

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, COLTON, GLICK, JAFFEE, KAVANAGH, MARKEY, MAYERSOHN, PHEFFER, ROSENTHAL, SCHIMEL, SCHIMMINGER, ZEBROWSKI, GIBSON -- Multi-Sponsored by -- M. of A. CLARK, GABRYSZAK, HEVESI, HIKIND, LUPARDO, MAGEE, McENENY, PERRY, SWEENEY, THIELE, TITONE, TOWNS, WEISENBERG -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to orders of restitution in certain cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative purpose. Animal cruelty and animal fighting are
2 serious crimes in New York state. Because crimes against animals often
3 involve the seizure of the victimized animals, these cases pose unique
4 challenges to law enforcement agencies throughout New York state. These
5 challenges involve arranging for the housing and care of the animals
6 while the criminal case is pending. Private organizations, such as shel-
7 ters, humane societies and societies for the prevention of cruelty to
8 animals have traditionally assisted law enforcement agencies by provid-
9 ing care for these animals (which preserves the "evidence" seized in
10 criminal matters) with little or no reimbursement.

11 It is imperative to the continued prosecution of animal cruelty cases
12 that these private organizations be reimbursed for the care that they
13 provide to these victimized animals. Many private organizations are
14 declining to offer assistance in these cases because of the enormous
15 financial burden of caring for a large number of animals for extended
16 time periods with no assurance of reimbursement for these services. If
17 there are no resources to care for the animals once they are seized, law
18 enforcement is less likely to conduct the seizures in the first place.
19 The legislature therefore intends to implement legislation that will
20 improve the state's ability to ensure proper security and reimbursement
21 for impounding organizations providing care on behalf of the state of
22 abused animals.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 S 2. Paragraph a of subdivision 6 of section 373 of the agriculture
2 and markets law, as amended by chapter 586 of the laws of 2008, is
3 amended to read as follows:

4 a. If any animal is seized and impounded pursuant to the provisions of
5 this section, section three hundred fifty-three-d of this article or
6 section three hundred seventy-five of this article for any violation of
7 this article, upon arraignment of charges, OR WITHIN A REASONABLE TIME
8 THEREAFTER, THE COURT SHALL ORDER A HEARING TO DETERMINE WHETHER THE
9 PERSON FROM WHOM AN ANIMAL IS SEIZED OR THE OWNER OF THE ANIMAL SHOULD
10 BE ORDERED TO POST A SECURITY TO REIMBURSE the duly incorporated society
11 for the prevention of cruelty to animals, humane society, pound, animal
12 shelter or any authorized agents thereof, hereinafter referred to for
13 the purposes of this section as the "impounding organization", [may file
14 a petition with the court requesting that the person from whom an animal
15 is seized or the owner of the animal be ordered to post a security. The
16 security] FOR THE COSTS OF CARING FOR SAID SEIZED ANIMALS. ANY SECURITY
17 ORDERED FOLLOWING SUCH A HEARING shall be in an amount sufficient to
18 secure payment for all reasonable expenses expected to be incurred by
19 the impounding organization in caring and providing for the animal pend-
20 ing disposition of the charges. Reasonable expenses shall include, but
21 not be limited to, estimated medical care and boarding of the animal for
22 at least thirty days. The amount of the security, if any, shall be
23 determined by the court after taking into consideration all of the facts
24 and circumstances of the case including, but not limited to the recom-
25 mendation of the impounding organization having custody and care of the
26 seized animal and the cost of caring for the animal. If a security has
27 been posted in accordance with this section, the impounding organization
28 may draw from the security the actual reasonable costs to be incurred by
29 such organization in caring for the seized animal.

30 S 3. Paragraphs b and c of subdivision 6 of section 373 of the agri-
31 culture and markets law, as amended by chapter 256 of the laws of 1997,
32 subparagraph 2 of paragraph b as amended by section 24 of part T of
33 chapter 59 of the laws of 2010, are amended to read as follows:

34 b. (1) [Upon receipt of a petition pursuant to paragraph a of this
35 subdivision the] THE court shall set a hearing [on the petition] to be
36 conducted within ten business days of [the filing of such petition] ITS
37 HEARING ORDER PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION. The [peti-
38 tioner] COURT shall serve a true copy of the [petition] HEARING ORDER
39 upon THE IMPOUNDING ORGANIZATION, the defendant and the district attor-
40 ney. The [petitioner] COURT shall also serve a true copy of the [peti-
41 tion] HEARING ORDER on any interested person. For purposes of this
42 subdivision, interested person shall mean an individual, partnership,
43 firm, joint stock company, corporation, association, trust, estate or
44 other legal entity who the court determines may have a pecuniary inter-
45 est in the animal which is the subject of the [petition] HEARING ORDER.
46 The [petitioner] DISTRICT ATTORNEY shall have the burden of proving by a
47 preponderance of the evidence that the person from whom the animal was
48 seized violated a provision of this article, UNLESS THE IMPOUNDING
49 ORGANIZATION APPEARS AT THE HEARING AND REQUESTS TO PRESENT SUCH
50 EVIDENCE AND MEET SUCH BURDEN ON ITS OWN BEHALF. The court may waive
51 for good cause shown the posting of security.

52 (2) If the court orders the posting of a security, the security shall
53 be posted with the clerk of the court within five business days of the
54 [hearing provided for in subparagraph one of this paragraph] ORDER. The
55 court may order the immediate forfeiture of the seized animal to the
56 impounding organization if the person ordered to post the security fails

1 to do so. Any animal forfeited shall be made available for adoption or
2 euthanized subject to subdivision seven-a of section one hundred seven-
3 teen of this chapter or section three hundred seventy-four of this arti-
4 cle.

5 (3) In the case of an animal other than a companion animal or pet, if
6 a person ordered to post security fails to do so, the court may, in
7 addition to the forfeiture to a duly incorporated society for the
8 prevention of cruelty to animals, humane society, pound, animal shelter
9 or any authorized agents thereof, and subject to the restrictions of
10 sections three hundred fifty-four, three hundred fifty-seven and three
11 hundred seventy-four of this article, order the animal which was the
12 basis of the order to be sold, provided that all interested persons
13 shall first be provided the opportunity to redeem their interest in the
14 animal and to purchase the interest of the person ordered to post secu-
15 rity, subject to such conditions as the court deems appropriate to
16 assure proper care and treatment of the animal. The court may reimburse
17 the person ordered to post security and any interested persons any money
18 earned by the sale of the animal less any costs including, but not
19 limited to, veterinary and custodial care. Any animal determined by the
20 court to be maimed, diseased, disabled or infirm so as to be unfit for
21 sale or any useful purpose shall be forfeited to a duly incorporated
22 society for the prevention of cruelty to animals or a duly incorporated
23 humane society or authorized agents thereof, and be available for
24 adoption or shall be euthanized subject to section three hundred seven-
25 ty-four of this article.

26 (4) Nothing in this section shall be construed to limit or restrict in
27 any way the rights of a secured party having a security interest in any
28 animal described in this section. This section expressly does not impair
29 or subordinate the rights of such a secured lender having a security
30 interest in the animal or in the proceeds from the sale of such animal.

31 c. In no event shall the security prevent the impounding organization
32 having custody and care of the animal from disposing of the animal
33 pursuant to section three hundred seventy-four of this article prior to
34 the expiration of the thirty day period covered by the security if the
35 court makes a determination of the charges against the person from whom
36 the animal was seized prior thereto. [Upon receipt of a petition from
37 the impounding organization, the] THE court may order the person from
38 whom the animal was seized or the owner of the animal to post an addi-
39 tional security with the clerk of the court to secure payment of reason-
40 able expenses for an additional period of time pending a determination
41 by the court of the charges against the person from whom the animal was
42 seized. The person who posted the security shall be entitled to a refund
43 of the security in whole or part for any expenses not incurred by such
44 impounding organization upon adjudication of the charges. The person who
45 posted the security shall be entitled to a full refund of the security,
46 including reimbursement by the impounding organization of any amount
47 allowed by the court to be expended, and the return of the animal seized
48 and impounded upon acquittal or dismissal of the charges, except where
49 the dismissal is based upon an adjournment in contemplation of dismissal
50 pursuant to section 215.30 of the criminal procedure law. The court
51 order directing such refund and reimbursement shall provide for payment
52 to be made within a reasonable time from the acquittal or dismissal of
53 charges.

54 S 4. This act shall take effect on the ninetieth day after it shall
55 have become a law.