

# STATE OF NEW YORK

1141

2017-2018 Regular Sessions

## IN SENATE

January 6, 2017

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Section 373 of the agriculture and markets law, as added by  
2 chapter 545 of the laws of 1971, subdivisions 1, 2 and 3 as amended by  
3 chapter 79 of the laws of 1997, subdivision 1-a as added by chapter 811  
4 of the laws of 1981, subdivision 5 as amended by section 23 and subpara-  
5 graph 2 of paragraph b of subdivision 6 as amended by section 24 of part  
6 T of chapter 59 of the laws of 2010, subdivisions 6 and 7 as amended by  
7 chapter 256 of the laws of 1997 and paragraph a and subparagraph 1 of  
8 paragraph b of subdivision 6 as amended by chapter 531 of the laws of  
9 2013, is amended to read as follows:

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

16 1-a. Any police officer in Lewis county may lawfully take possession  
17 of any lost, strayed, homeless or abandoned domestic animal, as defined  
18 in section one hundred eight of this chapter, found in any street, road  
19 or other public place.

20 2. Any such police officer or agent or officer may also lawfully take  
21 possession of any animal in or upon any premises other than a street,  
22 road or other public place, which (a) for more than twelve successive  
23 hours has been confined or kept in a crowded or unhealthy condition or  
24 in unhealthful or unsanitary surroundings or (b) has not been properly  
25 cared for, including, but not limited to the provision of necessary

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

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1 shelter, veterinary, farrier and other species- or breed-specific care;  
2 or [~~without~~] (c) for more than twelve successive hours has not been  
3 provided with necessary sustenance, food or drink, provided that a  
4 complaint stating just and reasonable grounds is made under oath or  
5 affirmation to any magistrate authorized to issue warrants in criminal  
6 cases, and that such warrant authorizing entry and search is issued and  
7 delivered by such magistrate; if just and reasonable cause is shown, the  
8 magistrate shall immediately issue such warrant. Further, the warrant  
9 shall provide that, where any animal is seized from a person based upon  
10 noncompliance with the standards of care set forth in this subdivision,  
11 the police officer, agent or officer may take possession of any other  
12 animal or animals in the custody or control of such person from whom the  
13 animal is seized. The person from whom animals are seized pursuant to  
14 this subdivision may petition the court, upon seizure, or within a  
15 reasonable time thereafter, for a return of the seized animal or  
16 animals. A hearing on such petition shall be conducted within ten busi-  
17 ness days of such petition. The petitioner shall have the burden of  
18 proving by a preponderance of the evidence that there was no probable  
19 cause for the seizure of such animal or animals seized pursuant to this  
20 subdivision. No animal or animals seized pursuant to this subdivision  
21 may be returned to the owner or person from whom the animal or animals  
22 were seized until such hearing has been conducted.

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

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

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

41 6. a. If any animal is seized and impounded pursuant to the provisions  
42 of this section, section three hundred fifty-three-d of this article or  
43 section three hundred seventy-five of this article for any violation of  
44 this article, upon arraignment of charges, or within a reasonable time  
45 thereafter, for one or more of the animals seized the duly incorporated  
46 society for the prevention of cruelty to animals, humane society, pound,  
47 animal shelter or any authorized agents thereof, hereinafter referred to  
48 for the purposes of this section as the "impounding organization", may  
49 file a petition with the court requesting that the person from whom an  
50 animal is seized or the owner of the animal be ordered to post a securi-  
51 ty. The district attorney prosecuting the charges may file and obtain  
52 the requested relief on behalf of the impounding organization if  
53 requested to do so by the impounding organization. The security shall  
54 be in an amount sufficient to secure payment for all reasonable expenses  
55 incurred since the date of seizure and expected to be incurred by the  
56 impounding organization in caring and providing for [~~the animal~~] all the

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

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

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

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

1 adoption or shall be euthanized subject to section three hundred seven-  
2 ty-four of this article.

3 (4) Nothing in this section shall be construed to limit or restrict in  
4 any way the rights of a secured party having a security interest in any  
5 animal described in this section. This section expressly does not impair  
6 or subordinate the rights of such a secured lender having a security  
7 interest in the animal or in the proceeds from the sale of such animal.

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

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

1 subdivision shall be interpreted as permitting the return of an animal  
2 seized pursuant to subdivision two of this section without a hearing as  
3 required under such subdivision.  
4 § 2. This act shall take effect immediately.