

# STATE OF NEW YORK

10234

## IN ASSEMBLY

March 26, 2018

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

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:

§ 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 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

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

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1 complaint stating just and reasonable grounds is made under oath or  
2 affirmation to any magistrate authorized to issue warrants in criminal  
3 cases, and that such warrant authorizing entry and search is issued and  
4 delivered by such magistrate; if just and reasonable cause is shown, the  
5 magistrate shall immediately issue such warrant. Further, the warrant  
6 shall provide that, where any animal is seized from a person based upon  
7 noncompliance with the standards of care set forth in this subdivision,  
8 the police officer, agent or officer may take possession of any other  
9 animal or animals in the custody or control of such person from whom the  
10 animal is seized. The person from whom animals are seized pursuant to  
11 this subdivision may petition the court, upon seizure, or within a  
12 reasonable time thereafter, for a return of the seized animal or  
13 animals. A hearing on such petition shall be conducted within ten busi-  
14 ness days of such petition. The petitioner shall have the burden of  
15 proving by a preponderance of the evidence that there was no probable  
16 cause for the seizure of such animal or animals seized pursuant to this  
17 subdivision. No animal or animals seized pursuant to this subdivision  
18 may be returned to the owner or person from whom the animal or animals  
19 were seized until such hearing has been conducted.

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

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

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

38 6. a. If any animal is seized and impounded pursuant to the provisions  
39 of this section, section three hundred fifty-three-d of this article or  
40 section three hundred seventy-five of this article for any violation of  
41 this article, upon arraignment of charges, or within a reasonable time  
42 thereafter, for one or more of the animals seized the duly incorporated  
43 society for the prevention of cruelty to animals, humane society, pound,  
44 animal shelter or any authorized agents thereof, hereinafter referred to  
45 for the purposes of this section as the "impounding organization", may  
46 file a petition with the court requesting that the person from whom an  
47 animal is seized or the owner of the animal be ordered to post a securi-  
48 ty. The district attorney prosecuting the charges may file and obtain  
49 the requested relief on behalf of the impounding organization if  
50 requested to do so by the impounding organization. The security shall  
51 be in an amount sufficient to secure payment for all reasonable expenses  
52 incurred since the date of seizure and expected to be incurred by the  
53 impounding organization in caring and providing for ~~[the animal]~~ all the  
54 animals seized pending disposition of the charges for one or more of the  
55 animals seized. Reasonable expenses shall include, but not be limited  
56 to, estimated medical care and boarding of the seized animal or animals

1 for at least thirty days. The amount of the security, if any, shall be  
2 determined by the court after taking into consideration all of the facts  
3 and circumstances of the case including, but not limited to the recom-  
4 mendation of the impounding organization having custody and care of the  
5 seized animal or animals and the cost of caring for the animal or  
6 animals. If a security has been posted in accordance with this section,  
7 the impounding organization may draw from the security the actual  
8 reasonable costs to be incurred by such organization in caring for the  
9 seized animal or animals.

10 b. (1) Upon receipt of a petition pursuant to paragraph a of this  
11 subdivision the court shall set a hearing on the petition to be  
12 conducted within ten business days of the filing of such petition. The  
13 petitioner shall serve a true copy of the petition upon the defendant  
14 and the district attorney if the district attorney has not filed the  
15 petition on behalf of the petitioner. The petitioner shall also serve a  
16 true copy of the petition on any interested person. For purposes of this  
17 subdivision, interested person shall mean an individual, partnership,  
18 firm, joint stock company, corporation, association, trust, estate or  
19 other legal entity who the court determines may have a pecuniary inter-  
20 est in the animal which is the subject of the petition. The petitioner  
21 or the district attorney acting on behalf of the petitioner, shall have  
22 the burden of proving by a preponderance of the evidence that the person  
23 from whom the animal was seized violated a provision of this article.  
24 The court may waive for good cause shown the posting of security.

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

34 (3) In the case of an animal other than a companion animal or pet, if  
35 a person ordered to post security fails to do so, the court may, in  
36 addition to the forfeiture to a duly incorporated society for the  
37 prevention of cruelty to animals, humane society, pound, animal shelter  
38 or any authorized agents thereof, and subject to the restrictions of  
39 sections three hundred fifty-four, three hundred fifty-seven and three  
40 hundred seventy-four of this article, order the animal which was the  
41 basis of the order to be sold, provided that all interested persons  
42 shall first be provided the opportunity to redeem their interest in the  
43 animal and to purchase the interest of the person ordered to post secu-  
44 rity, subject to such conditions as the court deems appropriate to  
45 assure proper care and treatment of the animal. The court may reimburse  
46 the person ordered to post security and any interested persons any money  
47 earned by the sale of the animal less any costs including, but not  
48 limited to, veterinary and custodial care. Any animal determined by the  
49 court to be maimed, diseased, disabled or infirm so as to be unfit for  
50 sale or any useful purpose shall be forfeited to a duly incorporated  
51 society for the prevention of cruelty to animals or a duly incorporated  
52 humane society or authorized agents thereof, and be available for  
53 adoption or shall be euthanized subject to section three hundred seven-  
54 ty-four of this article.

55 (4) Nothing in this section shall be construed to limit or restrict in  
56 any way the rights of a secured party having a security interest in any

1 animal described in this section. This section expressly does not impair  
2 or subordinate the rights of such a secured lender having a security  
3 interest in the animal or in the proceeds from the sale of such animal.

4 c. In no event shall the security prevent the impounding organization  
5 having custody and care of the animal or animals from disposing of the  
6 animal or animals pursuant to section three hundred seventy-four of this  
7 article prior to the expiration of the thirty day period covered by the  
8 security if the court makes a determination of the charges against the  
9 person from whom the animal or animals was or were seized prior thereto.  
10 Upon receipt of a petition from the impounding organization, the court  
11 may order the person from whom the animal or animals was or were seized  
12 or the owner of the animal or animals to post an additional security  
13 with the clerk of the court to secure payment of reasonable expenses for  
14 an additional period of time pending a determination by the court of the  
15 charges against the person from whom the animal or animals was or were  
16 seized. The person who posted the security [~~shall be entitled to a~~] may  
17 make application to the court for a refund of the security in whole or  
18 part for any expenses not incurred by such impounding organization upon  
19 adjudication of the charges. The person who posted the security shall be  
20 entitled to a [~~full~~] refund of the security, [~~including reimbursement by~~  
21 ~~the impounding organization of any amount allowed by the court to be~~  
22 ~~expended~~] solely to the extent that the reasonable expenses paid there-  
23 from by the impounding organization exceed the reasonable expenses that  
24 would have been incurred had the seizure not occurred, and the return of  
25 the animal or animals seized and impounded upon acquittal or dismissal  
26 of [~~the~~] all charges, except (a) where the dismissal is based upon an  
27 adjournment in contemplation of dismissal pursuant to section 215.30 of  
28 the criminal procedure law or (b) where the person is charged with  
29 violations of this article concerning more than one animal, and is found  
30 guilty, by plea or otherwise, of any violation of this article regarding  
31 any animal. The court order directing such refund and reimbursement  
32 shall provide for payment to be made within a reasonable time from the  
33 acquittal or dismissal of charges.

34 7. Notwithstanding any other provision of this section to the contra-  
35 ry, the court may order a person charged with any violation of this  
36 article to provide necessary food, water, shelter and care for any  
37 animal which is the basis of the charge, without the removal of the  
38 animal from its existing location, until the charges against the person  
39 are adjudicated. [~~Until~~] Upon application to the court, until a final  
40 determination of the charges is made, any law enforcement officer, offi-  
41 cer of a duly incorporated society for the prevention of cruelty to  
42 animals, or its authorized agents, [~~may~~] shall be authorized [~~by an~~  
43 ~~order of the court~~] to make [~~regular~~] sporadic, unannounced visits to  
44 where the animal is being kept to ascertain if the animal is receiving  
45 necessary [~~food, water, shelter and~~] care in accordance with subdivision  
46 two of this section. Nothing shall prevent any law enforcement officer,  
47 officer of a duly incorporated society for the prevention of cruelty to  
48 animals, or its authorized agents, from applying for a warrant pursuant  
49 to this section to seize any animal being held by the person charged  
50 pending the adjudication of the charges if it is determined that the  
51 animal is not receiving [~~the~~] necessary [~~food, water, shelter or~~] care  
52 in accordance with subdivision two of this section. Nothing in this  
53 subdivision shall be interpreted as permitting the return of an animal  
54 seized pursuant to subdivision two of this section without a hearing as  
55 required under such subdivision.

56 § 2. This act shall take effect immediately.