

# STATE OF NEW YORK

3707

2019-2020 Regular Sessions

## IN SENATE

February 13, 2019

Introduced by Sen. MARTINEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Domestic Animal Welfare

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, paragraph a as  
3 amended by chapter 289 of the laws of 2018 and subparagraph 1 of para-  
4 graph b as amended by chapter 531 of the laws of 2013, are amended to  
5 read as follows:

6 a. If any animal is seized and impounded pursuant to the provisions of  
7 this section, section three hundred fifty-three-d ~~[of this article]~~ or  
8 ~~[section]~~ three hundred seventy-five of this article for any violation  
9 of this article, ~~[upon arraignment of charges, or within a reasonable~~  
10 ~~time thereafter,]~~ the duly incorporated society for the prevention of  
11 cruelty to animals, humane society, pound, animal shelter or any author-  
12 ized agents thereof, hereinafter referred to for the purposes of this  
13 section as the "impounding organization", may file a petition with the  
14 court in which criminal charges have been filed requesting that the  
15 person ~~[from whom an animal is seized or the owner of the animal]~~  
16 against whom criminal charges are pending ("the defendant") be ordered  
17 to post a security. If the defendant is issued an appearance ticket, as  
18 defined in subdivision twenty-six of section 1.20 of the criminal proce-  
19 dure law, the petition may be filed upon the issuance of such appearance  
20 ticket or within a reasonable time thereafter. In all other circum-  
21 stances, the petition may be filed upon arraignment of charges or within  
22 a reasonable time thereafter. The district attorney prosecuting the  
23 charges may file and obtain the requested relief on behalf of the  
24 impounding organization if requested to do so by the impounding organ-

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

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

14 (1) Upon receipt of a petition pursuant to paragraph a of this subdivision  
15 the court shall set a hearing on the petition to be conducted  
16 within ten business days of the filing of such petition. The petitioner  
17 shall serve a true copy of the petition upon the defendant and the  
18 district attorney if the district attorney has not filed the petition on  
19 behalf of the petitioner. If the petition is filed after the issuance  
20 of an appearance ticket but prior to arraignment on charges, service may  
21 be effectuated by serving a true copy thereof personally upon the  
22 defendant, or by sending a true copy thereof by certified mail to the  
23 address of the defendant. The petitioner shall also serve a true copy of  
24 the petition on any interested person. For purposes of this subdivision,  
25 interested person shall mean an individual, partnership, firm, joint  
26 stock company, corporation, association, trust, estate or other legal  
27 entity who the court determines may have [a] an ownership or pecuniary  
28 interest in the animal which is the subject of the petition. Provided,  
29 that, if a petition is filed after the issuance of an appearance ticket  
30 but prior to arraignment on charges, and the defendant does not have  
31 counsel at the time of arraignment, the court may assign counsel for  
32 purposes of the petition if such defendant is otherwise eligible for  
33 appointed counsel for the underlying criminal offense. The petitioner or  
34 the district attorney acting on behalf of the petitioner, shall have the  
35 burden of proving by a preponderance of the evidence that the [person  
36 ~~from whom the animal was seized~~] defendant violated a provision of this  
37 article. The court may waive for good cause shown the posting of security.  
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39 § 2. This act shall take effect on the ninetieth day after it shall  
40 have become a law.