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:

Section 1. Paragraph a and subparagraph 1 of paragraph b of subdivision 6 of section 373 of the agriculture and markets law, paragraph a as amended by chapter 289 of the laws of 2018 and subparagraph 1 of paragraph b as amended by chapter 531 of the laws of 2013, are amended to read as follows:

a. If any animal is seized and impounded pursuant to the provisions of this section, section three hundred fifty-three-d [~~of this article~~] or [~~section~~] three hundred seventy-five of this article for any violation of this article, [~~upon arraignment of charges, or within a reasonable time thereafter,~~] the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes of this section as the "impounding organization", may file a petition with the court in which criminal charges have been filed requesting that the person [~~from whom an animal is seized or the owner of the animal~~] **against whom criminal charges are pending ("the defendant")** be ordered to post a security. **If the defendant is issued an appearance ticket, as defined in subdivision twenty-six of section 1.20 of the criminal procedure law, the petition may be filed upon the issuance of such appearance ticket or within a reasonable time thereafter. In all other circumstances, the petition may be filed upon arraignment of charges or within a reasonable time thereafter.** The district attorney prosecuting the charges may file and obtain the requested relief on behalf of the 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.

LBD09642-01-9

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

(1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney if the district attorney has not filed the petition on behalf of the petitioner. **If the petition is filed after the issuance of an appearance ticket but prior to arraignment on charges, service may be effectuated by serving a true copy thereof personally upon the defendant, or by sending a true copy thereof by certified mail to the address of the defendant.** The petitioner shall also serve a true copy of the petition on any interested person. For purposes of this subdivision, interested person shall mean an individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity who the court determines may have [~~a~~] **an ownership or** pecuniary interest in the animal which is the subject of the petition. **Provided, that, if a petition is filed after the issuance of an appearance ticket but prior to arraignment on charges, and the defendant does not have counsel at the time of arraignment, the court may assign counsel for purposes of the petition if such defendant is otherwise eligible for appointed counsel for the underlying criminal offense.** The petitioner or the district attorney acting on behalf of the petitioner, shall have the burden of proving by a preponderance of the evidence that the [~~person from whom the animal was seized~~] **defendant** violated a provision of this article. The court may waive for good cause shown the posting of security.

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