STATE OF NEW YORK

9215

IN ASSEMBLY

February 16, 2024

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

AN ACT to amend the agriculture and markets law, in relation to establishing a civil remedy for the protection of companion animals denied proper care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The agriculture and markets law is amended by adding a new article 26-D to read as follows:

ARTICLE 26-D
CIVIL REMEDY FOR THE PROTECTION OF COMPANION ANIMALS

Section 440. Legislative purpose.
441. Definitions.
442. Jurisdiction; courts; venue.
443. Notice of mistreated companion animal.
444. Emergency powers.
445. Animal care hearing.
446. Appeal.
447. Construction with other laws.

§ 440. Legislative purpose. The purpose of this article is to provide a civil means by which a companion animal that is found to be mistreated or not properly cared for may be:

1. Made the subject of a court order to provide care issued to its owner or caretaker, and

2. Removed from its present custody if necessary to ensure proper care.

§ 441. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Mistreated or not properly cared for" means every act or omission that results in a companion animal suffering unnecessary psychological or physical injury or pain, or failing to provide adequate food, water, shelter or veterinary care necessary to preserve the physical and mental well-being of a companion animal.

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

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2. "Companion animal" shall have the same meaning as defined by section three hundred fifty of this chapter.

3. "Authorized agent" means any police officer, or agent or officer of any duly incorporated society for the prevention of cruelty to animals pursuant to section three hundred seventy-three of this chapter.

4. "Impounding organization" shall mean any municipal pound or shelter, duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society.

§ 442. Jurisdiction; courts; venue. 1. A special proceeding to ensure proper care or seizure of a companion animal shall be maintained in the supreme court.

2. The place of the special proceeding shall be within the jurisdictional area of the court where such companion animal thereof is situated.

§ 443. Notice of mistreated companion animal. If an authorized agent has reason to believe that a companion animal has been or is being mistreated or not properly cared for, such authorized agent may notify the owner or caretaker, in writing, of such owner or caretaker's duty to provide certain care, including but not limited to, proper shelter, food, water or veterinary care to such companion animal at the owner's or caretaker's expense and within a time period determined by such authorized agent's discretion.

§ 444. Emergency powers. 1. If such owner or caretaker fails to provide care to such companion animal and such companion animal remains mistreated or not cared for after receiving notice and within the time period determined by such authorized agent, an authorized agent may immediately petition the court for an ex-parte emergency care and inspection order.

2. An emergency care and inspection order shall be immediately issued upon a showing of probable cause that such companion animal has been or is being mistreated or not properly cared for.

3. Such order shall require the owner or caretaker to provide care to such companion animal and allow an authorized agent to enter onto the premises where such companion animal is being kept to ensure such companion animal is receiving necessary food, water, shelter and care.

4. An ex-parte emergency care and inspection order issued pursuant to this section shall be effective upon service, in accordance with section three hundred eight of the civil practice law and rules, and shall:

(a) provide specific details of such mistreatment or failure to provide proper care to such companion animal and direct such owner or caretaker to take corrective action;

(b) allow an authorized agent and licensed veterinarian at the direction of such authorized agent to inspect such companion animal to ensure compliance with the order to provide care;

(c) prohibit such owner or caretaker from interfering with such inspection by the authorized agent or veterinarian;

(d) prohibit an owner or caretaker from transferring ownership of such companion animal;

(e) prohibit an owner or caretaker from euthanizing such companion animal without first seeking and obtaining permission of the court on a showing that such procedure is to prevent undue suffering or physical pain to such companion animal; and

(f) allow a veterinarian to examine such companion animal at least twenty-four hours prior to such animal care hearing.

5. Upon issuance of an emergency care and inspection order, the court shall set a time within ten calendar days of the date of issuance for an

animal care hearing pursuant to section four hundred forty-five of this article, to determine whether such companion animal has been mistreated or not properly cared for. The date and time for the scheduled hearing shall be noted within such order, or as an attachment to such order.

6. Such emergency care and inspection order and notice of animal care hearing shall be provided within at least five days prior to the scheduled animal care hearing and served in accordance with section three hundred eight of the civil practice law and rules. If such owner or caretaker is not known, the emergency care and inspection order and notice of animal care hearing may be affixed to such premises where such companion animal was located.

§ 445. Animal care hearing. 1. In a proceeding to determine whether such companion animal has been or is being mistreated or not properly cared for, and that such owner is unable to or unwilling to provide immediate and continued proper care for such companion animal, the court may consider the following:

(a) testimony from the authorized agent and other witnesses as to the condition of such companion animal;

(b) testimony from the authorized agent and other witnesses as to the conditions under which such companion animal was kept;

(c) evidence as to any veterinary and behavioral care provided to such companion animal;

(d) testimony from witnesses as to the prior treatment or condition of such companion animal or other companion animals in the owner or caretaker's custody;

(e) prior convictions of statutes prohibiting cruelty to animals; and

(f) any evidence the court deems material or relevant.

2. The authorized agent shall have the burden to prove, by a preponderance of the evidence, that such companion animal was mistreated or not properly cared for, and that such owner or caretaker is unable or unwilling to provide immediate and continued proper care for such companion animal. The owner or caretaker shall have the right to a full defense including, but not limited to, the right to cross-examine witnesses and to present witnesses and evidence.

3. If the court determines that such owner or caretaker of the companion animal is unable or unwilling to provide adequate care for the companion animal and that the companion animal was mistreated or not properly cared for, the court shall order the immediate forfeiture such companion animal that has been the subject of the hearing to the authorized agent. The court shall also enjoin the owner or caretaker's further possession, custody, or ownership of such other companion animals for a time determined by the court to be reasonable.

(a) Upon an order of forfeiture pursuant to this subdivision, the authorized agent may deliver such companion animal to an impounding organization for adoption or other disposition pursuant to section three hundred seventy-four of this chapter.

(b) Any order of forfeiture pursuant to this section shall identify a supersedeas bond amount based on the reasonable cost to care for the companion animal subject to the order of forfeiture, to be paid by the owner or caretaker. Reasonable costs of care shall be determined based on testimony provided at the animal care hearing and shall be calculated based on the total number of animal or animals and the reasonable daily cost of care for such animal or animals for, at minimum, a period of one hundred eighty days.

4. If the court determines that such owner or caretaker of the companion animal has provided and will continue to provide adequate care for

the companion animal that has been the subject of the order to provide care, or that the companion animal was not mistreated or not properly cared for as set forth in the emergency order, the court shall vacate the order to provide care. Vacatur pursuant to this subdivision shall not preclude the court from entering an order to provide care in the future.

5. A finding in a court of competent jurisdiction that the owner or caretaker of the animal is guilty of an offense brought pursuant to this article relating to the companion animal that is the subject of the animal care hearing is prima facie evidence that such companion animal has been mistreated or not properly cared for.

§ 446. Appeal. 1. An appeal may be taken to the appellate division as of right, originating in the supreme court from where the order of forfeiture was issued. As a condition of perfecting such appeal, the owner or caretaker shall file a notice of appeal and pay such supersedeas bond set by the court, not later than ten calendar days after the date the order of forfeiture was issued.

2. Any appeal filed with the appellate division of the supreme court shall be perfected within thirty days following the date of the order of forfeiture.

3. A hearing on such appeal shall be heard within thirty calendar days after such appeal is perfected unless a continuance is mutually agreed upon the parties. If a continuance is granted, the owner or caretaker of such forfeited companion animal shall pay a second supersedeas bond in the amount ordered by the appellate division.

4. The filing of such appeal shall not prevent the removal of a forfeited companion animal from such owner or caretaker's possession by the authorized agent. However, if such supersedeas bond has been paid under subdivision one of this section, such companion animal or animals may not be adopted or otherwise disposed of, except under circumstances which would require the humane euthanasia of such companion animal to prevent undue suffering or physical pain, or where such companion animal poses a severe and immediate danger to itself, people or other animals.

§ 447. Construction with other laws. Nothing in this article shall be construed to (a) limit or restrict agents or officers of societies for the prevention of cruelty to animals or any police officer from enforcing other provisions of article twenty-six of this chapter or any other law relating to the humane treatment of, or cruelty to, animals, or (b) prevent a dog control officer or peace officer, acting pursuant to the officer's special duties, or police officer in the employ of or under contract to a municipality from seizing any dog pursuant to article seven of this chapter. Relief pursuant to this section shall not be stayed or continued due to the filing of criminal charges involving or otherwise relating to such companion animals that are subject of the emergency care and inspection order and animal care hearing.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.