

3168

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 23, 2009

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Introduced by M. of A. BRADLEY, ZEBROWSKI, COLTON, SCHIMMINGER, MAYER-SOHN, GLICK, ALFANO, ESPAILLAT, KAVANAGH, ROSENTHAL, PHEFFER -- Multi-Sponsored by -- M. of A. ALESSI, BACALLES, CHRISTENSEN, CLARK, DelMONTE, GABRYSZAK, HEVESI, HIKIND, KOON, MAGEE, PERRY, SWEENEY, 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

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

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1 for impounding organizations providing care on behalf of the state of  
2 abused animals.

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

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

32 S 3. Paragraphs b and c of subdivision 6 of section 373 of the agri-  
33 culture and markets law, as amended by chapter 256 of the laws of 1997,  
34 are amended to read as follows:

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

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

1 impounding organization if the person ordered to post the security fails  
2 to do so. Any animal forfeited shall be made available for adoption or  
3 euthanized subject to subdivision seven-a of section one hundred eigh-  
4 teen of this chapter or section three hundred seventy-four of this arti-  
5 cle.

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

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

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

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