



Jeff Grim

## *Final Analysis*

*Legislative Service Commission*

### **Sub. H.B. 71**

127th General Assembly  
(As Passed by the General Assembly)

**Reps. White, J. McGregor, Setzer, Brown, J. Hagan, Seitz, Wagoner, Wolpert, Aslanides, Distel, Batchelder, Blessing, Boyd, Chandler, Coley, Domenick, Evans, Flowers, Foley, R. Hagan, Hite, Hottinger, Hughes, Letson, Luckie, Mallory, Otterman, Schneider, Stebelton, D. Stewart, Webster, S. Williams, Yuko**

**Sens. Faber, Wilson, Mumper, Grendell, Cates, Spada, Harris, Kearney**

**Effective date: September 30, 2008**

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### **ACT SUMMARY**

- Eliminates former procedures and requirements governing the seizure, impoundment, and disposition of an allegedly abused or neglected companion animal, and replaces them with new procedures and requirements.
- Makes changes to certain statutory prohibitions concerning dogfighting.
- Establishes procedures and requirements governing the seizure, impoundment, and disposition of a dog that allegedly is involved in dogfighting.
- Adds threatening and harassing to the list of actions for which a dog may be killed under certain circumstances.
- States that nothing in those provisions precludes a law enforcement officer from killing a dog that attacks a police dog.
- States that the owner, keeper, or harbinger of an attacking dog is liable if the dog attacks a person who is engaged in door-to-door sales or other solicitations on the owner's, keeper's, or harbinger's property, provided that the person was not committing a criminal offense or was not teasing, tormenting, or abusing the dog.

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## CONTENT AND OPERATION

### *Procedures for seizure and impoundment of companion animals*

#### *Former law*

Former law established procedures for the impoundment of a companion animal<sup>1</sup> that allegedly had been abused or neglected in violation of certain provisions regarding companion animals and for the care of the impounded companion animal and, in the case where charges were filed, but the companion animal was not impounded, for the care of the animal by the owner or person having custody of the companion animal during the pendency of the charges against the defendant who allegedly violated those provisions (sec. 959.132, repealed by the act). As part of the procedures, the owner, custodian, or caretaker of the impounded companion animal could request a probable cause hearing regarding his guilt (sec. 959.132(D), repealed by the act).

If the court found at the conclusion of the hearing that probable cause did not exist for finding that the defendant committed a violation of a prohibition governing companion animals and that he otherwise had a right to possess the companion animal, the court had to order the animal returned to the defendant. If the court found that probable cause existed for finding the defendant guilty of a violation, it had to either allow the impounding agency to retain custody of the companion animal pending resolution of the underlying charges or order it to be returned to the defendant under conditions and restrictions designed to ensure that the companion animal received humane and adequate care and treatment. (Sec. 959.132(D), repealed by the act.)

The impounding agency<sup>2</sup> could file a motion requesting the court to require the defendant to post a deposit to cover the costs of caring for impounded companion animals if the reasonably necessary projected costs of the care that would have been provided prior to the final resolution of the charges were estimated to be in excess of \$1,500. If a probable cause hearing resulted in a finding that probable cause existed for finding that the defendant committed a violation of a prohibition governing companion animals, the court had to hold a

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<sup>1</sup> "Companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept (sec. 959.131(A)(1), not in the act).

<sup>2</sup> "Impounding agency" meant the county humane society, animal shelter, or law enforcement agency that either had impounded a companion animal or had made regular visits to the place where a companion animal was kept to determine whether it was provided with necessities (sec. 959.132(A)(3), repealed by the act).

costs of care hearing regarding the motion. If the court found that the reasonably necessary projected costs of caring for the companion animals exceeded \$1,500 during the pendency of the charges, the court could grant the impounding agency's motion, thus requiring the defendant to post the deposit with the clerk of court, or alternatively the court could order other specified actions. If the defendant failed to post the deposit as required or otherwise failed to comply with the court's order, the court could order the defendant to forfeit the right of possession and ownership in one or more of the companion animals to the impounding agency. (Sec. 959.132(E), repealed by the act.)

If the defendant subsequently was found guilty of abusing or neglecting a companion animal and he posted a deposit to cover the costs of care for the animal, the court had to determine the amount of reasonably necessary costs that the impounding agency incurred in caring for the companion animal during the pendency of the charges. The court had to order the clerk of court to pay that amount of the deposit to the impounding agency and to dispose of any excess amount as specified in the statute. (Sec. 959.132(F), repealed by the act.)

If the defendant was found not guilty of abusing or neglecting a companion animal, the court had to order the clerk of court to return the entire amount of the deposit to the defendant. In addition, either the companion animal had to be returned to the defendant or, if that was not possible, the court had to order the impounding agency to pay the defendant the reasonable market value of the animal at the time of impoundment plus interest. (Sec. 959.132(F), repealed by the act.)

An impounding agency that impounded a companion animal had to pay a person who provided veterinary care to the companion animal during the impoundment for the cost of the veterinary care. That requirement applied regardless of whether the impounding agency was reimbursed for the payment. (Sec. 959.132(G), repealed by the act.)

### **The act**

The act eliminates and replaces the procedures that were established in prior law for the seizure, impoundment, and disposition of an allegedly abused or neglected companion animal. Under the act, an officer may seize and cause to be impounded at an impounding agency a companion animal that the officer has probable cause to believe is the subject of an offense (sec. 959.132(B)). The act defines "officer" as any law enforcement officer, agent of a county humane society, or other person appointed to act as an animal control officer for a municipal corporation or township in accordance with state law, an ordinance, or a resolution (sec. 959.132(A)(4)). In addition, the act defines "impounding agency" as a county humane society, an animal shelter, or a law enforcement agency that

has impounded a companion animal in accordance with the act (sec. 959.132(A)(2)). Under the act, "companion animal" is defined as any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept (sec. 959.132(A)(1), by reference to sec. 959.131(A)(1), not in the act). The act defines "offense" as a violation of the prohibition against the abuse or neglect of a companion animal or an attempt to violate that prohibition (sec. 959.132(A)(3)).

**Prohibition against impoundment at county dog pound unless authorized by contract.** The act prohibits an officer or impounding agency from impounding a companion animal that is the subject of an offense in a shelter owned, operated, or controlled by a board of county commissioners under the Dogs Law unless the board, by resolution, authorizes the impoundment of such a companion animal in a shelter owned, operated, or controlled by that board and has executed, in the case when the officer is other than a dog warden or assistant dog warden, a contract specifying the terms and conditions of the impoundment (sec. 959.132(B)).

**Notice of seizure and impoundment.** Under the act, the officer must give written notice of the seizure and impoundment to the owner, keeper, or harbinger of the companion animal that was seized and impounded. If the officer is unable to give the notice to the owner, keeper, or harbinger of the companion animal, the officer must post the notice on the door of the residence or in another conspicuous place on the premises at which the companion animal was seized. The notice must include a statement that a hearing will be held not later than ten days after the notice is provided or at the next available court date to determine whether the officer had probable cause to seize the companion animal and, if applicable, to determine the amount of a bond or cash deposit that is needed to provide for the companion animal's care and keeping for not less than 30 days beginning on the date on which the companion animal was impounded. (Sec. 959.132(C).)

**Humane destruction of companion animal.** The act specifies that a companion animal that is seized under the act may be humanely destroyed immediately or at any time during impoundment if a licensed veterinarian determines it to be necessary because the companion animal is suffering (sec. 959.132(D)).

**Probable cause hearing.** Under the act, not later than ten days after notice is provided or at the next available court date, the court must hold a hearing to determine whether the officer impounding a companion animal had probable cause to seize the companion animal. If the court determines that probable cause exists, the court must determine the amount of a bond or cash deposit that is needed to provide for the companion animal's care and keeping for not less than 30 days beginning on the date on which the companion animal was impounded. (Sec. 959.132(E)(1).)

The act specifies that if the court determines that probable cause does not exist, the court immediately must order the impounding agency to return the companion animal to its owner if possible. If the companion animal cannot be returned because it has died as a result of neglect or other misconduct by the impounding agency or if the companion animal is injured as a result of neglect or other misconduct by the impounding agency, the court must order the impounding agency to pay the owner an amount determined by the court to be equal to the reasonable market value of the companion animal at the time that it was impounded plus statutory interest from the date of the impoundment or an amount determined by the court to be equal to the reasonable cost of treatment of the injury to the companion animal, as applicable. The requirement regarding the payment of the reasonable market value of the companion animal does not apply in the case of a dog that was not registered at the time it was seized and impounded. (Sec. 959.132(E)(2).)

**Posting of bond or cash deposit.** Under the act, if the court determines that probable cause exists and determines the amount of a bond or cash deposit, the case must continue and the owner must post a bond or cash deposit to provide for the companion animal's care and keeping for not less than 30 days beginning on the date on which the companion animal was impounded. The owner may renew a bond or cash deposit by posting, not later than ten days following the expiration of the period for which a previous bond or cash deposit was posted, a new bond or cash deposit in an amount that the court, in consultation with the impounding agency, determines is sufficient to provide for the companion animal's care and keeping for not less than 30 days beginning on the date on which the previous period expired. If no bond or cash deposit is posted or if a bond or cash deposit expires and is not renewed, the impounding agency may determine the disposition of the companion animal unless the court issues an order that specifies otherwise. (Sec. 959.132(E)(3).)

**Penalties.** The act specifies that if a person is convicted of abusing or neglecting a companion animal or of attempting to do so, the court may impose the following additional penalties against the person:

(1) A requirement that the person pay for the costs incurred by the impounding agency in caring for a companion animal involved in the applicable offense, provided that the costs were incurred during the companion animal's impoundment. A bond or cash deposit posted under the act may be applied to the costs; and

(2) An order permanently terminating the person's right to possession, title, custody, or care of the companion animal that was involved in the offense. If the court issues such an order, the court must order the disposition of the companion animal. (Sec. 959.132(F).)

**Requirements upon "not guilty" finding.** If a person is found not guilty of committing an offense, the act requires the court immediately to order the impounding agency to return the companion animal to its owner if possible and to return the entire amount of any bond or cash deposit posted. If the companion animal cannot be returned or is injured as a result of neglect or other misconduct by the impounding agency, the court must order the impounding agency to pay the owner an amount determined by the court to be equal to the reasonable market value of the companion animal at the time that it was impounded plus statutory interest from the date of the impoundment or an amount determined by the court to be equal to the reasonable cost of treatment of the injury to the companion animal, as applicable. The requirements regarding the return of a bond or cash deposit and the payment of the reasonable market value of the companion animal or of the reasonable cost of treatment do not apply in the case of a dog that was not registered at the time it was seized and impounded. (Sec. 959.132(G).)

**Requirements if companion animal not impounded.** The act specifies that if charges are filed against the custodian or caretaker of a companion animal, but the companion animal that is the subject of the charges is not impounded, the court in which the charges are pending may order the owner or person having custody of the companion animal to provide the companion animal with proper food, water, and shelter as required in continuing law until the final disposition of the charges. If the court issues an order of that nature, the court also may authorize an officer or another person to visit the place where the companion animal is being kept, at the times and under the conditions that the court may set, to determine whether the companion animal is receiving those necessities and to remove and impound the companion animal if the companion animal is not receiving them. (Sec. 959.132(H).)

### **Dogfighting**

Ongoing law prohibits a person from committing the offense of dogfighting, which includes promoting, engaging in, or being employed at dogfighting; selling, purchasing, possessing, or training a dog for dogfighting; using, training, or possessing a dog for seizing, detaining, or maltreating a domestic animal; or witnessing a dogfight if it is presented as a public spectacle. In addition, under law revised in part by the act, the offense of dogfighting also includes receiving money for the admission of another person to a place kept for dogfighting. The act changes that provision to specify that the offense includes receiving money or anything else of value for the admission of another person to a dogfighting event or a place kept for dogfighting. Former law also specified that the offense of dogfighting included purchasing a ticket of admission to a dogfight. The act instead specifies that the offense includes paying money or giving anything else of value in exchange for admission to a dogfight. Finally, the act

retains language specifying that the offense of dogfighting includes being present at a dogfight. (Sec. 959.16(A).)

Law retained in part by the act requires any peace officer to confiscate any dogs that have been, are, or are intended to be used in dogfighting and any equipment or devices used in training such dogs or as part of dogfights. The act eliminates the requirement that a peace officer confiscate such dogs and instead authorizes a peace officer to seize and cause to be impounded such dogs in accordance with procedures established by the act (see below). (Sec. 959.16(C).)

### **Procedures for seizure and impoundment of fighting dogs**

The act authorizes a peace officer to seize and cause to be impounded with an impounding entity a fighting dog that the peace officer has probable cause to believe is involved in a violation (sec. 959.161(B)). The act defines "peace officer" to include certain law enforcement personnel who are specified under the Criminal Code (sec. 959.161(A)(3)). "Impounding entity" is defined as the entity that has possession of an impounded fighting dog during its impoundment (sec. 959.161(A)(2)). The act defines "fighting dog" as a dog that a peace officer has probable cause to believe has been, is, or is intended to be used in dogfighting (sec. 959.161(A)(1)). "Violation" is defined as a violation of the prohibition against dogfighting or an attempt to violate that prohibition (sec. 959.161(A)(4)).

### **Humane destruction of fighting dog**

The act authorizes a fighting dog that is seized under the act to be humanely destroyed under either of the following circumstances: (1) during its seizure if it is necessary because the fighting dog is suffering, or (2) at any time during its impoundment if a licensed veterinarian determines it to be necessary because the fighting dog is suffering (sec. 959.161(C)).

### **Procedures for seizure and impoundment of companion animals that apply to fighting dogs**

The act specifies that certain procedures, requirements, and other provisions that are established by the act regarding the seizure and impoundment of companion animals also apply to the seizure, impoundment, and disposition of fighting dogs. Specifically, the provisions described above under the following subheadings that are listed under the heading "**Procedures for seizure and impoundment of companion animal--The act**" apply: "**Notice of seizure and impoundment,**" "**Probable cause hearing,**" "**Posting of bond or cash deposit,**" "**Penalties,**" and "**Requirements upon 'not guilty' finding.**" The act states that for purposes of that application, references in those provisions to "companion animal," "impounding agency," "officer," and "offense" are deemed to be

replaced, respectively, with references to "fighting dog," "impounding entity," "peace officer," and "violation." Likewise, references in those provisions to the prohibition against the abuse or neglect of a companion animal are deemed to be replaced with references to the prohibition against dogfighting, as applicable. (Sec. 959.161(D).)

### **Authority to kill attacking dogs**

Law largely unchanged by the act generally specifies that a dog that is chasing or approaching in a menacing fashion or apparent attitude of attack, that attempts to bite or otherwise endanger, or that kills or injures a person or a dog that chases, injures, or kills livestock, poultry, other domestic animal, or other animal, that is the property of another person, except a cat or another dog, can be killed at the time of that chasing, approaching, attempt, killing, or injury. The act adds threatening and harassing to the list of actions for which a dog may be killed. It then states that nothing in those provisions precludes a law enforcement officer from killing a dog that attacks a police dog. (Sec. 955.28(A).)

### **Liability for attacking dogs**

Under law revised in part by the act, the owner, keeper, or harbinger of a dog is liable for any injury, death, or loss to person or property that is caused by the dog unless the injury, death, or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger, or was committing or attempting to commit a criminal offense against any person, or was teasing, tormenting, or abusing the dog on the owner's, keeper's, or harbinger's property. The act instead states that the owner, keeper, or harbinger of an attacking dog is not liable if the person was committing or attempting to commit criminal trespass or another criminal offense other than a minor misdemeanor.<sup>3</sup> It retains

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<sup>3</sup> Under continuing law, criminal trespass occurs when a person, without privilege to do so, does any of the following: (1) knowingly enters or remains on the land or premises of another, (2) knowingly enters or remains on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard, (3) recklessly enters or remains on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access, or (4) being on the land or premises of another, negligently fails or refuses to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either (sec. 2911.21(A), not in the act).

the immunity from liability if the person was teasing, tormenting, or abusing the dog.

Additionally, the act states that the owner, keeper, or harbinger of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog if the injury, death, or loss was caused to the person or property of an individual who, at the time of the injury, death, or loss, was on the property of the owner, keeper, or harbinger solely for the purpose of engaging in door-to-door sales or other solicitations regardless of whether the individual was in compliance with any requirement to obtain a permit or license to engage in door-to-door sales or other solicitations established by the political subdivision in which the property of the owner, keeper, or harbinger is located, provided that the person was not committing a criminal offense other than a minor misdemeanor or was not teasing, tormenting, or abusing the dog. (Sec. 955.28(B).)

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## HISTORY

ACTION	DATE
Introduced	02-27-07
Reported, H. Agriculture & Natural Resources	06-20-07
Passed House (95-0)	10-09-07
Reported, S. Agriculture	05-28-08
Passed Senate (32-0)	05-29-08
House concurred in Senate amendments (93-0)	06-10-08

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