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

445--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- 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 the seizure of animals

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

Section 1. Section 373 of the agriculture and markets law, as added by chapter 545 of the laws of 1971, subdivisions 1, 2 and 3 as amended by chapter 79 of the laws of 1997, subdivision 1-a as added by chapter 811 of the laws of 1981, subdivision 5 as amended by section 23 and subparagraph 2 of paragraph b of subdivision 6 as amended by section 24 of part T of chapter 59 of the laws of 2010, subdivisions 6 and 7 as amended by chapter 256 of the laws of 1997 and paragraph a and subparagraph 1 of paragraph b of subdivision 6 as amended by chapter 531 of the laws of 2013, is amended to read as follows:

S 373. Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept. 1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place.

1-a. Any police officer in Lewis county may lawfully take possession of any lost, strayed, homeless or abandoned domestic animal, as defined in section one hundred eight of this chapter, found in any street, road or other public place.

2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which (A) for more than twelve successive

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

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hours has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or (B) HAS not BEEN properly cared for, INCLUDING, BUT NOT LIMITED TO THE PROVISION OF NECESSARY SHELTER, VETERINARY, FARRIER AND OTHER SPECIES- OR BREED-SPECIFIC CARE; or [without] (C) FOR MORE THAN TWELVE SUCCESSIVE HOURS HAS NOT BEEN PROVIDED WITH necessary sustenance, food or drink, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant. FURTHER, THE WARRANT SHALL PROVIDE THAT, WHERE ANY ANIMAL IS SEIZED FROM A PERSON BASED UPON NONCOMPLIANCE WITH THE STANDARDS OF CARE SET FORTH IN THIS SUBDIVISION, THE POLICE OFFICER, AGENT OR OFFICER MAY TAKE POSSESSION OF ANY OTHER ANIMAL OR ANIMALS IN THE CUSTODY OR CONTROL OF SUCH PERSON FROM WHOM THE ANIMAL IS SEIZED. THE PERSON FROM WHOM ANIMALS ARE SEIZED PURSUANT TO THIS SUBDIVISION MAY PETITION THE COURT, UPON SEIZURE, OR WITHIN A REASONABLE TIME THEREAFTER, FOR A RETURN OF THE SEIZED ANIMAL OR ANIMALS. A HEARING ON SUCH PETITION SHALL BE CONDUCTED WITHIN TEN BUSINESS DAYS OF SUCH PETITION. THE PETITIONER SHALL HAVE THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THERE WAS NO PROBABLE CAUSE FOR THE SEIZURE OF SUCH ANIMAL OR ANIMALS SEIZED PURSUANT TO THIS SUBDIVISION. NO ANIMAL OR ANIMALS SEIZED PURSUANT TO THIS SUBDIVISION MAY BE RETURNED TO THE OWNER OR PERSON FROM WHOM THE ANIMAL OR ANIMALS WERE SEIZED UNTIL SUCH HEARING HAS BEEN CONDUCTED.

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

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

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

6. 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, or within a reasonable time thereafter, FOR ONE OR MORE OF THE ANIMALS SEIZED 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", may 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 district attorney prosecuting the charges may file and obtain the requested relief on behalf of the impounding organization if requested to do so by the impounding organization. The security shall

be in an amount sufficient to secure payment for all reasonable expenses INCURRED SINCE THE DATE OF SEIZURE AND expected to be incurred by the impounding organization in caring and providing for [the animal] ALL THE ANIMALS SEIZED pending disposition of the charges FOR ONE OR MORE OF THE ANIMALS SEIZED. Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the SEIZED animal OR ANIMALS for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of 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 OR ANIMALS and the cost of caring for the animal OR ANIMALS. If a security has been posted in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal OR ANIMALS.

b. (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 the district attorney if the district attorney has not filed the petition on behalf of the petitioner. 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 or the district attorney acting on behalf of 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.

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

(3) In the case of an animal other than a companion animal or pet, if a person ordered to post security fails to do so, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four, three hundred fifty-seven and three hundred seventy-four of this article, order the animal which was the basis of the order to be sold, provided that all interested persons shall first be provided the opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to such conditions as the court deems appropriate to assure proper care and treatment of the animal. The court may reimburse the person ordered to post security and any interested persons any money earned by the sale of the animal less any costs including, but not limited to, veterinary and custodial care. Any animal determined by the court to be maimed, diseased, disabled or infirm so as to be unfit for sale or any useful purpose shall be forfeited to a duly incorporated

society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and be available for adoption or shall be euthanized subject to section three hundred seventy-four of this article.

(4) 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 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 the animal or in the proceeds from the sale of such animal.

c. In no event shall the security prevent the impounding organization having custody and care of the animal OR ANIMALS from disposing of the animal OR ANIMALS 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 OR ANIMALS was OR WERE seized prior thereto. Upon receipt of a petition from the impounding organization, the court may order the person from whom the animal OR ANIMALS was OR WERE seized or the owner of the animal OR ANIMALS 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 OR ANIMALS was OR WERE seized. The person who posted the security [shall be entitled to a] MAY MAKE APPLICATION TO THE COURT FOR 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] SOLELY TO THE EXTENT THAT THE REASONABLE EXPENSES PAID THEREFROM BY THE IMPOUNDING ORGANIZATION EXCEED THE REASONABLE EXPENSES THAT WOULD HAVE BEEN INCURRED HAD THE SEIZURE NOT OCCURRED, and the return of the animal OR ANIMALS seized and impounded upon acquittal or dismissal of [the] ALL charges, except (A) where the dismissal is based upon an adjournment in contemplation of dismissal pursuant to section 215.30 of the criminal procedure law OR (B) WHERE THE PERSON IS CHARGED WITH VIOLATIONS OF THIS ARTICLE CONCERNING MORE THAN ONE ANIMAL, AND IS FOUND GUILTY, BY PLEA OR OTHERWISE, OF ANY VIOLATION OF THIS ARTICLE REGARDING ANY ANIMAL. 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.

7. Notwithstanding any other provision of this section to the contrary, the court may order a person charged with any violation of this article to provide necessary food, water, shelter and care for any animal which is the basis of the charge, without the removal of the animal from its existing location, until the charges against the person are adjudicated. [Until] UPON APPLICATION TO THE COURT, UNTIL a final determination of the charges is made, any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, [may] SHALL be authorized [by an order of the court] to make [regular] SPORADIC, UNANNOUNCED visits to where the animal is being kept to ascertain if the animal is receiving necessary [food, water, shelter and] care IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION. Nothing shall prevent any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, from applying for a warrant pursuant to this section to seize any animal being held by the person charged pending the adjudication of the charges if it is determined that the

animal is not receiving [the] necessary [food, water, shelter or] care IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION. NOTHING IN THIS SUBDIVISION SHALL BE INTERPRETED AS PERMITTING THE RETURN OF AN ANIMAL SEIZED PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITHOUT A HEARING AS REQUIRED UNDER SUCH SUBDIVISION.

S 2. This act shall take effect immediately.