S T A T E O F N E W Y O R K

3806

2011-2012 Regular Sessions

I N S E N A T E

March 4, 2011

Introduced by Sen. BALL -- read twice and ordered printed, and when printed to be committed 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:

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

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

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

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

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

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

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

(2) If the court orders the posting of a security, the security shall be posted with the clerk of the court within five business days of the [hearing provided for in subparagraph one of this paragraph] ORDER. The court may order the immediate forfeiture of the seized animal to the impounding organization if the person ordered to post the security fails to do so. Any animal forfeited shall be made available for adoption or euthanized subject to subdivision seven-a of section one hundred seven-

teen of this chapter or section three hundred seventy-four of this article.

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

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

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

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