



2015 SENATE BILL 450

December 11, 2015 - Introduced by Senator PETROWSKI, cosponsored by Representatives SPIROS, BOWEN, ROHRKASTE, GANNON, JAGLER, MILROY, A. OTT, SUBECK, KLEEFISCH, SINICKI, JOHNSON, ALLEN, GOYKE, OHNSTAD, R. BROOKS, BERNIER, WEATHERSTON, C. TAYLOR, ZAMARRIPA and BROSTOFF. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 173.12 (1m), 173.12 (2), 173.12 (3), 173.13 (1) (a) 7., 173.21 (1)
2 (c), 173.22 (3) (a) 1. and 173.22 (3) (a) 3.; *to renumber* 173.12 (1); *to renumber*
3 *and amend* 173.19; *to amend* 173.12 (title), 173.13 (1) (a) 8., 173.13 (3) (title),
4 173.13 (3) (a), 173.13 (3) (b), 173.21 (1) (a), 173.21 (4), 173.22 (1), 173.22 (3) (a)
5 (intro.), 173.23 (1m) (intro.), 173.23 (2), 173.23 (3) (a) (intro.), 173.23 (3) (a) 3.,
6 173.23 (3) (e), 951.18 (4) (b) 2. and 968.20 (1) (intro.); and *to create* 173.19 (3)
7 and 173.22 (4) of the statutes; **relating to:** animals believed to have been
8 involved in crimes against animals, when a stray or abandoned animal may be
9 considered unclaimed, and a court order relating to an animal taken into or held
10 in custody.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the treatment of animals that are believed to have been used in crimes against animals.

Under current law, a humane officer or law enforcement officer, on behalf of a city, village, town, or county (local governmental unit), may take custody of an animal if the officer believes the animal meets certain conditions, including if the animal has

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been a participant in an animal fight intentionally instigated by any person or has been criminally mistreated. This bill allows such an officer to take custody of an animal if the officer believes the animal has been involved in any of a number of crimes related to the treatment of animals (crimes against animals).

Under current law, a local governmental unit may withhold, or direct a person contracting with it to withhold, an animal in custody from an owner who makes an otherwise adequate claim for the animal on certain grounds, including if there are reasonable grounds to believe that the owner has criminally mistreated the animal. Under this bill, an animal may be withheld from an owner if there are reasonable grounds to believe that the owner has used the animal in any crime against animals.

Under current law, if the owner of an animal that is being held in custody (by a local governmental unit or other person, such as a humane society, on behalf of a local governmental unit) is convicted of a crime related to animal fighting and the animal is one year old or older or shows indication of having participated in fighting, the animal must be euthanized.

Also under current law, an animal that is taken into custody for certain reasons may be considered an unclaimed animal, including if the animal is abandoned or a stray, if it is an untagged dog, if it is not licensed, or if its owner fails to pick it up from a veterinarian. If an animal is considered unclaimed, the person with custody of the animal has a number of options regarding treatment of the animal. These options include releasing the animal to a person other than the owner under certain circumstances, selling an animal other than a dog or cat at public auction, euthanizing the animal, or, if the animal is a stray, releasing the animal for scientific or educational purposes.

Under this bill, if an animal of any age is being held in custody and the owner of the animal is convicted of a crime against an animal, the animal must be treated as an unclaimed animal.

Under current law, if an animal has been taken into custody because it is believed that the animal has been used in, or is evidence of, a crime related to animal fighting, it must be retained in custody. If the owner claims the right of possession of the animal, a court must determine whether the animal is needed as evidence or there is reason to believe that the animal has been used in fighting. If so, the animal must be retained in custody.

Under this bill, if an animal has been taken into custody because it is believed that the animal has been used in any crime against animals or that it constitutes evidence of a crime against animals, it must be retained in custody. The bill provides the animal's owner an opportunity to file an application with the court for the return of seized property within 30 days after the animal is seized, and the owner is barred from filing such an application after this period. If the owner files a timely application, the bill requires the court to hold a hearing within 20 days of receiving the application. At the hearing, if the court determines that there is reason to believe that the animal was used in any crime against animals or that the animal constitutes evidence of a crime against animals, the bill requires the court to order the animal to be retained in custody. If the court determines that the animal is not needed as evidence and that there is no reason to believe that the animal was used in a crime

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against animals, the bill requires the court to order the animal to be returned to the owner.

The bill also allows the local governmental unit or other person with custody of an animal believed to have been used in, or constitutes evidence of, a crime against animals to demand payment from the animal's owner for the custody, care, and treatment of the animal no more frequently than every 14 days. If the payment demanded is not received within 30 days of mailing the demand, the bill requires the animal to be treated as an unclaimed animal. The bill allows an owner to challenge the reasonableness of the amount of payment demanded.

Under current law, generally, a local governmental unit or person contracting with it may treat an animal as an unclaimed animal if it is taken into custody because it is abandoned or a stray, it is an untagged dog, it is not licensed in compliance with any ordinance, or it is delivered by a veterinarian after the owner failed to pick it up and if, within seven days after the animal is seized, it is not claimed by and returned to its owner. Under this bill, the period after which a stray or abandoned animal may be treated as unclaimed is reduced to four days.

Under current law, a local governmental unit may petition the court for an order regarding an animal in custody, including an order requiring payment or the posting of a bond for the costs of custody, care, and treatment pending the outcome of a proceeding or an order authorizing the sale, destruction, or other disposal of the animal. This bill allows a person other than a local governmental unit that has custody of an animal, such as a humane society, to petition the court for such an order.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 173.12 (title) of the statutes is amended to read:
- 2 **173.12 (title) Animal fighting; seizure.**
- 3 **SECTION 2.** 173.12 (1) of the statutes is renumbered 173.12.
- 4 **SECTION 3.** 173.12 (1m) of the statutes is repealed.
- 5 **SECTION 4.** 173.12 (2) of the statutes is repealed.
- 6 **SECTION 5.** 173.12 (3) of the statutes is repealed.
- 7 **SECTION 6.** 173.13 (1) (a) 7. of the statutes is repealed.
- 8 **SECTION 7.** 173.13 (1) (a) 8. of the statutes is amended to read:

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1 173.13 (1) (a) 8. An animal ~~mistreated in violation of~~ used in any crime under
2 ch. 951 or that constitutes evidence of a crime under ch. 951.

3 **SECTION 8.** 173.13 (3) (title) of the statutes is amended to read:

4 173.13 (3) (title) NOTIFICATION OF OWNER.

5 **SECTION 9.** 173.13 (3) (a) of the statutes is amended to read:

6 173.13 (3) (a) If a humane officer or law enforcement officer takes custody of
7 an animal with the knowledge of the owner, the humane officer or law enforcement
8 officer shall explain the procedure by which the owner can recover the animal,
9 including the procedure under s. 173.22, and the procedure to be followed if the
10 animal is not returned to the owner. If the humane officer or law enforcement officer
11 takes custody of the animal under sub. (1) (a) 8., the humane officer or law
12 enforcement officer shall explain the provisions of s. 173.22 (4) to the owner.

13 **SECTION 10.** 173.13 (3) (b) of the statutes is amended to read:

14 173.13 (3) (b) If a humane officer or law enforcement officer takes custody of
15 an animal without the knowledge of the owner, the humane officer or law
16 enforcement officer shall promptly notify the owner in writing if he or she can be
17 identified and located with reasonable effort. The notice shall explain the procedure
18 by which the owner can recover the animal, including the procedure under s. 173.22,
19 and the procedure to be followed if the animal is not returned to the owner. The notice
20 shall also inform the owner that the owner must notify any person with a lien on the
21 animal that the animal has been taken into custody. If the humane officer or law
22 enforcement officer takes custody of the animal under sub. (1) (a) 8., the notice shall
23 explain the provisions of s. 173.22 (4).

24 **SECTION 11.** 173.19 of the statutes is renumbered 173.19 (1) and amended to
25 read:

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1 173.19 (1) A political subdivision or person contracting under s. 173.15 (1) may
2 treat any animal taken into custody under s. 173.13 (1) (a) 1., as an unclaimed animal
3 subject to s. 173.23 (1m) if, within 4 days after custody is taken of the animal, it is
4 not claimed by and returned to its owner under s. 173.23 (1).

5 (2) Except as provided in sub. (3), a political subdivision or person contracting
6 under s. 173.15 (1) may treat any animal taken into custody under s. 173.13 (1) (a)
7 3., 4., or 9. as an unclaimed animal subject to s. 173.23 (1m) if, within 7 days after
8 custody is taken of the animal, it is not claimed by and returned to its owner under
9 s. 173.23 (1), except that an animal taken into custody under s. 173.13 (1) (a) 3. or
10 4. may not be treated as unclaimed if its owner files a petition under s. 173.22 (1)
11 within 7 days after custody is taken.

12 **SECTION 12.** 173.19 (3) of the statutes is created to read:

13 173.19 (3) If an animal is taken into custody under s. 173.13 (1) (a) 3., 4., or 9.
14 and also taken into custody under s. 173.13 (1) (a) 1., only sub. (1) applies to that
15 animal.

16 **SECTION 13.** 173.21 (1) (a) of the statutes is amended to read:

17 173.21 (1) (a) There are reasonable grounds to believe that the owner has
18 ~~mistreated the animal in violation of~~ used the animal in a crime under ch. 951 or that
19 the animal constitutes evidence of a crime under ch. 951.

20 **SECTION 14.** 173.21 (1) (c) of the statutes is repealed.

21 **SECTION 15.** 173.21 (4) of the statutes is amended to read:

22 173.21 (4) RETURN. ~~A~~ Except with respect to an animal taken into custody
23 under s. 173.13 (1) (a) 8., a political subdivision or person contracting under s. 173.15
24 (1) having custody of an animal withheld under sub. (1) shall release the animal to

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1 the owner at the direction of the humane officer or law enforcement officer that took
2 custody of the animal if the requirements of s. 173.23 (1) (a) to (c) are satisfied.

3 **SECTION 16.** 173.22 (1) of the statutes is amended to read:

4 173.22 (1) PETITION. A person claiming that an animal that he or she owns was
5 improperly taken into custody under s. 173.13 (1) (a) 3., 4., 5., or 6. ~~or~~ or is
6 wrongfully withheld under s. 173.21 (1) (b) or (d) may seek return of the animal by
7 petitioning for an order from the circuit court for the county in which the animal was
8 taken into custody or in which it is held.

9 **SECTION 17.** 173.22 (3) (a) (intro.) of the statutes is amended to read:

10 173.22 (3) (a) (intro.) If the animal ~~was taken into custody under s. 173.13 (1)~~
11 ~~(a) 8. or~~ is withheld under s. 173.21 (1) (b) or (d), the court shall order the animal
12 returned to the owner unless it determines that one of the following conditions is
13 satisfied:

14 **SECTION 18.** 173.22 (3) (a) 1. of the statutes is repealed.

15 **SECTION 19.** 173.22 (3) (a) 3. of the statutes is repealed.

16 **SECTION 20.** 173.22 (4) of the statutes is created to read:

17 173.22 (4) HOLDING AN ANIMAL INVOLVED IN A CRIME. (a) An owner of an animal
18 taken into custody under s. 173.13 (1) (a) 8. or withheld under s. 173.21 (1) (a) may
19 apply for the animal's return to the circuit court for the county in which the animal
20 was taken into custody. No application under this paragraph may be made more
21 than 30 days after the animal was seized. The court shall order such notice as it
22 considers adequate to be given the district attorney, the political subdivision or
23 person contracting under s. 173.15 (1) with custody of the animal, and all persons
24 who have or may have an interest in the animal. The court shall hold a hearing to

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1 hear all claims to the animal's ownership within 20 days after a timely application
2 is filed, and the hearing shall be given preference.

3 (b) In the hearing under par. (a), the court shall determine if the animal is
4 needed as evidence or if there is reason to believe that the animal was involved in any
5 crime under ch. 951. If the court determines that the animal is needed as evidence
6 or that there is reason to believe that the animal was involved in any crime under
7 ch. 951, the court shall order the animal to be retained in custody. If the court
8 determines that the animal is not needed as evidence and that there is not reason
9 to believe that the animal was involved in a crime under ch. 951, the court shall order
10 the animal returned to the owner.

11 (c) If the owner files a timely application under par. (a) and the court orders the
12 animal to be retained in custody under par. (b), no payment is due under par. (f) until
13 30 days after the court order. If the court orders an animal to be returned to its owner
14 under par. (b), no payment is due under par. (f).

15 (d) If an animal that was taken into custody under s. 173.13 (1) (a) 8. or is
16 withheld under s. 173.21 (1) (a) is in custody and its owner is charged with a crime
17 under ch. 951, one of the following applies:

18 1. If all of the charges are dismissed or the owner is found not guilty of all
19 charges, the political subdivision or person contracting under s. 173.15 (1) with
20 custody of the animal shall return the animal to the owner unless the owner is subject
21 to the restrictions under s. 951.08 (2m) or the animal has been treated as unclaimed
22 or is otherwise subject to a disposition under s. 173.23.

23 2. If the owner is convicted of a crime under ch. 951, the animal shall be treated
24 as unclaimed under s. 173.23 (1m), except that the charges under s. 173.23 (1m) (a)
25 4. do not apply if the court assesses the charges as expenses under s. 173.24.

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1 (e) If an animal that was taken into custody under s. 173.13 (1) (a) 8. or is
2 withheld under s. 173.21 (1) (a) is in custody and the district attorney or the
3 department of justice notifies the political subdivision or person contracting under
4 s. 173.15 (1) with custody of the animal that the animal's owner will not be charged
5 with a crime under ch. 951, the political subdivision or person contracting under s.
6 173.15 (1) with custody of the animal shall return the animal to its owner unless the
7 owner is subject to the restrictions under s. 951.08 (2m) or the animal has been
8 treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

9 (f) The owner of an animal taken into custody under s. 173.13 (1) (a) 8. or
10 withheld under s. 173.21 (1) (a) is personally liable to the political subdivision or
11 person contracting under s. 173.15 (1) with custody of the animal for the cost of the
12 custody, care, and treatment of the animal. The political subdivision or person
13 contracting under s. 173.15 (1) shall notify the owner in writing that he or she must
14 pay for the outstanding costs of custody, care, or treatment of the animal upon
15 demand. The political subdivision or person contracting under s. 173.15 (1) may
16 demand such payment no more frequently than every 14 days and shall do so by 1st
17 class mail to the owner's last-known address. If the amount demanded is received
18 within 30 days of the mailing of the demand, the political subdivision or person
19 contracting under s. 173.15 (1) shall keep the animal in custody. Except as provided
20 in par. (c), if the amount demanded is not received within 30 days of the mailing of
21 the demand, the political subdivision or person contracting under s. 173.15 (1) shall
22 treat the animal as unclaimed under s. 173.23 (1m). The owner of the animal may
23 challenge the reasonableness of the amount demanded under this paragraph by
24 filing a petition with the court within 20 days after the date the demand is mailed.

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1 The owner may not file a petition challenging the reasonableness of the amount
2 demanded more than 20 days after the date the demand is mailed.

3 **SECTION 21.** 173.23 (1m) (intro.) of the statutes is amended to read:

4 173.23 (1m) UNCLAIMED ANIMALS. (intro.) A political subdivision or a person
5 contracting under s. 173.15 (1) that has custody of an animal considered unclaimed
6 under sub. ~~(3) (a) 3., (5) (c), or (6)~~ or s. 173.13 (3) (c) ~~or, 173.19, or 173.22 (4) (e) or (f)~~
7 or an unwanted animal may do any of the following:

8 **SECTION 22.** 173.23 (2) of the statutes is amended to read:

9 173.23 (2) ANIMALS NOT RETURNED TO OWNER. If an animal in the custody of a
10 political subdivision, other than an animal to which sub. (1m) applies, is not returned
11 to the owner under sub. (1) or (5) (b) or ~~s. 173.12 (2), 173.21 (4) or 173.22~~ or disposed
12 of under sub. (4) or (5) (a) or s. ~~173.12 (3)~~ 173.22 (4) (e) 2., it shall be disposed of under
13 a court order under sub. (3) or s. 951.18 (4).

14 **SECTION 23.** 173.23 (3) (a) (intro.) of the statutes is amended to read:

15 173.23 (3) (a) (intro.) A political subdivision or person contracting under s.
16 173.15 (1) may petition the circuit court for an order doing any of the following with
17 respect to an animal taken into custody by a law enforcement officer or a humane
18 officer or withheld under s. 173.21 (1):

19 **SECTION 24.** 173.23 (3) (a) 3. of the statutes is amended to read:

20 173.23 (3) (a) 3. Authorizing the sale, destruction, treatment as unclaimed
21 under sub. (1m), or other disposal of the animal.

22 **SECTION 25.** 173.23 (3) (e) of the statutes is amended to read:

23 173.23 (3) (e) The court shall issue its order after hearing and may grant,
24 modify and grant, or deny the petitioned-for relief, after considering the interests of
25 the animal, the owner of the animal, the political subdivision, and the public. The

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1 court may not consider the impact of any payments made under s. 173.22 (4) (f) on
2 these interests.

3 **SECTION 26.** 951.18 (4) (b) 2. of the statutes is amended to read:

4 951.18 (4) (b) 2. If the court is sentencing a person covered under s. ~~173.12 (3)~~
5 (a) 173.22 (4) (e) 2. and an animal has been seized under s. ~~173.12~~ 173.13 (1) (a) 8.,
6 the court shall act in accordance with s. ~~173.12 (3)~~ 173.22 (4) (e) 2.

7 **SECTION 27.** 968.20 (1) (intro.) of the statutes is amended to read:

8 968.20 (1) (intro.) Any person claiming the right to possession of property
9 seized pursuant to a search warrant or seized without a search warrant, except for
10 an animal taken into custody under s. 173.13 (1) or withheld from its owner under
11 s. 173.21 (1) (a), may apply for its return to the circuit court for the county in which
12 the property was seized or where the search warrant was returned. The court shall
13 order such notice as it deems adequate to be given the district attorney and all
14 persons who have or may have an interest in the property and shall hold a hearing
15 to hear all claims to its true ownership. If the right to possession is proved to the
16 court's satisfaction, it shall order the property, other than contraband or property
17 covered under sub. (1m) or (1r) or s. ~~173.12,~~ 173.21 (4), or 968.205, returned if:

18 **SECTION 28. Initial applicability.**

19 (1) This act first applies to animals taken into custody on the effective date of
20 this subsection.

21 (END)