



HB422 – An Act Requiring the Posting of Security for the Seizure & Impoundment of Animals (Rep. Campbell)

Referred to Joint Committee on the Judiciary

PROBLEM:

Municipalities are frequently obligated to pay the bill for an animal's care when the animals are seized prior to a trial. As it can take weeks or even months to prepare a case, this expenditure can become quite problematic for cities and towns to cover if the town wins the case and the owner does not pay.

WHAT THIS BILL DOES:

Requires a animal owner to post a bond to cover the expenses of their animals care should they lose the case in court.

WHY YOU SHOULD OPPOSE THIS BILL:

1. Seizure and impoundment, even with probable cause, is not proof of guilt. All actions outlined in this bill can be executed against an innocent person.
2. The bill clearly states if you can not post the bond your animal is immediately forfeited to the agency. This means that even if you are found innocent, your animal has been relinquished and is not yours to reclaim.
3. The bill discriminates against people based on income, despite the fact that the courts might waive or reduce the security amount because it is entirely discretionary. This is exactly the situation the district court found unconstitutional in Louisville, KY in 2009. Allowing for a lien against personal property if the animal owner has something of value (car, home, etc.) would be an alternative approach that we could support. This would not be required however if the person did not have such equity.

FOR MORE INFORMATION:

Massachusetts Federation of Dog Clubs and Responsible Dog Owners

Nancy Fisk, Vice President; akikoakitas@aol.com; 508-966-4564

Holly Stump, Legislative Specialist; hollystump@hickoryhillkennel.com; 508-843-6358

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Bill Text for HB422 (HD201) of 2011-2012 Session
An Act requiring the posting of security for the seizure and impoundment of animals
Prime sponsor: **Representative Linda Dean Campbell (D)**

Chapter 272 of the General Laws is hereby replacing section 104 with the following section:-

Section 104. (a) As used in this section the word "Authority" shall mean an organization or authorized agent thereof that seizes or impounds an animal or animals pursuant to the General Laws.

(b) If an animal is lawfully seized or impounded pursuant to the General Laws relating to cruelty to animals or animal fighting resulting in the issuance of a criminal complaint or a criminal indictment, the authority or prosecuting agency, including the district attorney or attorney general, may file a petition with the court that is exercising jurisdiction over the criminal complaint or criminal indictment requesting that the person from whom an animal is seized or a person claiming an interest in the seized animal, be ordered to post a security. The authority shall serve a copy of the petition on the person from whom the animal was seized, or if the person cannot be found, by posting of copy at the place where the animal was taken into custody. The authority shall also serve a copy of the petition on the district attorney or the attorney general, whichever is appropriate. The court may order that person to post a security.

(c) The security shall be in an amount sufficient to secure payment for all reasonable expenses incurred, and to be incurred, by the authority having custody of the seized animal from the date of seizure or impoundment and thereafter for a period of at least 30 days. The amount of the security shall be determined by the court upon the recommendation of the authority. Reasonable expenses shall include, but shall not be limited to, estimated medical and surgical care, quarantine costs, shelter, and board.

(d) When security is posted in accordance with this section, the authority may draw from the security the actual reasonable costs incurred for medical and surgical care, quarantine costs, shelter, and board. If the expenses already incurred by the seizing authority at the time of judicial decision on the petition exceed the petitioned for security amount, the court may permit the security amount to be paid in its entirety to the seizing authority through the court, or directly from the respondent to the authority, as the court deems appropriate in the interest of justice.

(e) If the court orders the posting of security, the security shall be posted with the clerk within 10 business days of the court's decision on the petition. The respondent's failure to post security as determined within the appointed time shall be deemed an immediate forfeiture of the seized animal to the authority, with the full force and effect of a court order. The court may reduce the amount of the security for good cause shown.

(f) Posting of the security shall not prevent the authority from disposing of the seized or impounded animal for humane reasons and in a humane manner before the expiration of the period covered by the security.

(g) The authority may humanely dispose of the animal at the end of the period for which expenses are covered by the security, if the court orders the disposition. If the disposition order is denied, the court may require the owner or custodian or any other person claiming interest in the animal, to provide additional security to secure payment of reasonable expenses and to extend the period of time pending adjudication by the court of the charges against the person from whom the animal was seized.

(h) The owner or custodian of an animal humanely euthanized pursuant to this section shall not be entitled to recover damages or the actual value of the animal if the owner or custodian failed to post security.

(i) The court may direct a refund to the person who posted the security in whole or part for any expenses not incurred by the authority. The court shall direct a refund to the person who posted security upon acquittal of the charges.