
25 owner, the court shall, upon proper petition, proceed to

1 determine if security is required to be posted pursuant to  
2 Section 30-18-1.2 NMSA 1978. Otherwise, the judge or  
3 magistrate executing the warrant shall notify the board, have  
4 the livestock impounded and give written notice to the owner  
5 of the livestock of the time and place of a hearing to  
6 determine disposition of the livestock.

7 D. All interested parties, including the district  
8 attorney, shall be given an opportunity to present evidence  
9 at the hearing, and if the court finds that the owner has  
10 cruelly treated the livestock, the court shall order the sale  
11 of the livestock at fair market value or order humane  
12 destruction. If the livestock is ordered sold, the sale  
13 shall occur within ten days of the order. If the court does  
14 not find that the owner has cruelly treated the livestock,  
15 the court shall order the livestock returned to the owner.

16 E. If the court orders the sale of the livestock,  
17 the board shall take proper action to ensure the livestock is  
18 sold at fair market value, including acceptance of reasonable  
19 bids or sale at auction. A bid by the owner of the livestock  
20 or the owner's representative shall not be accepted.

21 F. Proceeds from the sale of the livestock shall  
22 be forwarded to the court ordering the sale. From these  
23 proceeds, the court shall pay all expenses incurred in caring  
24 for the livestock while it was impounded and any expenses  
25 involved in its sale. Any excess proceeds of the sale shall

1 be forwarded to the former owner. If the expenses incurred  
2 in caring for and selling the livestock exceed the amount  
3 received from the sale, the court shall order the former  
4 owner to pay the additional cost."

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