

1 HB315
2 126428-1
3 By Representative Fincher (N & P)
4 RFD: Mobile County Legislation
5 First Read: 22-MAR-11

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A BILL

10 TO BE ENTITLED

11 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall only apply in Mobile
25 County in those areas of the county outside the corporate
26 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.

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

(4) COUNTY. Mobile County.

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

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

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

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

(9) OWNER. A person, firm, corporation, or organization having a right of property in a dog, or who keeps or harbors a dog, or who has a dog in his or her care or acts as the custodian of a dog, or who permits a dog to remain on or about any premises occupied by him or her.

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

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

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

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

c. Provides adequate ventilation and protection from the elements.

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

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

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

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

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

(c) If there is probable cause to believe that an owned dog is dangerous or a nuisance and has caused serious physical injury or has caused damage to real or personal property, the law enforcement officer or animal control officer shall impound the dog pending disposition of a petition to declare a dog to be dangerous or a nuisance. The county may impound the dog at the county pound as described in Section 3-7A-7, Code of Alabama 1975, or may enter into an

1 agreement with an animal shelter or licensed veterinarian to
2 secure and impound dangerous or nuisance dogs pursuant to this
3 section. The owner of the dog shall be liable to the county
4 for the costs and expenses incurred in impounding, feeding,
5 and providing veterinary care or treatment for the dog.

6 (d) The district attorney shall be authorized to
7 file a petition in the district court to declare the dog
8 dangerous or a nuisance. The owner of the dog shall be served
9 with a copy of the petition.

10 (e) A dog that is the subject of a dangerous or
11 nuisance dog investigation may not be relocated and ownership
12 shall not be transferred pending the outcome of the
13 investigation and hearing to determine whether to declare the
14 dog to be dangerous or a nuisance.

15 (f) The court hearing shall be held as soon as
16 practicable. At the hearing, the district attorney shall
17 present evidence that the dog is a dangerous dog or a nuisance
18 dog as defined by this act.

19 (1) If the court determines that the dog is
20 dangerous or a nuisance and has caused serious physical injury
21 or death to a human being, the court shall order the dog to be
22 humanely euthanized by a licensed veterinarian or an
23 authorized animal control official.

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

(g) The pleading and practice in all cases to petition the court to declare a dog to be dangerous or a nuisance under this act shall be in accordance with the Alabama Rules of Civil Procedure. Any judicial determination of a district court that a dog is dangerous or a nuisance may be appealed to the circuit court pursuant to the requirements of the Alabama Rules of Civil Procedure.

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

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

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

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

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

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

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

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

a. A current certificate of rabies vaccination.

b. A current photograph of the dog.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If a dog that has not been declared dangerous, attacks and causes severe injury to or death of any human, and the owner of the dog had prior knowledge of the dangerous propensities of the dog yet demonstrated a reckless disregard of the propensities under the circumstances, the owner of the dog shall be guilty of a misdemeanor punishable by a fine of not more than three hundred dollars (\$300) for the first offense and, for a second or subsequent offense, punishable by a fine of not more than six hundred dollars (\$600). In addition, the dog shall be immediately confiscated by an animal control authority, held for 10 business days after the owner is given written notification, and thereafter destroyed in an expeditious and humane manner. This 10-day period shall allow the owner to request a due process hearing. The owner

1 shall be responsible for payment of all boarding costs and
2 other fees as may be required to humanely and safely keep the
3 dog during any appeal procedure.

4 (d) This section shall not be construed to repeal
5 other criminal laws. Whenever conduct prescribed by any
6 provision of this act is also prescribed by any other
7 provision of law, the provision which carries the more serious
8 penalty shall be applied.

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

14 Section 9. A law enforcement officer may enforce
15 this act by immediately removing the dog to an appropriate
16 facility, without requirement for a warrant or pending due
17 process, or both, if in responding to an incident covered by
18 this act, he or she determines that the dog poses a threat to
19 the public safety, regardless of the actions, omissions, or
20 intent of the owner.

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

23 Section 11. The provisions of this act are
24 severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

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