

7401

I N S E N A T E

May 14, 2014

Introduced by Sen. GALLIVAN -- 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 the seizure of animals

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

1 Section 1. Section 373 of the agriculture and markets law, as added by
2 chapter 545 of the laws of 1971, subdivisions 1, 2 and 3 as amended by
3 chapter 79 of the laws of 1997, subdivision 1-a as added by chapter 811
4 of the laws of 1981, subdivision 5 as amended by section 23 and subpara-
5 graph 2 of paragraph b of subdivision 6 as amended by section 24 of part
6 T of chapter 59 of the laws of 2010, subdivisions 6 and 7 as amended by
7 chapter 256 of the laws of 1997 and paragraph a and subparagraph 1 of
8 paragraph b of subdivision 6 as amended by chapter 531 of the laws of
9 2013, is amended to read as follows:
10 S 373. Seizure of animals lost, strayed, homeless, abandoned or
11 improperly confined or kept. 1. Any police officer or agent or officer
12 of the American Society for the Prevention of Cruelty to Animals or any
13 duly incorporated society for the prevention of cruelty to animals, may
14 lawfully take possession of any lost, strayed, homeless or abandoned
15 animal found in any street, road or other public place.
16 1-a. Any police officer in Lewis county may lawfully take possession
17 of any lost, strayed, homeless or abandoned domestic animal, as defined
18 in section one hundred eight of this chapter, found in any street, road
19 or other public place.
20 2. Any such police officer or agent or officer may also lawfully take
21 possession of any animal in or upon any premises other than a street,
22 road or other public place, which (A) for more than twelve successive
23 hours has been confined or kept in a crowded or unhealthy condition or
24 in unhealthful or unsanitary surroundings or (B) HAS not BEEN properly
25 cared for, INCLUDING, BUT NOT LIMITED TO THE PROVISION OF NECESSARY
26 SHELTER, VETERINARY, FARRIER AND OTHER SPECIES- OR BREED-SPECIFIC CARE;
27 or [without] (C) FOR MORE THAN TWELVE SUCCESSIVE HOURS HAS NOT BEEN
28 PROVIDED WITH necessary sustenance, food or drink, provided that a
29 complaint stating just and reasonable grounds is made under oath or
30 affirmation to any magistrate authorized to issue warrants in criminal
31 cases, and that such warrant authorizing entry and search is issued and

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

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1 delivered by such magistrate; if just and reasonable cause is shown, the
2 magistrate shall immediately issue such warrant. FURTHER, THE WARRANT
3 SHALL PROVIDE THAT, WHERE ANY ANIMAL IS SEIZED FROM A PERSON BASED UPON
4 NONCOMPLIANCE WITH THE STANDARDS OF CARE SET FORTH IN THIS SUBDIVISION,
5 THE POLICE OFFICER, AGENT OR OFFICER MAY TAKE POSSESSION OF ANY OTHER
6 ANIMAL OR ANIMALS IN THE CUSTODY OR CONTROL OF SUCH PERSON FROM WHOM THE
7 ANIMAL IS SEIZED. THE PERSON FROM WHOM ANIMALS ARE SEIZED PURSUANT TO
8 THIS SUBDIVISION MAY PETITION THE COURT FOR A RETURN OF THE SEIZED
9 ANIMAL OR ANIMALS. A HEARING ON SUCH PETITION SHALL BE CONDUCTED WITHIN
10 TEN BUSINESS DAYS OF SUCH PETITION. THE PETITIONER SHALL HAVE THE BURDEN
11 OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THERE WAS NO PROBABLE
12 CAUSE FOR THE SEIZURE OF SUCH ANIMAL OR ANIMALS SEIZED PURSUANT TO THIS
13 SUBDIVISION. NO ANIMAL OR ANIMALS SEIZED PURSUANT TO THIS SUBDIVISION
14 MAY BE RETURNED TO THE OWNER OR PERSON FROM WHOM THE ANIMAL OR ANIMALS
15 WERE SEIZED UNTIL SUCH HEARING HAS BEEN CONDUCTED.

16 3. Any such police officer or agent or officer may also lawfully take
17 possession of any unwanted animal from the person in possession or
18 custody thereof.

19 4. When any person arrested is, at the time of such arrest, in charge
20 of any animal or of any vehicle drawn by or containing any animal, any
21 agent or officer of said society or societies or any police officer may
22 take charge of such animal and of such vehicle and its contents, and
23 deposit the same in a safe place or custody, or deliver the same into
24 the possession of the police or sheriff of the county or place wherein
25 such arrest was made, who shall thereupon assume the custody thereof;
26 and all necessary expenses incurred in taking charge of such property
27 shall be a charge thereon.

28 5. Nothing herein contained shall restrict the rights and powers
29 derived from section one hundred seventeen of this chapter relating to
30 seizure of unlicensed dogs and the disposition to be made of animals so
31 seized or taken, nor those derived from any other general or special law
32 relating to the seizure or other taking of dogs and other animals by a
33 society for the prevention of cruelty to animals.

34 6. a. If any animal is seized and impounded pursuant to the provisions
35 of this section, section three hundred fifty-three-d of this article or
36 section three hundred seventy-five of this article for any violation of
37 this article, upon arraignment of charges[, or within a reasonable time
38 thereafter,] FOR ONE OR MORE OF THE ANIMALS SEIZED the duly incorporated
39 society for the prevention of cruelty to animals, humane society, pound,
40 animal shelter or any authorized agents thereof, hereinafter referred to
41 for the purposes of this section as the "impounding organization", may
42 file a petition with the court requesting that the person from whom an
43 animal is seized or the owner of the animal be ordered to post a securi-
44 ty. [The district attorney prosecuting the charges may file and obtain
45 the requested relief on behalf of the impounding organization if
46 requested to do so by the impounding organization.] The security shall
47 be in an amount sufficient to secure payment for all reasonable expenses
48 INCURRED SINCE THE DATE OF SEIZURE AND expected to be incurred by the
49 impounding organization in caring and providing for [the animal] ALL THE
50 ANIMALS SEIZED pending disposition of the charges FOR ONE OR MORE OF THE
51 ANIMALS SEIZED. Reasonable expenses shall include, but not be limited
52 to, estimated medical care and boarding of the SEIZED animal OR ANIMALS
53 for at least thirty days. The amount of the security, if any, shall be
54 determined by the court after taking into consideration all of the facts
55 and circumstances of the case including, but not limited to the recom-
56 mendation of the impounding organization having custody and care of the

1 seized animal OR ANIMALS and the cost of caring for the animal OR
2 ANIMALS. If a security has been posted in accordance with this section,
3 the impounding organization may draw from the security the actual
4 reasonable costs to be incurred by such organization in caring for the
5 seized animal OR ANIMALS.

6 b. (1) Upon receipt of a petition pursuant to paragraph a of this
7 subdivision the court shall set a hearing on the petition to be
8 conducted within ten business days of the filing of such petition. The
9 petitioner shall serve a true copy of the petition upon the defendant
10 and the district attorney [if the district attorney has not filed the
11 petition on behalf of the petitioner]. The petitioner shall also serve a
12 true copy of the petition on any interested person. For purposes of this
13 subdivision, interested person shall mean an individual, partnership,
14 firm, joint stock company, corporation, association, trust, estate or
15 other legal entity who the court determines may have a pecuniary inter-
16 est in the animal which is the subject of the petition. The petitioner
17 [or the district attorney acting on behalf of the petitioner,] shall
18 have the burden of proving by a preponderance of the evidence that the
19 person from whom the animal was seized violated a provision of this
20 article. The court may waive for good cause shown the posting of securi-
21 ty.

22 (2) If the court orders the posting of a security, the security shall
23 be posted with the clerk of the court within five business days of the
24 hearing provided for in subparagraph one of this paragraph. The court
25 may order the immediate forfeiture of the seized animal OR ANIMALS to
26 the impounding organization if the person ordered to post the security
27 fails to do so. Any animal forfeited shall be made available for
28 adoption or euthanized subject to subdivision seven-a of section one
29 hundred seventeen of this chapter or section three hundred seventy-four
30 of this article.

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

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

1 c. In no event shall the security prevent the impounding organization
2 having custody and care of the animal OR ANIMALS from disposing of the
3 animal OR ANIMALS pursuant to section three hundred seventy-four of this
4 article prior to the expiration of the thirty day period covered by the
5 security if the court makes a determination of the charges against the
6 person from whom the animal OR ANIMALS was OR WERE seized prior thereto.
7 Upon receipt of a petition from the impounding organization, the court
8 may order the person from whom the animal OR ANIMALS was OR WERE seized
9 or the owner of the animal OR ANIMALS to post an additional security
10 with the clerk of the court to secure payment of reasonable expenses for
11 an additional period of time pending a determination by the court of the
12 charges against the person from whom the animal OR ANIMALS was OR WERE
13 seized. The person who posted the security [shall be entitled to a] MAY
14 MAKE APPLICATION TO THE COURT FOR A refund of the security in whole or
15 part for any expenses not incurred by such impounding organization upon
16 adjudication of the charges. The person who posted the security shall be
17 entitled to a [full] refund of the security, [including reimbursement by
18 the impounding organization of any amount allowed by the court to be
19 expended] SOLELY TO THE EXTENT THAT THE REASONABLE EXPENSES PAID THERE-
20 FROM BY THE IMPOUNDING ORGANIZATION EXCEED THE REASONABLE EXPENSES THAT
21 WOULD HAVE BEEN INCURRED HAD THE SEIZURE NOT OCCURRED, and the return of
22 the animal OR ANIMALS seized and impounded upon acquittal or dismissal
23 of [the] ALL charges, except (A) where the dismissal is based upon an
24 adjournment in contemplation of dismissal pursuant to section 215.30 of
25 the criminal procedure law OR (B) WHERE THE PERSON IS CHARGED WITH
26 VIOLATIONS OF THIS ARTICLE CONCERNING MORE THAN ONE ANIMAL, AND IS FOUND
27 GUILTY, BY PLEA OR OTHERWISE, OF ANY VIOLATION OF THIS ARTICLE REGARDING
28 ANY ANIMAL. The court order directing such refund and reimbursement
29 shall provide for payment to be made within a reasonable time from the
30 acquittal or dismissal of charges.

31 7. Notwithstanding any other provision of this section to the contra-
32 ry, the court may order a person charged with any violation of this
33 article to provide necessary food, water, shelter and care for any
34 animal which is the basis of the charge, without the removal of the
35 animal from its existing location, until the charges against the person
36 are adjudicated. [Until] UPON APPLICATION TO THE COURT, UNTIL a final
37 determination of the charges is made, any law enforcement officer, offi-
38 cer of a duly incorporated society for the prevention of cruelty to
39 animals, or its authorized agents, [may] SHALL be authorized [by an
40 order of the court] to make [regular] SPORADIC, UNANNOUNCED visits to
41 where the animal is being kept to ascertain if the animal is receiving
42 necessary [food, water, shelter and] care IN ACCORDANCE WITH SUBDIVISION
43 TWO OF THIS SECTION. Nothing shall prevent any law enforcement officer,
44 officer of a duly incorporated society for the prevention of cruelty to
45 animals, or its authorized agents, from applying for a warrant pursuant
46 to this section to seize any animal being held by the person charged
47 pending the adjudication of the charges if it is determined that the
48 animal is not receiving [the] necessary [food, water, shelter or] care
49 IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION. NOTHING IN THIS
50 SUBDIVISION SHALL BE INTERPRETED AS PERMITTING THE RETURN OF AN ANIMAL
51 SEIZED PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITHOUT A HEARING AS
52 REQUIRED UNDER SUCH SUBDIVISION.

53 S 2. This act shall take effect immediately, and shall be deemed to
54 have been in full force and effect on and after March 18, 2014.