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

6880

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to limiting the right of a person who has violated certain animal cruelty statutes from owning, possessing, residing with, or having custody of or contact with any animal

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

Section 1. Section 374 of the agriculture and markets law is amended by adding a new subdivision 9 to read as follows:

9. A. IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW, A PERSON CONVICTED OF A VIOLATION OF ANY OF THE FOLLOWING PROVISIONS AND ORDERED TO FORFEIT AN ANIMAL PURSUANT TO THE TERMS OF SUBDIVISION EIGHT OF THIS SECTION SHALL NOT OWN, POSSESS, RESIDE WITH, OR HAVE CUSTODY OF OR CONTACT WITH ANY ANIMAL FOR A PERIOD OF FIVE YEARS FOR A FIRST OFFENSE AND FOR A PERIOD OF FIFTEEN YEARS FOR EACH SUBSEQUENT OFFENSE: SECTION THREE HUNDRED FIFTY-THREE (OVERDRIVING, TORTURING AND INJURING ANIMALS); SECTION THREE HUNDRED FIFTY-THREE-B (APPROPRIATE SHELTER FOR DOGS LEFT OUTSIDE); SECTION THREE HUNDRED FIFTY-THREE-C (ELECTROCUTION OF FUR-BEARING ANIMALS PROHIBITED); SECTION THREE HUNDRED FIFTY-FIVE (ABANDONMENT OF ANIMALS); SECTION THREE HUNDRED FIFTY-SIX (FAILURE TO PROVIDE PROPER FOOD AND DRINK TO IMPOUNDED ANIMAL); SECTION THREE HUNDRED FIFTY-NINE (CARRYING ANIMAL IN A CRUEL MANNER); SECTION THREE HUNDRED SIXTY (POISONING OR ATTEMPTING TO POISON ANIMALS); SECTION THREE HUNDRED SIXTY-TWO (THROWING SUBSTANCE INJURIOUS TO ANIMALS IN PUBLIC PLACE); SECTION THREE HUNDRED SIXTY-FOUR (RUNNING HORSES ON HIGHWAY); SECTION THREE HUNDRED SIXTY-FIVE (CLIPPING OR CUTTING THE EARS OF DOGS); SECTION THREE HUNDRED SIXTY-SIX-A (REMOVING, SEIZING OR TRANSPORTING DOGS FOR RESEARCH PURPOSES); OR SECTION THREE HUNDRED SIXTY-EIGHT (OPERATING UPON TAILS OF HORSES UNLAWFUL) OF THIS ARTICLE.

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

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B. IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW, A PERSON CONVICTED OF A VIOLATION OF ANY OF THE FOLLOWING PROVISIONS AND ORDERED TO FORFEIT AN ANIMAL PURSUANT TO THE TERMS OF SUBDIVISION EIGHT OF THIS SECTION SHALL NOT OWN, POSSESS, RESIDE WITH, OR HAVE CUSTODY OF OR CONTACT WITH ANY ANIMAL FOR A PERIOD OF FIFTEEN YEARS FOR A FIRST OFFENSE AND FOR THE LIFETIME OF THE OFFENDER FOR THE SECOND OFFENSE OF: SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-ONE (PROHIBITION OF ANIMAL FIGHTING); SECTION THREE HUNDRED FIFTY-THREE-A (AGGRAVATED CRUELTY TO ANIMALS); OR SECTION THREE HUNDRED SIXTY-ONE (INTERFERENCE WITH OR INJURY TO CERTAIN DOMESTIC ANIMALS) OF THIS ARTICLE.

C. IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW, A PERSON CONVICTED OF A VIOLATION OF ANY OF THE FOLLOWING PROVISIONS SHALL NOT OWN, POSSESS, RESIDE WITH, OR HAVE CUSTODY OF OR CONTACT WITH ANY ANIMAL FOR A PERIOD OF FIVE YEARS FOR A FIRST OFFENSE AND FOR A PERIOD OF FIFTEEN YEARS FOR EACH SUBSEQUENT OFFENSE: SECTION 242.05 (INTERFERENCE, HARASSMENT OR INTIMIDATION OF A SERVICE ANIMAL) OR SECTION 242.10 (HARMING A SERVICE ANIMAL IN THE SECOND DEGREE) OF THE PENAL LAW.

D. IN ADDITION TO ANY OTHER PENALTY IMPOSED BY LAW, A PERSON CONVICTED OF A FELONY VIOLATION OF ANY OF THE FOLLOWING PROVISIONS SHALL NOT OWN, POSSESS, RESIDE WITH, OR HAVE CUSTODY OF OR CONTACT WITH ANY ANIMAL FOR A PERIOD OF FIFTEEN YEARS FOR A FIRST OFFENSE AND FOR THE LIFETIME OF THE OFFENDER FOR THE SECOND OFFENSE: SECTION 242.15 (HARMING A SERVICE ANIMAL IN THE FIRST DEGREE) OF THE PENAL LAW.

E. A PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION IS GUILTY OF A CLASS A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR A PERIOD NOT TO EXCEED ONE YEAR, OR BY A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

F. UPON CONVICTION OF A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION THE COURT IMMEDIATELY ORDER THE CONVICTED PERSON TO SURRENDER EACH ANIMAL IN HIS OR HER POSSESSION, CARE OR CUSTODY TO A DULY INCORPORATED SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, A DULY INCORPORATED HUMANE SOCIETY, A DULY INCORPORATED ANIMAL PROTECTIVE ASSOCIATION, A DULY INCORPORATED ANIMAL SHELTER, A DULY INCORPORATED RESCUE GROUP, POUND OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS, OR AUTHORIZED AGENTS THEREOF, AS DIRECTED BY THE COURT IMPOSING SENTENCE, AS DIRECTED BY THE COURT. UPON SUCH AN ORDER OF FORFEITURE, THE CONVICTED PERSON SHALL BE DEEMED TO HAVE RELINQUISHED ALL RIGHTS TO THE ANIMALS WHICH ARE THE BASIS OF THE CONVICTION, EXCEPT THOSE GRANTED IN PARAGRAPH D OF SUBDIVISION EIGHT OF THIS SECTION.

S 2. Subdivision 8 of section 374 of the agriculture and markets law, as added by chapter 569 of the laws of 1995, paragraph a as amended by chapter 594 of the laws of 2003, paragraph b as amended by chapter 419 of the laws of 2010 and paragraph e as amended and such subdivision as renumbered by chapter 479 of the laws of 2009, is amended to read as follows:

8. a. In addition to any other penalty provided by law, upon conviction for any violation of section three hundred fifty-one, three hundred fifty-three, three hundred fifty-three-a, three hundred fifty-three-b, THREE HUNDRED FIFTY-THREE-C, three hundred fifty-five, three hundred fifty-six, three hundred fifty-nine, three hundred sixty, three hundred sixty-one, THREE HUNDRED SIXTY-TWO, THREE HUNDRED SIXTY-FOUR, THREE HUNDRED SIXTY-SIX-A, three hundred sixty-five or three hundred sixty-eight of this article, the convicted person may, after a duly held hearing pursuant to paragraph f of this subdivision, be ordered by the court to forfeit, to a duly incorporated society for the prevention of cruelty to animals [or], a duly incorporated humane society, A DULY

INCORPORATED ANIMAL PROTECTIVE ASSOCIATION, A DULY INCORPORATED ANIMAL SHELTER, A DULY INCORPORATED RESCUE GROUP, POUND OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS or authorized agents thereof, the animal or animals which are the basis of the conviction. Upon such an order of forfeiture, the convicted person shall be deemed to have relinquished all rights to the animals which are the basis of the conviction, except those granted in paragraph d of this subdivision.

b. Pursuant to the provisions of subdivisions two, three, four and five of this section, no animal in the custody of a duly incorporated society for the prevention of cruelty to animals, a duly incorporated humane society, duly incorporated animal protective association, A DULY INCORPORATED RESCUE GROUP, pound OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS or its authorized agents thereof, shall be sold, transferred or otherwise made available to any person for the purpose of research, experimentation or testing. No authorized agent of a duly incorporated society for the prevention of cruelty to animals, nor of a duly incorporated humane society, duly incorporated animal protective association, A DULY INCORPORATED RESCUE GROUP, or pound OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS shall use any animal placed in its custody by the duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society for the purpose of research, experimentation or testing.

c. The court may additionally order that the convicted person or any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, shall not own, harbor, or have custody or control of any other animals, other than farm animals, for a period of time which the court deems reasonable.

d. In the case of farm animals SUBJECT TO FORFEITURE PURSUANT TO THE TERMS OF THIS SUBDIVISION OR OF SUBDIVISION NINE OF THIS SECTION, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals [or], a duly incorporated humane society, A DULY INCORPORATED ANIMAL PROTECTIVE ASSOCIATION, A DULY INCORPORATED ANIMAL SHELTER, A DULY INCORPORATED RESCUE GROUP, POUND OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS or authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four and three hundred fifty-seven of this article, order the farm animals which were the basis of the conviction to be sold. In no case shall farm animals which are the basis of the conviction be redeemed by the convicted person who is the subject of the order of forfeiture or by any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act. The court shall reimburse the convicted person and any duly determined interested persons, pursuant to paragraph f of this subdivision, any money earned by the sale of the farm animals less any costs including, but not limited to, veterinary and custodial care, and any fines or penalties imposed by the court. The court may order that the subject animals be provided with appropriate care and treatment pending the hearing and the disposition of the charges. Any farm animal ordered forfeited but not sold shall be remanded to the custody and charge of a duly incorporated society for the prevention of cruelty to animals [or], duly incorporated humane society, A DULY INCORPORATED ANIMAL PROTECTIVE ASSOCIATION, A DULY INCORPORATED ANIMAL SHELTER, A DULY INCORPORATED RESCUE GROUP, POUND OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF

ANIMALS or its authorized agent thereof and disposed of pursuant to paragraph e of this subdivision.

e. A duly incorporated society for the prevention of cruelty to animals [or], a duly incorporated humane society, A DULY INCORPORATED ANIMAL PROTECTIVE ASSOCIATION, A DULY INCORPORATED ANIMAL SHELTER, A DULY INCORPORATED RESCUE GROUP, POUND OR OTHER ENTITY FORMED FOR THE HUMANE TREATMENT OF ANIMALS in charge of animals forfeited pursuant to paragraph a of this subdivision may, in its discretion, lawfully and without liability, adopt them to individuals other than the convicted person or person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely dispose of them according to the provisions of subdivisions two, three, four and five of this section.

f. (1) Prior to an order of forfeiture of farm animals, a hearing shall be held within thirty days of conviction, to determine the pecuniary interests of any other person in the farm animals which were the basis of the conviction. Written notice shall be served at least five days prior to the hearing upon all interested persons. In addition, notice shall be made by publication in a local newspaper at least seven days prior to the hearing. For the purposes of this subdivision, interested persons shall mean any 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 farm animals which are the subject of the forfeiture action.

(2) All interested persons shall be provided an opportunity at the hearing to redeem their interest as determined by the court in the subject farm animals and to purchase the interest of the convicted person. The convicted person shall be entitled to be reimbursed his interest in the farm animals, less any costs, fines or penalties imposed by the court, as specified under paragraph d of this subdivision. In no case shall the court award custody or control of the animals to any interested person who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act.

g. 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 farm 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 farm animals or in the proceeds from the sale of such farm animals.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.