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

3765

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. ENGLEBRIGHT, McENENY, GALEF, WEISENBERG, ESPAILLAT, KAVANAGH -- Multi-Sponsored by -- M. of A. AUBRY, CLARK, COOK, DINOWITZ, HOOPER, MILLMAN, PHEFFER, J. RIVERA -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to authorizing district attorneys to petition for the posting of security for the care of impounded animals

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

Section 1. Paragraphs a and c of subdivision 6 of section 373 of the agriculture and markets law, paragraph a as amended by chapter 586 of the laws of 2008 and paragraph c as amended by chapter 256 of the laws of 1997, are amended to read as follows:

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 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", OR THE DISTRICT ATTORNEY PROSECUTING THE CHARGES OR ANY AGENT THEREOF, ACTING ON BEHALF OF THE IMPOUNDING ORGANIZATION, may, AT OR AFTER ARRAIGNMENT ON THE CHARGES, 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 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

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

LBD06754-01-9

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] SUBDIVISION, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized 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] PURSUANT TO THIS SUBDIVISION, 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 2. Subparagraph 1 of paragraph b of subdivision 6 of section 373 of the agriculture and markets law, as amended by chapter 256 of the laws of 1997, is amended to read as follows:

(1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and, WHERE THE PETITIONER IS NOT THE DISTRICT ATTORNEY, UPON the district attorney. The petitioner shall also serve a true copy of the petition 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. The petitioner 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. The court may waive for good cause shown the posting of security.

S 3. This act shall take effect immediately.