

# STATE OF NEW YORK

4796

2017-2018 Regular Sessions

## IN SENATE

March 1, 2017

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 against whom certain criminal charges are pending

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  
7 of this article, [~~upon arraignment of charges, or within a reasonable~~  
8 ~~time thereafter,~~] the duly incorporated society for the prevention of

9 cruelty to animals, humane society, pound, animal shelter or any author-  
10 ized agents thereof, hereinafter referred to for the purposes of this  
11 section as the "impounding organization", may file a petition, with the  
12 court in which criminal charges have or will be brought, requesting that  
13 the person [~~from whom an animal is seized or the owner of the animal~~]

14 against whom criminal charges are pending ("the defendant") be ordered  
15 to post a security. If the defendant is issued an appearance ticket, as  
16 defined in subdivision twenty-six of section 1.20 of the criminal proce-  
17 cedure law, the petition may be filed upon the issuance of such appearance  
18 ticket or within a reasonable time thereafter. In all other circum-  
19 stances, the petition may be filed upon arraignment of charges or within  
20 a reasonable time thereafter. The district attorney prosecuting the

21 charges may file and obtain the requested relief on behalf of the  
22 impounding organization if requested to do so by the impounding organ-  
23 ization. The security shall be in an amount sufficient to secure payment  
24 for all reasonable expenses expected to be incurred by the impounding

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

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1 organization in caring and providing for the animal pending disposition  
2 of the charges. Reasonable expenses shall include, but not be limited  
3 to, estimated medical care and boarding of the animal for at least thir-  
4 ty days. The amount of the security, if any, shall be determined by the  
5 court after taking into consideration all of the facts and circumstances  
6 of the case including, but not limited to the recommendation of the  
7 impounding organization having custody and care of the seized animal and  
8 the cost of caring for the animal. If a security has been posted in  
9 accordance with this section, the impounding organization may draw from  
10 the security the actual reasonable costs to be incurred by such organ-  
11 ization in caring 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 and the  
16 district attorney if the district attorney has not filed the petition on  
17 behalf of the petitioner. If the petition is filed after the issuance  
18 of an appearance ticket but prior to arraignment on charges, service may  
19 be effectuated by serving a true copy thereof personally upon the  
20 defendant, or by sending a true copy thereof by certified mail to the  
21 address of the defendant. The petitioner shall also serve a true copy of  
22 the petition on any interested person. For purposes of this subdivision,  
23 interested person shall mean an individual, partnership, firm, joint  
24 stock company, corporation, association, trust, estate or other legal  
25 entity who the court determines may have [a] an ownership or pecuniary  
26 interest in the animal which is the subject of the petition. Provided,  
27 that, if a petition is filed after the issuance of an appearance ticket  
28 but prior to arraignment on charges, and the defendant does not have  
29 counsel at the time of arraignment, the court may assign counsel for  
30 purposes of the petition if such defendant is otherwise eligible for  
31 appointed counsel for the underlying criminal offense. The petitioner or  
32 the district attorney acting on behalf of the petitioner, shall have the  
33 burden of proving by a preponderance of the evidence that the [~~person~~  
34 ~~from whom the animal was seized~~] defendant violated a provision of this  
35 article. The court may waive for good cause shown the posting of securi-  
36 ty.

37 § 2. This act shall take effect on the ninetieth day after it shall  
38 have become a law.