

THE COMMITTEE ON ANIMALS AND THE LAW URGES APPROVAL OF THIS LEGISLATION

Animals and the Law #4 - GOV

July 25, 2013

S. 2665-B
A. 5113-A

By: Senator Ball
By: M. of A. Paulin
Senate Committee: Agriculture
Assembly Committee: Codes
Effective Date: 90th day after it shall have
become a law

AN ACT to amend the agriculture and markets law, in relation to orders of restitution in certain cases.

SECTION AND LAW REFERRED TO: Agriculture and Markets Law Section 373

THE COMMITTEE ON ANIMALS AND THE LAW **URGES APPROVAL OF THIS LEGISLATION**

This bill would amend the Agriculture and Markets Law to provide a simpler process for filing a petition with the court to request that security be posted to provide payment for the cost of caring for an animal seized as part of a prosecution of animal cruelty or animal fighting. The security may be required from the person from whom the animal was seized or the owner(s) of the animal, and is intended to provide payment for all reasonable charges incurred by the organization that impounded the animal in the course of an investigation into charges of animal cruelty, abandonment or animal fighting.

Currently, the impounding organization (which may be a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter, or any authorized agents of these organizations) has the burden of petitioning the court to order a hearing to determine whether a security should be required to be posted. The impounding organization must currently serve all parties and interested persons with the hearing order, including the district attorney prosecuting the case, and it has the burden of proving, by a preponderance of the evidence, that the person from whom the animal was seized or the animal owner violated a provision of Article 26 of the Agriculture and Markets Law, which contains the provisions on animal cruelty and animal fighting.

The bill was amended to allow the district attorney to file a petition for the posting of this security when requested to do so by the impounding organization, rather than requiring the impounding organization to file the petition, a delegation of responsibility that will allow for this petition to be filed more expediently when it is appropriate in a case.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

When a petition is filed requesting that security for the care of seized animals be posted, the court must hold a hearing within 10 days. At the hearing, evidence must be presented and the court must determine by a preponderance of the evidence that the person from whom the animal was seized violated the law. Both bills appropriately shift the burden of proof of this violation of the law to the district attorney, instead of requiring the impounding organization to meet that burden of proof.

By delegating to the district attorney the petitioning for security and providing of evidence supporting a petition for the posting of security for the costs of care, this bill will alleviate the financial and administrative burdens currently placed on the impounding organization. Many of these organizations lack the financial resources to employ or retain counsel. They may be unfamiliar with the law and with the provisions allowing them to petition the court to require posting of security for the care of the seized animal. Even if familiar with the law, acting pro se can be a challenge, and the impounding organization simply may not be able to pursue this possibility of obtaining funds for the care of the seized animals.

Care of these animals is expensive. It includes not only the basic provision of food, water, shelter, and exercise but – due to the very nature of animal abuse – also involves medical attention and often rehabilitation. Typically, these expenses are paid by the impounding organization itself. The high cost of this care has deterred many organizations from accepting and providing care to seized animals. Without a safe, qualified organization to accept these animals and adequately provide for their care, law enforcement has less incentive to remove an animal from an abusive situation.

The role of the impounding organization is crucial in prosecution of animal cruelty offenses. Not only does it provide necessary care to the seized animal, it also provides the “evidence” needed by law enforcement to properly prosecute the underlying charges. By simplifying the process for the impounding organization to receive funding for the care of animals seized in prosecutions of animal cruelty or animal fighting, this legislation would ensure the continuation of the cooperative relationship between law enforcement and impounding agencies on these offenses against animals.

This bill would not change the factors that the court must consider in deciding whether a requirement to post security for the care of seized animals is appropriate in any case, and does not change the provisions providing for the return of any security posted by an individual acquitted of charges of animal abuse or animal fighting. It therefore leaves intact existing provisions that protect individuals from whom a security posting may not be appropriate, and those individuals exonerated of charges of animal cruelty or animal fighting.

Based on the foregoing, the Committee on Animals and the Law **URGES APPROVAL** of this legislation by the Governor.

Chair of the Committee: Amy L. Chaitoff, Esq.