

1 HB651  
2 119288-1  
3 By Representatives Hinshaw, Ball, Sanderford, Williams (P),  
4 Hall and McCutcheon (Constitutional Amendment)  
5 RFD: Madison County Legislation  
6 First Read: 02-MAR-10

SYNOPSIS:                This bill would propose a local constitutional amendment to the Constitution of Alabama of 1901, applicable to those areas of Madison County outside the corporate limits of any municipality; to establish a procedure by which a dog can be declared dangerous and be humanely destroyed.

                         The amendment would provide that a dog found to be dangerous but which has not caused serious physical injury to a person, could be returned to the owner if certain registration requirements are met and the dog is securely enclosed.

                         The amendment would provide immunity for county officers and employees and would provide for penalties.

                         A BILL  
                         TO BE ENTITLED  
                         AN ACT

1           To propose an amendment to the Constitution of  
2   Alabama of 1901, relating to Madison County; to provide  
3   procedures for dogs within those areas of Madison County  
4   outside the corporate limits of any municipality; to establish  
5   a procedure by which a dog found to be dangerous, but which  
6   has not caused serious physical injury to a person, could be  
7   returned to the owner if certain registration requirements are  
8   met and the dog is securely enclosed; to provide for  
9   penalties; and to provide immunity for county officers and  
10   employees.

11   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12           Section 1. The following amendment to the  
13   Constitution of Alabama of 1901, is proposed and shall become  
14   valid as a part of the Constitution when all requirements of  
15   this act are fulfilled:

16                           PROPOSED AMENDMENT

17           Section 1. Certain dogs are an increasingly serious  
18   and widespread threat to the safety and welfare of citizens of  
19   this state by virtue of their unprovoked attacks on, and  
20   associated injury to, individuals. These attacks are in part  
21   attributable to the failure of owners to confine and properly  
22   train and control these dogs. Existing laws inadequately  
23   address this problem; therefore, it is appropriate and  
24   necessary to impose requirements on the owners of dangerous  
25   dogs.

1           Section 2. This constitutional amendment is  
2           applicable to those areas of Madison County outside the  
3           corporate limits of any municipality.

4           Section 3. The following words shall have the  
5           following meanings:

6                   (1) ANIMAL CONTROL OFFICER. Any person employed by  
7           Madison County who performs animal control functions.

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

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

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

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

22                  (6) IMPOUNDED. Taken into the custody of law  
23           enforcement, the county pound, or an animal control authority  
24           or provider of animal control services to Madison County.

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(12), 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(14), Code of Alabama 1975.

1           Section 4. (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 the purposes of this subsection, "bites" means the  
8 same as "has been exposed" as defined in Section 3-7A-1 (4),  
9 Code of 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. Madison County may  
15 impound the dog at the county pound as described in Section  
16 3-7A-7, Code of Alabama 1975, or may enter into an agreement  
17 with an animal shelter or licensed veterinarian to secure and  
18 impound dangerous dogs pursuant to this section. The owner of  
19 the dog shall be liable to Madison County for the costs and  
20 expenses incurred in impounding, feeding, and providing  
21 veterinary care or treatment for the dog.

22           (d) The district attorney or the county attorney may  
23 file a petition in the district court to declare the dog that  
24 caused physical injury to a human being in Madison County to  
25 be dangerous. The owner of the dog shall be served with a copy  
26 of the petition.

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

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

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

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

20           (g) The pleading and practice in all cases to  
21 petition the court to declare a dog to be dangerous under this  
22 section shall be in accordance with the Alabama Rules of Civil  
23 Procedure unless otherwise specified by this amendment. The  
24 court may tax all costs of the proceedings including  
25 attorneys' fees and expert witness fees to the owner of the  
26 dog.

1           Section 5. (a) A dog may not be declared dangerous  
2 in any of the following circumstances:

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

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

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

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

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

21           Section 6. (a) If a court determines that a dog is  
22 dangerous, but does not order that the dog be destroyed  
23 because evidence was insufficient to determine that the dog  
24 caused serious physical injury, the owner of the dog shall  
25 comply with the following requirements in addition to any  
26 other requirements imposed by the court:



1           (1) Within 30 days of the issuance of the order  
2       declaring the dog to be dangerous, the owner of the dog shall  
3       be required to register the dog with the Madison County Animal  
4       Control Department. All certificates of registration required  
5       to be obtained under this section may only be issued to  
6       persons 18 years of age or older which represent evidence of  
7       the following:

8           a. A current certificate of rabies vaccination.

9           b. A current photograph of the dog.

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

12          d. That the dog has been neutered or spayed, unless  
13       medically not needed.

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

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

24          g. If the owner of the dangerous dog is not the  
25       owner of the property where the dog is kept, the owner of the  
26       dog must obtain from the property owner written permission for  
27       the dangerous dog to be kept there.

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

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

13           (c) The owner of the dangerous dog shall pay an  
14 annual fee to register the dog pursuant to this amendment. The  
15 amount of the dangerous dog registration fee shall be  
16 established by the Madison County Commission. The payment of  
17 the dangerous dog registration fee shall be in addition to any  
18 regular dog licensing fee required by Madison County.

19           (d) An animal control officer or law enforcement  
20 officer may make whatever inquiry is deemed necessary to  
21 ensure compliance with this act and any court order issued  
22 pursuant to this amendment.

23           (e) Prior to a dangerous dog being sold or given  
24 away, the owner shall advise the new prospective owner in  
25 writing that the dog has been declared to be dangerous by a  
26 court and shall provide the Madison County Animal Control  
27 Department the name, address, and telephone number of the new

1 owner. The new owner shall comply with all of the requirements  
2 of this amendment.

3 Section 7. The owner of a dog that has been declared  
4 to be dangerous by a court may petition the district court to  
5 remove the dangerous dog designation 18 months after the  
6 judicial declaration was issued. A copy of the petition shall  
7 be filed with the county attorney. The court may remove the  
8 dangerous dog designation and eliminate any requirements of  
9 this amendment. If the owner of the dog has not violated this  
10 amendment and any orders of the court, and if the court is  
11 satisfied from the evidence that the dog is no longer  
12 dangerous.

13 Section 8. (a) If a dog that has previously been  
14 declared by a court to be dangerous, when unprovoked, causes  
15 physical injury or kills a human being, the owner of the dog  
16 shall be guilty of a Class C felony.

17 (b) If a dog that has not been declared by a court  
18 to be dangerous attacks and causes serious physical injury or  
19 death to any human being and the owner of the dog had prior  
20 knowledge of the dangerous propensities of the dog, yet  
21 demonstrated a reckless disregard of the propensities under  
22 the circumstances, the owner of the dog shall be guilty of a  
23 Class A misdemeanor.

24 (c) In addition to any fines imposed by the court, a  
25 person guilty of violating subsections (a) and (b) shall pay  
26 all expenses, including, but not limited to, shelter, food,  
27 veterinary expenses for boarding and veterinary expenses

1       necessitated by impoundment of the dog, medical expenses  
2       incurred by a victim from an attack by a dangerous dog, and  
3       other expenses required for the destruction of the animal.

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

7               (e) An owner of a dog declared to be dangerous by a  
8       court who has been adjudicated guilty of subsection (d) and  
9       subsequently fails to contain a dangerous dog in a proper  
10      enclosure shall be guilty of a Class B misdemeanor.

11              Section 9. Nothing in this amendment shall be  
12      construed to repeal other criminal laws. Whenever conduct  
13      prescribed by any provision of this amendment is also  
14      prescribed by any other provision of law, the provision which  
15      carries the more serious penalty shall be applied.

16              Section 10. (a) Nothing in this amendment shall be  
17      construed to restrict or negate the requirements of the rabies  
18      control law contained in Sections 3-7A-1 to 3-7A-15,  
19      inclusive, Code of Alabama 1975.

20              (b) Nothing in this amendment is designed to  
21      abrogate any civil remedies available under statutory or  
22      common law.

23              (c) Nothing in this amendment shall be construed to  
24      restrict the power of any county or municipality to adopt and  
25      enforce ordinances or regulations that comply with at least  
26      the minimum applicable standards set forth in this amendment.

1           Section 11. Any person who knowingly makes a false  
2       report to a law enforcement officer or an animal control  
3       officer that a dog is dangerous is guilty of a Class C  
4       misdemeanor.

5           Section 12. Madison County and any of its employees  
6       or agents and the individual issuing the dangerous dog  
7       certificate or registration shall be immune from any and all  
8       liability for any actions taken or for any failure to act  
9       pursuant to this amendment.

10          Section 13. The Madison County Commission shall  
11       establish the date on which these provisions shall become  
12       effective.

13          Section 2. An election upon the proposed amendment  
14       shall be held in accordance with Amendment 555 to the  
15       Constitution of Alabama of 1901, now appearing as Section  
16       284.01 of the Official ReCompilation of the Constitution of  
17       Alabama of 1901, as amended, and the election laws of this  
18       state.

19          Section 3. The appropriate election official shall  
20       assign a ballot number for the proposed constitutional  
21       amendment on the election ballot and shall set forth the  
22       following description of the substance or subject matter of  
23       the proposed constitutional amendment:

24                "Relating to Madison County, proposing an amendment  
25       to the Constitution of Alabama of 1901, for those areas of  
26       Madison County outside the corporate limits of any  
27       municipality, to establish a procedure by which a dog can be

1 declared dangerous and humanely destroyed or returned to the  
2 owner if certain requirements are met and the dog is securely  
3 enclosed; to provide immunity for county officers and  
4 employees; and to provide for penalties.

5 "Proposed by Act \_\_\_\_\_"

6 This description shall be followed by the following  
7 language:

8 "Yes ( ) No ( )."