

SENATE No. 2523

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

SENATE, Wednesday, December 28, 2016

The committee on Rules, to whom was referred the House Bill relative to the posting of a security for seized animals in cruelty cases (House, No. 1220),-- reported, that the matter be placed in the Orders of the Day with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2523.

For the committee,
Mark C. Montigny

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1 Chapter 272 of the General Laws is hereby amended by striking out section 104, as
2 appearing in the 2014 Official Edition, and inserting in place thereof the following section:-

3 Section 104. (a) As used in this section, the word “authority” shall mean an organization or the
4 authorized agent of an organization that seizes or impounds an animal pursuant to the General
5 Laws.

6 (b) If an animal is seized or impounded pursuant to the General Laws relating to cruelty
7 to animals or animal fighting resulting in the issuance of a criminal complaint or a criminal
8 indictment, the authority or prosecuting agency, including the district attorney or attorney
9 general, may file a petition with the court requesting that the person from whom the animal was
10 seized or a person claiming an interest in the seized animal be ordered to post a security. The
11 authority or prosecuting agency shall serve a copy of the petition on the person from whom the
12 animal was seized or who is claiming an interest in the seized animal; provided, however, that if
13 such a person cannot be found, service may be made by posting a copy of the petition at the
14 place from which the animal was seized. If the petition is filed by the authority, the authority
15 shall also serve a copy of the petition on the prosecuting agency.

16 (c) The security shall be in an amount sufficient to secure payment for the reasonable
17 expenses incurred by the authority that has custody of the seized or impounded animal and the
18 reasonable expenses anticipated by the authority. In determining the amount of the security,
19 expenses shall be calculated from the date of seizure or impoundment until the authority ends
20 custody of the animal provided, however, that the amount shall be determined for a period of not
21 less than 30 days. The amount of the security shall be determined by the court upon the
22 recommendation of the authority. Reasonable expenses shall include, but shall not be limited to,
23 estimated medical care, quarantine costs, shelter and board.

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

31 (e) If the court orders the posting of a security, the security shall be posted with the clerk
32 within 10 business days of the court's allowance of the petition. The defendant's failure to post
33 the security within the appointed time shall be deemed an immediate forfeiture of the seized
34 animal to the authority. The court may waive the security requirement or reduce the amount of
35 the security for good cause. The court may extend the time for posting the security with the
36 clerk; provided, however, that the time between the court's allowance of the petition and the
37 posting shall be not more than 20 business days.

38 (f) The posting of the security shall not prevent the authority from euthanizing the seized
39 or impounded animal for humane reasons before the expiration of the period covered by the
40 security; provided, however, that the euthanasia shall be done in a humane manner.

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

47 (h) The owner or custodian of an animal humanely disposed of or a person claiming
48 interest in such an animal pursuant to this section shall not be entitled to recover damages or the
49 actual value of the animal if the owner, custodian or other person failed to post the required
50 security.

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