

1 HB231
2 126428-8
3 By Representatives Fincher, Barton, Davis, Buskey, Kennedy,
4 Bracy, Sessions, Ison and Gaston (N & P)
5 RFD: Mobile County Legislation
6 First Read: 08-FEB-12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ENROLLED, An Act,

Relating to Mobile County; to establish a procedure by which a dog can be declared dangerous or a nuisance and be humanely destroyed in the unincorporated areas of Mobile County; to provide that a dog found to be dangerous, but which has not caused serious physical injury to a person, or a dog found to be a nuisance could be returned to the owner if certain registration requirements are met and the dog is securely enclosed; to provide for penalties; to provide for enforcement by injunctive relief; and to repeal Act 2008-127 of the 2008 Regular Session (Acts 2008, p. 168).

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall only apply in Mobile County in those areas of the county outside the corporate limits of any municipality.

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

(1) ANIMAL CONTROL OFFICER. Any person employed by Mobile County who performs animal control functions or any person who performs animal control functions who is employed by an entity under agreement or contract with the county to perform animal control functions or to enforce this act.

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

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

4 (4) COUNTY. Mobile County.

5 (5) DANGEROUS DOG. A dog, regardless of its breed,
6 that has bitten, or caused physical injury to a human being
7 without provocation, or has repeatedly bitten or caused
8 physical injury to humans except a dog used by law enforcement
9 officials for legitimate law enforcement purposes, a certified
10 guide dog for the blind, a hearing dog for the deaf, or a
11 service dog for the disabled.

12 (6) DOG. All members of the canine family including
13 dog hybrids.

14 (7) IMPOUNDED. Taken into the custody of law
15 enforcement, the county pound, or an animal control authority
16 or provider of animal control services to the county where the
17 dangerous dog is found.

18 (8) NUISANCE DOG. A dog, regardless of its breed,
19 that has caused damage to or disturbed the real or personal
20 property of a human being without provocation, except a dog
21 used by law enforcement officials for legitimate law
22 enforcement purposes, a certified guide dog for the blind, a
23 hearing dog for the deaf, or a service dog for the disabled.

24 (9) OWNER. A person, firm, corporation, or
25 organization having a right of property in a dog, or who keeps

1 or harbors a dog, or who has a dog in his or her care or acts
2 as the custodian of a dog, or who permits a dog to remain on
3 or about any premises occupied by him or her.

4 (10) PHYSICAL INJURY. An injury as defined in
5 Section 13A-1-2(12), Code of Alabama 1975.

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

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

12 b. Has secure sides and a secure top attached at all
13 sides. All four sides of the fence or pen must be sunk at
14 least two feet into the ground or the fence or pen must be
15 built over a concrete pad to prevent the dog from digging 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" or "Nuisance Dog - No 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.

1 (12) SERIOUS PHYSICAL INJURY. An injury as defined
2 in Section 13A-1-2(14), Code of Alabama 1975.

3 Section 3. (a) An animal control officer or law
4 enforcement officer of Mobile County shall investigate any
5 incidents involving any dog reported to be dangerous or a
6 nuisance in the unincorporated areas of Mobile County.

7 (b) If a dog, which is unowned and has been reported
8 to be dangerous, bites a person, the dog may be quarantined
9 and destroyed pursuant to Section 3-7A-9(b), Code of Alabama
10 1975. For purposes of this subsection, "bites" means the same
11 as "has been exposed" as defined in Section 3-7A-1(5), Code of
12 Alabama 1975.

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

1 (d) The district attorney shall be authorized to
2 file a petition in the district court to declare the dog
3 dangerous or a nuisance. The owner of the dog shall be served
4 with a copy of the petition.

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

10 (f) The court hearing shall be held as soon as
11 practicable. At the hearing, the district attorney shall
12 present evidence that the dog is a dangerous dog or a nuisance
13 dog as defined by this act.

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

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

23 (g) The pleading and practice in all cases to
24 petition the court to declare a dog to be dangerous or a
25 nuisance under this act shall be in accordance with the

1 Alabama Rules of Civil Procedure. Any judicial determination
2 of a district court that a dog is dangerous or a nuisance may
3 be appealed to the circuit court pursuant to the requirements
4 of the Alabama Rules of Civil Procedure.

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

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

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

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

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

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

1 Section 5. (a) (1) If a court determines that a dog
2 is dangerous or a nuisance, but does not order that the dog be
3 destroyed because evidence was insufficient to determine that
4 the dog caused serious physical injury or damage to the real
5 or personal property of another person, the owner of the dog
6 shall comply with the following requirements in addition to
7 any other requirements imposed by the court:

8 (2) Within 30 days of the issuance of the order
9 declaring the dog to be dangerous or a nuisance, the owner of
10 the dog shall be required to register the dog with the animal
11 control authority in the jurisdiction in which the animal is
12 kept or if there is no animal control authority in the
13 jurisdiction where the animal is kept, with the county health
14 department. All certificates of registration required to be
15 obtained under this section shall only be issued to persons 18
16 years of age or older which represent evidence of the
17 following:

- 18 a. A current certificate of rabies vaccination.
- 19 b. A current photograph of the dog.
- 20 c. That the dog will be confined to a proper
21 enclosure when the dog is outdoors and unattended.
- 22 d. That the dog has been neutered or spayed, unless
23 medically not needed.

1 e. That the dog has been permanently identified by
2 tattooing or injected with an identification microchip using
3 standard veterinary procedures.

4 f. A policy of insurance, ~~such as homeowner's,~~ or a
5 surety bond in the amount of not less than one hundred
6 thousand dollars (\$100,000) covering the medical or veterinary
7 costs, or both, resulting from any future dangerous actions of
8 the dog.

9 g. If the owner of the dangerous or nuisance dog is
10 not the owner of the property where the dog is kept, proof
11 that the owner of the dog has obtained from the property owner
12 written permission for the dangerous or nuisance dog to be
13 kept there.

14 h. A notarized affidavit from the owner of the
15 dangerous or nuisance dog stating that the dog will be under
16 the control of a person 18 years of age or older when the dog
17 is not in a proper enclosure or inside a building and that the
18 dog will not be allowed outside the property of its owner
19 except in emergencies or for normal or necessary medical or
20 health-related treatment.

21 (b) If the owner fails to provide a proper enclosure
22 for the dangerous or nuisance dog or fails to provide a
23 certification of dangerous or nuisance dog registration to the
24 court within 30 days of the issuance of the declaration of the

1 court that the dog is dangerous or a nuisance, the dog shall
2 be humanely euthanized.

3 (c) The owner of the dangerous or nuisance dog shall
4 pay an annual fee to register the dog pursuant to this act.
5 The amount of the dangerous or nuisance dog registration fee
6 shall be established by the county.

7 (d) An animal control officer or law enforcement
8 officer may make whatever inquiry is deemed necessary to
9 ensure compliance with this act and any court order issued
10 pursuant to this act.

11 (e) Prior to a dangerous or a nuisance dog being
12 sold or given away, the owner shall advise the new prospective
13 owner in writing that the dog has been declared to be
14 dangerous or a nuisance by a court and shall provide the
15 animal control authority or county health department
16 information on where the dog is registered, the name, address,
17 and the telephone number of the new owner. The new owner shall
18 comply with all of the requirements of this act.

19 Section 6. The owner of a dog which has been
20 declared to be dangerous or a nuisance by a court may petition
21 the district court to remove the dangerous or nuisance dog
22 designation 18 months after the judicial declaration was
23 issued. A copy of the petition shall be filed with the
24 district attorney. The court may remove the dangerous or
25 nuisance dog designation and eliminate any requirements of

1 this act if the owner of the dog has not violated this act and
2 any orders of the court, and if the court is satisfied from
3 the evidence that the dog is no longer dangerous.

4 Section 7. (a) An owner of a dangerous dog who
5 violates this act shall be guilty of a misdemeanor punishable
6 by a fine of not more than three hundred dollars (\$300) for
7 the first offense and not more than six hundred dollars (\$600)
8 for each subsequent offense.

9 (b) If a dog that has previously been declared
10 dangerous, when unprovoked, attacks, assaults, wounds, or
11 causes severe physical injury, or kills a human being, the
12 owner or keeper of the dog shall be guilty of a Class C felony
13 punishable by a fine of not more than five thousand dollars
14 (\$5,000) or imprisonment of not more than two years, or both.
15 The dog control authority may confiscate and, after the
16 expiration of 10 working days after the owner has been
17 notified, destroy the dangerous dog. The 10-day time period
18 shall allow the owner to request a due process hearing. The
19 owner shall be responsible for payment of all boarding costs
20 and other fees as may be required to humanely and safely keep
21 the dog during any appeal procedure.

22 (c) If a dog that has not been declared dangerous,
23 attacks and causes severe injury to or death of any human, and
24 the owner of the dog had prior knowledge of the dangerous
25 propensities of the dog yet demonstrated a reckless disregard

1 of the propensities under the circumstances, the owner of the
2 dog shall be guilty of a misdemeanor punishable by a fine of
3 not more than three hundred dollars (\$300) for the first
4 offense and, for a second or subsequent offense, punishable by
5 a fine of not more than six hundred dollars (\$600). In
6 addition, the dog shall be immediately confiscated by an
7 animal control authority, held for 10 business days after the
8 owner is given written notification, and thereafter destroyed
9 in an expeditious and humane manner. This 10-day period shall
10 allow the owner to request a due process hearing. The owner
11 shall be responsible for payment of all boarding costs and
12 other fees as may be required to humanely and safely keep the
13 dog during any appeal procedure.

14 (d) This section shall not be construed to repeal
15 other criminal laws. Whenever conduct prescribed by any
16 provision of this act is also prescribed by any other
17 provision of law, the provision which carries the more serious
18 penalty shall be applied.

19 Section 8. An owner of a nuisance dog who violates
20 this act shall be guilty of a misdemeanor punishable by a fine
21 of not more than three hundred dollars (\$300) for the first
22 offense and not more than six hundred dollars (\$600) for each
23 subsequent offense.

24 Section 9. A law enforcement officer may enforce
25 this act by immediately removing the dog to an appropriate

1 facility, without requirement for a warrant or pending due
2 process, or both, if in responding to an incident covered by
3 this act, he or she determines that the dog poses a threat to
4 the public safety, regardless of the actions, omissions, or
5 intent of the owner.

6 Section 10. Act 2008-127 of the 2008 Regular Session
7 (Acts 2008, p. 168), is hereby expressly repealed.

8 Section 11. The provisions of this act are
9 severable. If any part of this act is declared invalid or
10 unconstitutional, that declaration shall not affect the part
11 which remains.

12 Section 12. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 22-MAR-12, as amended.

Greg Pappas
Clerk

Senate 19-APR-12 Passed