

1 Ordinance To Amend and Reenact the City Code of the City of Hampton, Virginia by
2 Amending Chapter 5 Entitled Animals - Article III, Dogs and Cats Generally, Section 5-42,
3 Dangerous dogs; penalties, and Article V, Animal Welfare, Section 5-87, Impoundment of
4 threatened, neglected, etc., animals; and Repealing and Reenacting Article V, Animal
5 Welfare, Section 5-88, Procedure after impoundment under Section 5-87, to conform with
6 Virginia Code

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8 **BE IT ORDAINED** by the City Council of the City of Hampton, Virginia that Sections 5-42 and 5-
9 87 of Chapter 5 of the City Code of the City of Hampton, Virginia be amended to read as follows
10 and that Section 5-88 of Chapter 5 of the City Code of Hampton, Virginia be repealed and
11 reenacted as follows:

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13 **Chapter 5 – ANIMALS**

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16 **Article III. – DOGS AND CATS GENERALLY**

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18 Sec. 5-42. - Dangerous dogs; penalties.

19 (a) As used in this section: "*Dangerous dog*" means

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21 *1. A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or*
22 *companion animal that is a dog or cat or killed a companion animal that is a dog or cat. ~~When a~~*
23 *dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not*
24 *be deemed a canine or canine crossbreed is not a dangerous dog if, upon investigation, a law-*
25 *enforcement officer or animal control officer finds that (i) if no serious physical injury, as*
26 *determined by a licensed veterinarian, has occurred to the dog or cat as a result of the attack or*
27 *bite; (ii) both animals are owned by the same person; or (iii) if such attack occurs occurred on the*
28 *property of the attacking or biting dog's owner or custodian; or (iv) for other good cause as*
29 *determined by the court.*

30 *2. A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person. A*
31 *canine or canine crossbreed is not a dangerous dog if, upon investigation, a law-enforcement*
32 *officer or animal control officer finds that the injury inflicted by the canine or canine crossbreed*
33 *upon a person consists solely of a single nip or bite resulting only in a scratch, abrasion, or other*
34 *minor injury.*

35 (b) No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury
36 on a another dog or cat while engaged with an owner or custodian as part of lawful hunting or
37 participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or
38 inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on
39 the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

40 (c) (b) Any law-enforcement officer or animal control officer who has reason to believe that a
41 canine or canine crossbreed within his jurisdiction is a dangerous dog shall may apply to a
42 magistrate serving the jurisdiction for the issuance of a summons requiring the owner or

43 custodian, if known, to appear before a general district court at a specified time. The summons
44 shall advise the owner of the nature of the proceeding and the matters at issue. If a law-
45 enforcement officer successfully makes an application for the issuance of a summons, he shall
46 contact a local animal control officer and inform him of the location of the dog and the relevant
47 facts pertaining to his belief that the dog is dangerous. The animal control officer shall confine
48 the animal until such time as evidence shall be heard and a verdict rendered. If the animal
49 control officer determines that the owner or custodian can confine the animal in a manner that
50 protects the public safety, he may permit the owner or custodian to confine the animal until such
51 time as evidence shall be heard and a verdict rendered. The court, through its contempt
52 powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If,
53 after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall
54 order the animal's owner to comply with the provisions of this section. The court upon finding
55 the animal to be a dangerous dog, may order the owner, custodian, or harbinger thereof to pay
56 restitution for actual damages to any person injured by the animal or whose companion animal
57 was injured or killed by the animal. The court, in its discretion, may also order the owner to pay
58 all reasonable expenses incurred in caring and providing for such dangerous dog from the time
59 the animal is taken into custody until such time as the animal is disposed of or returned to the
60 owner. The procedure for appeal and trial shall be the same as provided by law for
61 misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter
62 15 of Title 19.2 of the Code of Virginia. The burden of proof shall be beyond a reasonable
63 doubt.

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65 ~~(d)~~ (e) No canine or canine crossbreed shall be found to be a dangerous dog solely because it
66 is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed
67 prohibited.

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69 (e) No animal shall be found to be a dangerous dog if the threat, injury or damage was
70 sustained by a person who was (i) committing, at the time, a crime upon the premises occupied
71 by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the
72 premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or
73 physically abusing the animal, or can be shown to have repeatedly provoked, tormented,
74 abused, or assaulted the animal at other times. No police dog that was engaged in the
75 performance of its duties as such at the time of the acts complained of shall be found to be a
76 dangerous dog. No animal that, at the time of the acts complained of, was responding to pain or
77 injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's
78 property, shall be found to be a dangerous dog.

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80 ~~(f)~~ (d) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or
81 legal guardian shall be responsible for complying with all requirements of this section.

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83 (g) (e) The owner of any animal found to be a dangerous dog shall, within-45 30 days of such
84 finding, obtain a dangerous dog registration certificate from the local animal control officer for a
85 fee of \$150, in addition to other fees that may be authorized by law. The local animal control
86 officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the
87 animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that
88 the animal wears the collar and tag at all times. By January 31 of each year, until such time as
89 the dangerous dog is deceased, all certificates obtained pursuant to this subsection shall be
90 renewed annually for a fee of \$85 and in the same manner as the initial certificate was obtained.
91 The animal control officer shall post registration information on the Virginia Dangerous Dog
92 Registry.

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94 (h) (f) All dangerous dog registration certificates or renewals thereof required to be obtained
95 under this section shall only be issued to persons 18 years of age or older who present
96 satisfactory evidence (i) of the animal's current rabies vaccination, if applicable; (ii) that the
97 animal has been neutered or spayed; and (iii) that the animal is and will be confined in a proper
98 enclosure or is and will be confined inside the owner's residence or is and will be muzzled and
99 confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition,
100 owners who apply for certificates or renewals thereof under this section shall not be issued a
101 certificate or renewal thereof unless they present satisfactory evidence that (a) their residence is
102 and will continue to be posted with clearly visible signs warning both minors and adults of the
103 presence of a dangerous dog on the property and (b) the animal has been permanently
104 identified by means of electronic implantation. All certificates or renewals thereof required to be
105 obtained under this section shall only be issued to persons who present satisfactory evidence
106 that the owner has liability insurance coverage, to the value of at least \$100,000, that covers
107 animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance,
108 to the value of at least \$100,000.

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110 (i) (g) While on the property of its owner, an animal found to be a dangerous dog shall be
111 confined indoors or in a securely enclosed and locked structure of sufficient height and design
112 to prevent its escape or direct contact with or entry by minors, adults, or other animals. While so
113 confined within the structure, the animal shall be provided for according to § 3.2-6503 of the
114 Code of Virginia. When off its owner's property, an animal found to be a dangerous dog shall be
115 kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere
116 with the animal's vision or respiration, but so as to prevent it from biting a person or another
117 animal.

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119 (j) (h) The owner of an animal found to be a dangerous dog shall cause the local animal control
120 officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners;
121 (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints
122 or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits
123 brought as a result of any attack; (v) chip identification information; (vi) proof of insurance or
124 surety bond; and (vii) the death of the dog.

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126 (k) (i) After an animal has been found to be a dangerous dog, the animal's owner shall
127 immediately, upon learning of same, cause the local animal control authority to be notified if the
128 animal (i) is loose or unconfined; (ii) bites a person or attacks another animal; or (iii) is sold, is
129 given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within
130 10 days of relocating, provide written notice to the appropriate local animal control authority for
131 the old address from which the animal has moved and the new address to which the animal has
132 been moved.

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134 (l) (j) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

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136 1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous
137 dog pursuant to this section, when such declaration arose out of a separate and distinct
138 incident, attacks and injures or kills a cat or dog that is a companion animal belonging to
139 another person;

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141 2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous
142 dog pursuant to this section, when such declaration arose out of a separate and distinct
143 incident, bites a human being or attacks a human being causing bodily injury.

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145 3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or
146 containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable
147 as to show a reckless disregard for human life, and is the proximate cause of such dog or other
148 animal attacking and causing serious bodily injury to any person.

149 The provisions of this subsection shall not apply to any animal that, at the time of the acts
150 complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a
151 person, or its owner's or custodian's property, or when the animal is a police dog that is engaged
152 in the performance of its duties at the time of the attack.

153 *(m)* ~~(k)~~ The owner of any animal that has been found to be a dangerous dog who willfully fails to
154 comply with the requirements of this section shall be guilty of a Class 1 misdemeanor.

155 Whenever an owner or custodian of an animal found to be a dangerous dog is charged with a
156 violation of this section, the animal control officer shall confine the dangerous dog until such time
157 as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may
158 compel the owner, custodian, or harbinger of the animal to produce the animal.

159 Upon conviction, the court may (i) order the dangerous dog to be disposed of by the city
160 pursuant to § 3.2-6562 of the Code of Virginia or (ii) grant the owner up to 45 ~~30~~ days to comply
161 with the requirements of this section, during which time the dangerous dog shall remain in the
162 custody of the animal control officer until compliance has been verified. If the owner fails to
163 achieve compliance within the time specified by the court, the court shall order the dangerous dog
164 to be disposed of by the city pursuant to § 3.2-6562 of the Code of Virginia. The court in its
165 discretion, may order the owner to pay all reasonable expenses incurred in caring and providing
166 for such dangerous dog from the time the animal is taken into custody until such time that the
167 animal is disposed of or returned to the owner.

168 *(n)* ~~(j)~~ All fees collected pursuant to this section, less the costs incurred by the animal control
169 authority in producing and distributing the certificates and tags required by this section, and the
170 fees due to the state veterinarian for maintenance of the Virginia Dangerous Dog Registry, shall
171 be paid into a special dedicated fund in the treasury of the city for the purpose of paying the
172 expenses of any training course required under Virginia Code § 3.2-6556.

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174 *(o)* ~~(m)~~ This section is enacted pursuant to Virginia Code § 3.2-6540(MO).

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177 **Article V. – ANIMAL WELFARE**

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179 **Sec. 5-87. - Impoundment of threatened, neglected, etc., animal.**

180 When a humane investigator, any law-enforcement officer, an animal control officer or a
181 licensed veterinarian finds that an apparent violation of this article has rendered an animal in such
182 condition as to constitute a direct and immediate threat to its life, safety or health, which the owner
183 or custodian has failed or refuses to remedy, ~~or finds an abandoned, neglected or cruelly treated~~
184 ~~animal or one that is unfit for use,~~ such approved humane officer, law-enforcement officer, animal
185 control officer or licensed veterinarian may take charge of and impound the animal in a facility
186 which will provide the elements of good care set forth in section 5-79 and shall then proceed to
187 take such steps as are required to dispose of the animal pursuant to section 5-88.

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State law references: Impoundment; expenses; lien; disposition of animal, Code of Virginia § 3.2-6565.

Sec. 5-88. - Procedure after impoundment under section 5-87.

(a) — *Petition for hearing; notice to owner.* When an animal is impounded pursuant to section 5-87, the person who seized the animal or an animal control officer shall forthwith petition a judge of the general district court of the city for a hearing, which shall be not more than ten business days from the date of the seizure of the animal, to determine whether the owner, if known, is able to adequately provide for such animal and is a fit person to own such animal. Such petitioner shall cause to be served upon the owner, if known and residing within the city, written notice, at least five (5) days prior to such hearing, of the time and place of such hearing. If the owner is known but residing out of the city, written notice by any method shall be given. If the owner is not known, the petitioner shall cause to be published in a newspaper of general circulation in the city notice of such hearing at least one (1) time prior to the hearing and shall further cause notice of the hearing to be posted, at least five (5) days prior to the hearing, at the place provided for such public notices at the City Hall or Courthouse wherein such hearing shall be had.

(b) — *Provision for animals pending adjudication of owner's fitness; authority to sell or destroy.* The person who seized the animal or the an animal control officer may provide for such animal until the owner is adjudged by the court able to adequately provide for the animal and a fit person to own the animal, in which case the animal shall be forthwith returned to such owner, but if the owner is adjudged by the court unable to adequately provide for the animal or not a fit person to own the animal, the court shall order that the animal be sold at public auction, placed for adoption in a suitable home or humanely destroyed, as deemed proper by the court, but in no case shall the person adjudged unable to adequately provide for such animal or adjudged an unfit person to own such animal be allowed to purchase such animal at such sale.

(c) — *Consideration of owner's past record.* The court, in determining under this section whether the owner is able to adequately provide for such animal or is a fit person to own such animal, may take into consideration, among other things, the owner's past record of convictions under this article or one similar thereto prohibiting cruelty to animals and the owner's mental and physical condition.

(d) — *Disposition of proceeds.* The proceeds from the sale of an animal under this section shall first be applied to the costs of the sale then to the expenses for the care and provision of such animal and the remaining proceeds, if any, shall be paid over to the owner of such animal. If the owner of such animal cannot be found, the proceeds remaining shall be paid into the Literary Fund of the State Treasury.

(e) — *Destruction of critically injured or ill animals.* Nothing in this section shall be construed to prohibit the destruction of a critically injured or ill animal for humane purposes.

(a) *Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an*

235 *apparent violation of this chapter that has rendered the animal in such a condition as to constitute a*
236 *direct and immediate threat to its life, safety or health. The seizure or impoundment of an equine*
237 *resulting from a violation of clause (iii) of subsection (a) or clause (ii) of subsection (c) of section 5-*
238 *77 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has*
239 *received training in the examination and detection of sore horses as required by 9 C.F.R. Part 11.7.*
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241 *(b) Before seizing or impounding any agricultural animal, the humane investigator, law-*
242 *enforcement officer or animal control officer shall contact the State Veterinarian or State*
243 *Veterinarian's representative, who shall recommend to the person the most appropriate action for*
244 *effecting the seizure and impoundment. The humane investigator, law-enforcement officer or animal*
245 *control officer shall notify the owner of the agricultural animal and the local attorney for the*
246 *Commonwealth of the recommendation. The humane investigator, law-enforcement officer or*
247 *animal control officer may impound the agricultural animal on the land where the agricultural animal*
248 *is located if:*

249 *1. The owner or tenant of the land where the agricultural animal is located gives written permission;*

250 *2. A general district court so orders; or*

251 *3. The owner or tenant of the land where the agricultural animal is located cannot be immediately*
252 *located, and it is in the best interest of the agricultural animal to be impounded on the land where it*
253 *is located until the written permission of the owner or tenant of the land can be obtained.*

254 *If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-*
255 *enforcement officer or animal control officer may seize the animal, in which case the humane*
256 *investigator, law-enforcement officer or animal control officer shall file within five business days on a*
257 *form approved by the State Veterinarian a report on the condition of the animal at the time of the*
258 *seizure, the location of impoundment, and any other information required by the State Veterinarian.*

259 *(c) Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or*
260 *animal control officer shall petition the general district court for a hearing. The hearing shall be not*
261 *more than 10 business days from the date of the seizure of the animal. The hearing shall be to*
262 *determine whether the animal has been abandoned, has been cruelly treated, or has not been*
263 *provided adequate care.*

264 *(d) The humane investigator, law-enforcement officer, or animal control officer shall cause to be*
265 *served upon the person with a right of property in the animal or the custodian of the animal notice of*
266 *the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the*
267 *animal is seized, written notice shall be given at least five days prior to the hearing of the time and*
268 *place of the hearing. If such person or the custodian is known but residing out of the jurisdiction*
269 *where such animal is seized, written notice by any method or service of process as is provided by*
270 *the Code of Virginia shall be given. If such person or the custodian is not known, the humane*
271 *investigator, law-enforcement officer, or animal control officer shall cause to be published in a*
272 *newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the*
273 *hearing at least one time prior to the hearing and shall further cause notice of the hearing to be*
274 *posted at least five days prior to the hearing at the place provided for public notices at the city hall or*
275 *courthouse wherein such hearing shall be held.*

276 *(e) The procedure for appeal and trial shall be the same as provided by law for misdemeanors.*
277 *Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2 of the*
278 *Code of Virginia. The City shall be required to prove its case beyond a reasonable doubt.*
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280 *(f) The humane investigator, law-enforcement officer, or animal control officer shall provide for*
281 *such animal until the court has concluded the hearing.*

282 *If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of*
283 *adequate care, the animal shall be returned to the owner. If the court determines that the animal has*
284 *been (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in*
285 *section 5-2 or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in*
286 *violation of section 3.2-6571 of the Code of Virginia, then the court shall order that the animal may*
287 *be:*

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289 *1. sold by a local governing body, if not a companion animal;*

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291 *2. disposed of by a local governing body pursuant to subsection D of section 3.2-6546 of the Code of*
292 *Virginia, whether such animal is a companion animal or an agricultural animal; or*

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294 *3. delivered to the person with a right of property in the animal as provided in subsection (g).*
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296 *(g) In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if*
297 *the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate*
298 *care. The court shall direct that the animal be delivered to the person with a right of property in the*
299 *animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of*
300 *adequate care is not attributable to the actions or inactions of such person.*

301 *(h) The court shall order the owner of any animal determined to have been abandoned, cruelly*
302 *treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and*
303 *providing for such animal from the time the animal is seized until such time that the animal is*
304 *disposed of in accordance with the provisions of this section, to the provider of such care.*

305 *(i) The court may prohibit the possession or ownership of other companion animals by the*
306 *owner of any companion animal found to have been abandoned, cruelly treated, or deprived of*
307 *adequate care. In making a determination to prohibit the possession or ownership of companion*
308 *animals, the court may take into consideration the owner's past record of convictions under this*
309 *chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals*
310 *and the owner's mental and physical condition.*

311 *(j) If the court finds that an agricultural animal has been abandoned or cruelly treated, the court*
312 *may prohibit the possession or ownership of any other agricultural animal by the owner of the*
313 *agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural*
314 *animals as evidenced by previous convictions of violating sections 3.2-6504 or 3.2-6570 of the Code*
315 *of Virginia, or section 5-77 of this Code. In making a determination to prohibit the possession or*
316 *ownership of agricultural animals, the court may take into consideration the owner's mental and*
317 *physical condition.*

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319 *(k) Any person who is prohibited from owning or possessing animals pursuant to subsection (i)*
320 *or (j) may petition the court to repeal the prohibition after two years have elapsed from the date of*
321 *entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can*
322 *prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.*

323 *(l) When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to*
324 *the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if*
325 *any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the*
326 *proceeds remaining shall be paid into the Literary Fund.*

327 *(m) Nothing in this section shall be construed to prohibit the humane destruction of a critically*
328 *injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement*
329 *officer, animal control officer, or licensed veterinarian.*

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331 **State law references:** *Seizure and impoundment of animals; notice and hearing; disposition of*
332 *animal; disposition of proceeds upon sale, Code of Virginia § 3.2-6569.*

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