

1 HB384
2 96994-1
3 By Representatives Fincher and Ward
4 RFD: Judiciary
5 First Read: 12-FEB-08

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8 SYNOPSIS: Existing law does not provide for
9 procedures for handling claims relating to
10 potentially or proven dangerous dogs.

11 This bill would establish the procedure by
12 which a dog can be declared dangerous.

13 This bill would authorize a district
14 attorney or municipal attorney to file a petition
15 with the district or municipal court to declare a
16 dog dangerous.

17 This bill would provide that a dangerous dog
18 which causes serious physical injury to a person
19 would be humanely destroyed.

20 This bill would provide that a dog found to
21 be dangerous, but which has not caused serious
22 physical injury to a person, could be returned to
23 the owner if certain registration requirements are
24 met and the dog is securely enclosed. This bill
25 would provide for penalties, including felony
26 penalties for violations of this act.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a
9 two-thirds vote unless: It comes within one of a
10 number of specified exceptions; it is approved by
11 the affected entity; or the Legislature
12 appropriates funds or provides a local source of
13 revenue to the entity for the purpose.

14 The purpose or effect of this bill would
15 require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a two-thirds
19 vote to become effective because it comes within
20 one of the specified exceptions contained in the
21 amendment.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to dogs; to establish a procedure by which
2 a dog can be declared dangerous and be humanely destroyed; to
3 provide that a dog found to be dangerous, but which has not
4 caused serious physical injury to a person, could be returned
5 to the owner if certain registration requirements are met and
6 the dog is securely enclosed; to provide for penalties; to
7 provide immunity for county officers and employees; and in
8 connection therewith would have as its purpose or effect the
9 requirement of a new or increased expenditure of local funds
10 within the meaning of Amendment 621 of the Constitution of
11 Alabama of 1901, now appearing as Section 111.05 of the
12 Official Recompilation of the Constitution of Alabama of 1901,
13 as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. The Legislature of Alabama finds that
16 certain dogs are an increasingly serious and widespread threat
17 to the safety and welfare of citizens of this state by virtue
18 of their unprovoked attacks on, and associated injury to,
19 individuals and other animals; that these attacks are in part
20 attributable to the failure of owners to confine and properly
21 train and control these dogs; that existing laws inadequately
22 address this problem; and that it is therefore appropriate and
23 necessary to impose a uniform set of state requirements on the
24 owners of dangerous dogs.

25 Section 2. The following words shall have the
26 following meanings:

1 (1) ANIMAL CONTROL OFFICER. Any person employed by a
2 county or municipality who performs animal control functions
3 or any person who performs animal control functions who is
4 employed by an entity under agreement or contract with a
5 county or municipality to perform animal control functions or
6 to enforce the provisions of this act.

7 (2) ATTACK. Aggressive physical contact initiated by
8 a dog.

9 (3) BITTEN. Seized with the teeth so that the skin
10 of the person seized has been gripped, or has been wounded or
11 pierced.

12 (4) DANGEROUS DOG. A dog, regardless of its breed,
13 that has bitten, attacked, or caused physical injury to a
14 human being without provocation, or has repeatedly bitten or
15 caused physical injury to humans except a dog used by law
16 enforcement officials for legitimate law enforcement purposes,
17 a certified guide dog for the blind, a hearing dog for the
18 deaf, or a service dog for the disabled.

19 (5) DOG. All members of the canine family including
20 dog hybrids.

21 (6) IMPOUNDED. Taken into the custody of law
22 enforcement, the county pound, or an animal control authority
23 or provider of animal control services to the municipality or
24 county where the dangerous dog is found.

25 (7) OWNER. A person, firm, corporation, or
26 organization having a right of property in a dog, or who keeps
27 or harbors a dog, or who has a dog in his or her care or acts

1 as the custodian of a dog, or who permits a dog to remain on
2 or about any premises occupied by him or her.

3 (8) PHYSICAL INJURY. An injury as defined in Section
4 13A-1-2(8), Code of Alabama 1975.

5 (9) PROPER ENCLOSURE OF A DANGEROUS DOG. An
6 enclosure for the confinement of a dog that has been declared
7 dangerous that is suitable to prevent the entry of the general
8 public and that:

9 a. Is capable of being locked with a key or
10 combination lock when the dog is within the structure.

11 b. Has secure sides and a secure top attached at all
12 sides. All four sides of the fence or pen must be sunk at
13 least two feet into the ground or the fence or pen must be
14 built over a concrete pad to prevent the animal from digging
15 out.

16 c. Provides adequate ventilation and protection from
17 the elements.

18 d. Exhibits a sign conspicuously posted upon the pen
19 or the structure containing the following: "Dangerous Dog - No
20 Trespassing."

21 e. The enclosure shall be constructed to allow the
22 dog to stand normally and without restriction and shall be not
23 less than four times the length of the dog and two times the
24 width of the dog.

25 (10) SERIOUS PHYSICAL INJURY. An injury as defined
26 in Section 13A-1-2(9), Code of Alabama 1975.

1 Section 3. (a) An animal control officer or law
2 enforcement officer shall investigate any incidents involving
3 any dog reported to be dangerous.

4 (b) If a dog, which is unowned and has been reported
5 to be dangerous, bites a person, the dog may be quarantined
6 and destroyed pursuant to Section 3-7A-9(b), Code of Alabama
7 1975. For purposes of this subsection, "bites" means the same
8 as "has been exposed" as defined in Section 3-7A-1(4), Code of
9 Alabama 1975.

10 (c) If there is probable cause to believe that an
11 owned dog is dangerous and has caused serious physical injury
12 to a human being, a law enforcement officer or animal control
13 officer shall impound the dog pending disposition of a
14 petition to declare a dog to be dangerous. The county or
15 municipality may impound the dog at the county pound as
16 described in Section 3-7A-7, Code of Alabama 1975, or may
17 enter into an agreement with an animal shelter or licensed
18 veterinarian to secure and impound dangerous dogs pursuant to
19 this section. The owner of the dog shall be liable to the
20 county or municipality for the costs and expenses incurred in
21 impounding, feeding, and providing veterinary care or
22 treatment for the dog.

23 (d) The district attorney or municipal prosecutor or
24 attorney shall be authorized to file a petition in the
25 district court or municipal court to declare the dog that
26 caused physical injury to a human being in the jurisdiction of

1 the county or municipality to be dangerous. The owner of the
2 dog shall be served with a copy of the petition.

3 (e) A dog that is the subject of a dangerous dog
4 investigation may not be relocated and ownership shall not be
5 transferred pending the outcome of the investigation and
6 hearing to determine whether to declare the dog to be
7 dangerous.

8 (f) The court hearing shall be held as soon as
9 practicable. At the hearing, the district attorney or city
10 prosecutor shall present evidence that the dog is dangerous
11 and whether the dog caused serious physical injury to a human
12 being.

13 (1) If the court determines that the dog is
14 dangerous and has caused serious physical injury or death to a
15 human being, the court shall order the dog to be humanely
16 euthanized by a licensed veterinarian or an authorized animal
17 control official.

18 (2) If the court determines that the dog is
19 dangerous, but has not caused serious physical injury or death
20 to a human being, the court shall issue orders authorized by
21 this section.

22 (g) The pleading and practice in all cases to
23 petition the court to declare a dog to be dangerous under this
24 section shall be in accordance with the Alabama Rules of Civil
25 Procedure and rules of the courts governing municipal courts
26 in this state unless otherwise specified by this act. Any
27 judicial determination in municipal or district court that a

1 dog is dangerous may be appealed to the circuit court pursuant
2 to the requirements of the Alabama Rules of Civil Procedure.

3 Section 4. (a) A dog may not be declared dangerous
4 in any of the following circumstances:

5 (1) When an injury or damage was sustained by a
6 person who at the time of the injury or damage was committing
7 a willful trespass or other tort upon premises occupied by the
8 owner or custodian of the dog with the intent to commit a
9 crime or was committing a crime, or was teasing, tormenting,
10 abusing, or assaulting the dog, or who can be shown to have
11 repeatedly, in the past, provoked, tormented, abused, or
12 assaulted the dog.

13 (2) When the dog was protecting or defending a
14 person within the immediate vicinity of the dog from an
15 unjustified attack or assault.

16 (3) When the dog was responding to pain or injury or
17 protecting itself, its kennel, or its offspring.

18 (4) When a person or domestic animal was disturbing
19 the natural functions of the dog such as sleeping or eating.

20 (b) Neither growling nor barking, or both, shall
21 alone constitute grounds upon which to find a dog to be
22 dangerous.

23 Section 5. (a) If a court determines that a dog is
24 dangerous, but does not order that the dog be destroyed
25 because evidence was insufficient to determine that the dog
26 caused serious physical injury, the owner of the dog shall

1 comply with the following requirements in addition to any
2 other requirements imposed by the court:

3 (1) Within 30 days of the issuance of the order
4 declaring the dog to be dangerous, the owner of the dog shall
5 be required to register the dog with the animal control
6 authority in the jurisdiction in which the animal is kept or
7 if there is no animal control authority in the jurisdiction
8 where the animal is kept, with the county health department.
9 All certificates of registration required to be obtained under
10 this section shall only be issued to persons 18 years of age
11 or older which represent evidence of the following:

12 a. A current certificate of rabies vaccination.

13 b. A current photograph of the dog.

14 c. That the dog will be confined to a proper
15 enclosure when the dog is outdoors and unattended.

16 d. That the dog has been neutered or spayed, unless
17 medically not needed.

18 e. That the dog has been permanently identified by
19 tattooing or injecting an identification microchip using
20 standard veterinary procedures and practices, and the name,
21 address, and phone number of the veterinarian performing the
22 identification procedure.

23 f. A policy of insurance, such as homeowners, or a
24 surety bond in the amount of not less than one hundred
25 thousand dollars (\$100,000) covering the medical or veterinary
26 costs, or both, resulting from any future dangerous actions of
27 the dog.

1 g. If the owner of the dangerous dog is not the
2 owner of the property where the dog is kept, the owner of the
3 dog must obtain from the property owner written permission for
4 the dangerous dog to be kept there.

5 h. A notarized affidavit from the owner of the
6 dangerous dog stating that the dog will be under the control
7 of a person 18 years or older when the dog is not in a proper
8 enclosure or inside a building and that the dog will not be
9 allowed outside the property of its owner except in
10 emergencies or for normal or necessary medical or
11 health-related treatment.

12 (b) If the owner fails to provide a proper enclosure
13 for the dangerous dog or fails to provide a certification of
14 dangerous dog registration to the court within 30 days of the
15 issuance of the court's declaration that the dog is dangerous,
16 the dog shall be humanely euthanized.

17 (c) The owner of the dangerous dog shall pay an
18 annual fee to register the dog pursuant to the provisions of
19 this act. The amount of the dangerous dog registration fee
20 shall be established by the municipality or county. The
21 payment of the dangerous dog registration fee shall be in
22 addition to any regular dog licensing fee required by any
23 county or municipality.

24 (d) An animal control officer or law enforcement
25 officer may make whatever inquiry is deemed necessary to
26 ensure compliance with this act and any court order issued
27 pursuant to this act.

1 (e) Prior to a dangerous dog being sold or given
2 away, the owner shall advise the new prospective owner in
3 writing that the dog has been declared to be dangerous by a
4 court and shall provide the animal control authority or county
5 health department where the dog is registered, the name,
6 address, and telephone number of the new owner. The new owner
7 shall comply with all of the requirements of this act.

8 Section 6. The owner of a dog which has been
9 declared to be dangerous by a court may petition the municipal
10 court or district court to remove the dangerous dog
11 designation 18 months after the judicial declaration was
12 issued. A copy of the petition shall be filed with the
13 municipal attorney or prosecutor or the district attorney. The
14 court may remove the dangerous dog designation and eliminate
15 any requirements of this act if the owner of the dog has not
16 violated this act and any orders of the court, and if the
17 court is satisfied from the evidence that the dog is no longer
18 dangerous.

19 Section 7. (a) If a dog that has previously been
20 declared by a court to be dangerous, when unprovoked, shall
21 cause serious physical injury or kill a human being, the owner
22 of the dog shall be guilty of a Class C felony.

23 (b) If a dog that has not been declared by a court
24 to be dangerous, attacks and causes serious physical injury or
25 death to any human being, and the owner of the dog had prior
26 knowledge of the dangerous propensities of the dog, yet
27 demonstrated a reckless disregard of the propensities under

1 the circumstances, the owner of the dog shall be guilty of a
2 Class A misdemeanor.

3 (c) In addition to any fines imposed by the court, a
4 person guilty of violating subsections (a) and (b) of this
5 section shall pay all expenses, including, but not limited to,
6 shelter, food, veterinary expenses for boarding, and
7 veterinary expenses necessitated by impoundment of the dog,
8 medical expenses incurred by a victim from an attack by a
9 dangerous dog, and other expenses required for the destruction
10 of the animal.

11 (d) An owner of a dog declared to be dangerous by a
12 court who does not contain the dog in a proper enclosure shall
13 be guilty of a Class C misdemeanor.

14 (e) An owner of a dog declared to be dangerous by a
15 court who has been adjudicated guilty of subsection (d) of
16 this section and subsequently fails to contain a dangerous dog
17 in a proper enclosure shall be guilty of a Class B
18 misdemeanor.

19 Section 8. Nothing in this act shall be construed to
20 repeal other criminal laws. Whenever conduct prescribed by any
21 provision of this act is also prescribed by any other
22 provision of law, the provision which carries the more serious
23 penalty shall be applied.

24 Section 9. (a) Nothing in this act shall be
25 construed to restrict or negate the requirements of the rabies
26 control law contained in Sections 3-7A-1 to 3-7A-15,
27 inclusive, Code of Alabama 1975.

1 (b) Nothing in this act is designed to abrogate any
2 civil remedies available under statutory or common law.

3 (c) Nothing in this act shall be construed to
4 restrict the power of any county or municipality to adopt and
5 enforce ordinances or regulations that comply with at least
6 the minimum applicable standards set forth in this act.

7 Section 10. Any person who knowingly makes a false
8 report to a law enforcement officer or an animal control
9 officer that a dog is dangerous is guilty of a Class C
10 misdemeanor.

11 Section 11. Nothing in this act shall be construed
12 to require any county to employ or make available an animal
13 control officer or other employee or agent to carry out any
14 requirements of this act.

15 Section 12. The county and municipality and any of
16 its employees or agents and the individual issuing the
17 dangerous dog certificate of registration shall be immune from
18 any and all liability for any actions taken or for any failure
19 to act pursuant to this act.

20 Section 13. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended, because the
26 bill defines a new crime or amends the definition of an
27 existing crime.

1 Section 14. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.