

**ACT 78**

H.B. NO. 1516

A Bill for an Act Relating to Animal Forfeiture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the final disposition of rescued animals can be delayed while preparing for a criminal case, especially when large numbers of animals are involved. This delay can impose extraordinary costs and strains upon the incorporated humane society or incorporated society that is tasked with the care of the animals; postpone the full recovery of the animals that are being held unnecessarily; and prevent the adoption of the rescued animals.

The purpose of this Act is to clarify that an incorporated humane society or incorporated society for the prevention of cruelty to animals may petition the court for the forfeiture of an impounded animal prior to the filing or disposition of criminal charges against the owner of the animal that arise from circumstances supporting the impoundment.

SECTION 2. Section 711-1109.2, Hawaii Revised Statutes, is amended to read as follows:

**“§711-1109.2 Forfeiture of animal prior to filing of or final disposition of criminal charges.** (1) If any pet animal or equine animal is impounded pursuant to section 711-1109.1, prior to filing of, or final disposition of a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable, against the pet animal’s or equine animal’s owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal or equine animal may file a petition in the court that would have jurisdiction over the criminal case when the criminal charge is filed, if the petition is filed prior to the filing of the criminal charge, or in the criminal action requesting that the court issue an order for forfeiture of the pet animal or equine animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to the filing of the criminal charge that arises from the impoundment or final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, and the prosecuting attorney.

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal or equine animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal or equine animal to the petitioner, unless the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal or equine animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal or equine animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal or equine animal may be destroyed by a petitioner under this section prior to final disposition of a criminal charge under section

711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, except in the event that the pet animal or equine animal is a danger to itself or others, or so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal or equine animal under this section shall not be subject to the provisions of chapter 712A.

(7) In addition to any reasonable costs incurred under subsection (4) by the petitioner in the caring for the pet animal or equine animal, the court may award reasonable attorney's fees and court costs to the petitioner following the conviction of the defendant.

(8) As used in this section, "pet animal or equine animal" includes any offspring from the pet animal or equine animal that was pregnant at the time of the rescue and born during the impoundment of the pet animal or equine animal.

(9) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 3, 2017.)