

5113--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 20, 2013

Introduced by M. of A. PAULIN, COLTON, GLICK, JAFFEE, KAVANAGH, MARKEY, ROSENTHAL, SCHIMEL, SCHIMMINGER, ZEBROWSKI, GIBSON, OTIS, MOSLEY, NOJAY -- Multi-Sponsored by -- M. of A. CLARK, GABRYSZAK, HEVESI, HIKIND, LUPARDO, MAGEE, PERRY, SWEENEY, THIELE, TITONE, WEISENBERG -- read once and referred to the Committee on Agriculture -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 this 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

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

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1 improve the state's ability to ensure proper security and reimbursement
2 for impounding organizations providing care on behalf of the state of
3 abused animals.

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

7 a. If any animal is seized and impounded pursuant to the provisions of
8 this section, section three hundred fifty-three-d of this article or
9 section three hundred seventy-five of this article for any violation of
10 this article, upon arraignment of charges, OR WITHIN A REASONABLE TIME
11 THEREAFTER, the duly incorporated society for the prevention of cruelty
12 to animals, humane society, pound, animal shelter or any authorized
13 agents thereof, hereinafter referred to for the purposes of this section
14 as the "impounding organization", may file a petition with the court
15 requesting that the person from whom an animal is seized or the owner of
16 the animal be ordered to post a security. [The security] THE DISTRICT
17 ATTORNEY PROSECUTING THE CHARGES MAY FILE AND OBTAIN THE REQUESTED
18 RELIEF ON BEHALF OF THE IMPOUNDING ORGANIZATION IF REQUESTED TO DO SO BY
19 THE IMPOUNDING ORGANIZATION. THE SECURITY shall be in an amount suffi-
20 cient to secure payment for all reasonable expenses expected to be
21 incurred by the impounding organization in caring and providing for the
22 animal pending disposition of the charges. Reasonable expenses shall
23 include, but not be limited to, estimated medical care and boarding of
24 the animal for at least thirty days. The amount of the security, if any,
25 shall be determined by the court after taking into consideration all of
26 the facts and circumstances of the case including, but not limited to
27 the recommendation of the impounding organization having custody and
28 care of the seized animal and the cost of caring for the animal. If a
29 security has been posted in accordance with this section, the impounding
30 organization may draw from the security the actual reasonable costs to
31 be incurred by such organization in caring for the seized animal.

32 S 3. Subparagraph 1 of paragraph b of subdivision 6 of section 373 of
33 the agriculture and markets law, as amended by chapter 256 of the laws
34 of 1997, is amended to read as follows:

35 (1) Upon receipt of a petition pursuant to paragraph a of this subdi-
36 vision the court shall set a hearing on the petition to be conducted
37 within ten business days of the filing of such petition. The petitioner
38 shall serve a true copy of the petition upon the defendant and the
39 district attorney IF THE DISTRICT ATTORNEY HAS NOT FILED THE PETITION ON
40 BEHALF OF THE PETITIONER. The petitioner shall also serve a true copy of
41 the petition on any interested person. For purposes of this subdivision,
42 interested person shall mean an individual, partnership, firm, joint
43 stock company, corporation, association, trust, estate or other legal
44 entity who the court determines may have a pecuniary interest in the
45 animal which is the subject of the petition. The petitioner OR THE
46 DISTRICT ATTORNEY ACTING ON BEHALF OF THE PETITIONER, shall have the
47 burden of proving by a preponderance of the evidence that the person
48 from whom the animal was seized violated a provision of this article.
49 The court may waive for good cause shown the posting of security.

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