

5727

2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

Introduced by Sen. LANZA -- 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 posting of security by a person from whom an animal is seized and impounded

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

1 Section 1. Paragraph a and subparagraph 1 of paragraph b of subdivi-  
2 sion 6 of section 373 of the agriculture and markets law, as amended by  
3 chapter 531 of the laws of 2013, is amended to read as follows:  
4 a. If any animal is seized and impounded pursuant to the provisions of  
5 this section, section three hundred fifty-three-d of this article or  
6 section three hundred seventy-five of this article for any violation of  
7 this article, [upon arraignment of charges, or within a reasonable time  
8 thereafter,] the duly incorporated society for the prevention of cruelty  
9 to animals, humane society, pound, animal shelter or any authorized  
10 agents thereof, hereinafter referred to for the purposes of this section  
11 as the "impounding organization", may file a petition, with the court IN  
12 WHICH CRIMINAL CHARGES HAVE OR WILL BE BROUGHT, requesting that the  
13 person from whom an animal is seized or the owner of the animal be  
14 ordered to post a security. IF THE PERSON FROM WHOM AN ANIMAL IS SEIZED  
15 OR THE OWNER OF THE ANIMAL IS ISSUED AN APPEARANCE TICKET, AS DEFINED IN  
16 SUBDIVISION TWENTY-SIX OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW,  
17 THE PETITION MAY BE FILED UPON THE ISSUANCE OF SUCH APPEARANCE TICKET OR  
18 WITHIN A REASONABLE TIME THEREAFTER. IN ALL OTHER CIRCUMSTANCES, THE  
19 PETITION MAY BE FILED UPON ARRAIGNMENT OF CHARGES OR WITHIN A REASONABLE  
20 TIME THEREAFTER. The district attorney prosecuting the charges may file  
21 and obtain the requested relief on behalf of the impounding organization  
22 if requested to do so by the impounding organization. The security shall  
23 be in an amount sufficient to secure payment for all reasonable expenses  
24 expected to be incurred by the impounding organization in caring and

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

LBD10798-01-5

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

12 (1) Upon receipt of a petition pursuant to paragraph a of this subdi-  
13 vision the court shall set a hearing on the petition to be conducted  
14 within ten business days of the filing of such petition. The petitioner  
15 shall serve a true copy of the petition upon the [defendant] PERSON FROM  
16 WHOM THE ANIMAL IS SEIZED OR THE OWNER OF THE ANIMAL and the district  
17 attorney if the district attorney has not filed the petition on behalf  
18 of the petitioner. IF THE PETITION IS FILED AFTER THE ISSUANCE OF AN  
19 APPEARANCE TICKET BUT PRIOR TO ARRAIGNMENT ON CHARGES, SERVICE MAY BE  
20 EFFECTUATED BY SERVING A TRUE COPY THEREOF PERSONALLY UPON THE PERSON  
21 FROM WHOM THE ANIMAL WAS SEIZED OR THE OWNER OF THE ANIMAL, OR BY SEND-  
22 ING A TRUE COPY THEREOF BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF  
23 THE PERSON FROM WHOM THE ANIMAL WAS SEIZED OR THE OWNER OF THE ANIMAL.  
24 The petitioner shall also serve a true copy of the petition on any  
25 interested person. For purposes of this subdivision, interested person  
26 shall mean an individual, partnership, firm, joint stock company, corpo-  
27 ration, association, trust, estate or other legal entity who the court  
28 determines may have a pecuniary interest in the animal which is the  
29 subject of the petition. PROVIDED, THAT, IF A PETITION IS FILED AFTER  
30 THE ISSUANCE OF AN APPEARANCE TICKET BUT PRIOR TO ARRAIGNMENT ON CHARG-  
31 ES, AND THE PERSON FROM WHOM THE ANIMAL WAS SEIZED OR THE OWNER OF THE  
32 ANIMAL DOES NOT HAVE COUNSEL AT THE TIME OF ARRAIGNMENT, THE COURT MAY  
33 ASSIGN COUNSEL FOR PURPOSES OF THE PETITION IF SUCH PERSON OR OWNER IS  
34 OTHERWISE ELIGIBLE FOR APPOINTED COUNSEL FOR THE UNDERLYING CRIMINAL  
35 OFFENSE. The petitioner or the district attorney acting on behalf of the  
36 petitioner, shall have the burden of proving by a preponderance of the  
37 evidence that the person from whom the animal was seized OR THE OWNER OF  
38 THE ANIMAL violated a provision of this article. The court may waive for  
39 good cause shown the posting of security. IF, UPON PROOF OF PROPER  
40 SERVICE PURSUANT TO THIS SUBPARAGRAPH, THE PERSON FROM WHOM THE ANIMAL  
41 WAS SEIZED OR THE OWNER OF THE ANIMAL FAILS TO APPEAR BEFORE THE COURT  
42 ON THE DATE OF THE HEARING, SUCH HEARING MAY BE CONDUCTED IN SUCH  
43 PERSON'S OR OWNER'S ABSENCE.

44 S 2. This act shall take effect on the ninetieth day after it shall  
45 have become a law.