



SPONSOR: Rep. Jaques & Sen. Henry
Reps. Viola, Wilson; Sen. Marshall

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 173

AN ACT TO AMEND TITLE 11, 16 AND 29 OF THE DELAWARE CODE RELATED TO DANGEROUS ANIMALS AND ANIMAL WELFARE LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §§ 3031F – 3035F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3031F. Powers, duties, and functions of animal welfare officers of the Department of Health and Social Services and the Department of Agriculture.

(a) The Office of Animal Welfare within the Department of Health and Social Services shall enforce all animal cruelty laws in the State, except in cases of domestic agricultural animals specified in § 101(8) of Title 3, where the Department of Agriculture shall have primary enforcement authority. In cases of imminent danger, the Office of Animal Welfare and the Department of Agriculture shall have concurrent jurisdiction to seize and impound an animal and take any other necessary step to alleviate the imminent danger or preserve evidence.

(b) The Office of Animal Welfare within the Department of Health and Social Services shall enforce all dog control, dangerous dog and animal fighting laws, and laws concerning the maintenance of a dangerous animal in the State.

~~(b)(c)~~ The Office of Animal Welfare is a law-enforcement agency for purposes of § 8901(b) of Title 11 and any other purpose relating to communication and access to criminal justice information.

~~(e)(d)~~ Animal welfare officers of the Office of Animal Welfare or Department of Agriculture shall be trained and certified pursuant to § 122(3)bb. of this title, ~~and must meet the qualification and training requirements of 2703 of Title 10.~~

~~(d) Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall have the power to investigate, search, and seize when investigating and enforcing animal cruelty laws. Animal welfare officers of the Office of Animal Welfare shall additionally have the power to detain and arrest when investigating and enforcing animal cruelty laws. Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall have no police powers to investigate or enforce laws other than those related to animal cruelty.~~

(e) Animal welfare officers of the Office of Animal Welfare shall have the power to investigate, search, seize, detain and arrest when investigating and enforcing animal cruelty and fighting, dog control, or dangerous animal laws.

(f) The Department of Agriculture shall have the power to investigate, and search, and seize when investigating and enforcing animal cruelty laws.

(g) Animal welfare officers of the Office of Animal Welfare and the Department of Agriculture shall have no police powers to investigate or enforce laws other than those related to animal cruelty or fighting, dog control, or dangerous animal laws.

(e)(h) Animal welfare officers of the Office of Animal Welfare or the Department of Agriculture shall not be permitted to carry firearms while on duty as such.

§ 3032F. Enforcement of laws for protection of animals.

The constables of the several counties of this State, and the police force of the City of Wilmington, as well as all other places in the State where police organizations exist, shall, as occasion requires, assist the Office of Animal Welfare and the Department of Agriculture in the enforcement of all laws which are enacted for the protection of animals.

§ 3033F. Fines and penalties in certain cases; disposition.

All fines, penalties and forfeitures, imposed and collected in any county of the State under every act relating to or affecting cruelty to animals, animal fighting, dog control, or dangerous animals, shall be remitted to the enforcing agency.

§ 3034F. Service of process.

Any warrant, subpoena, summons, or other process issued in relation to animal cruelty, animal fighting, dog control, or dangerous animals laws may be directed to and executed by any trained and certified animal welfare officer of the Office of Animal Welfare.

§ 3035F. Impoundment.

(a) Any trained and certified animal welfare officer working for the Office of Animal Welfare or the Department of Agriculture, or any law-enforcement officer as defined in § 222 of Title 11, may, in instances of alleged acts of animal cruelty or animal fighting and as provided for by the laws of Delaware relating to seizure of property, impound in an appropriate shelter, animal rescue or, if required, in an appropriate veterinarian facility, any animal subjected to cruel mistreatment or cruel neglect. Should the owner or custodian of an animal not be available at or near the premises where the animal is located, upon taking an animal under this section the agent shall leave in an appropriate place written notice to the animal's owner or custodian of such action. The officer shall take all reasonable action to insure that owners or custodians of an animal, impounded under this section, shall have received notice of such action as soon as possible and no later than 24 hours after the impoundment.

(b) An animal impounded under this section shall not remain in the custody of the State longer than 48 hours and shall be returned to its owner or custodian unless a complaint is filed within the 48-hour period in the appropriate court

53 under the animal cruelty laws against the owner or custodian, except that upon good cause shown a court may permit a
54 reasonable extension of the 48-hour period not to exceed 30 days. When a complaint is filed in the appropriate court, the
55 impounded animal shall remain in the custody of the State pending the outcome of the action. If the owner or custodian is
56 found to be in violation of the animal cruelty laws the court shall make a final determination as to the disposition of the
57 animal. Should the complaint be withdrawn, prior to a court hearing, the animal shall be immediately made available to its
58 owner or custodian.

59 (c) Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have
60 been violated by the owner or custodian of any impounded animal, the State or its agent shall have the right to recover the
61 costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Upon
62 impoundment, the State shall submit a detailed billing to the owner or custodian of the animal, listing the monthly costs of
63 boarding, evaluation, veterinary and other costs associated with care. Notwithstanding any provision of this section or any
64 other law to the contrary, failure of the animal's owner or custodian to pay these costs within 30 days of ~~the receipt~~ delivery
65 of a detailed monthly billing will result in ownership of the animal reverting to the State and the State may determine the
66 final disposition of said animal. The provisions of this subsection shall be applicable notwithstanding the final disposition
67 of the criminal charges.

68 (d) An owner or custodian of an animal impounded under this section who is found guilty of cruelty to the animal,
69 and the court orders the animal returned to such owner or custodian, shall, prior to taking the animal, reimburse the State or
70 its agent its regular standard fees charged for the care of animals while in the State's custody plus any veterinary fees
71 incurred for the animal during the period of impoundment. Failure of the animal's owner or custodian to pay such fees
72 within 5 days after a finding of guilty will result in ownership of the animal reverting to the State. The State may then
73 dispose of the animal in accord with its procedures for such disposition.

74 (e) Should an animal which has been impounded under this section expire while in the custody of the State, the
75 animal shall, as soon as possible, be turned over to the State Veterinarian at the Department of Agriculture. The State
76 Veterinarian shall take whatever action necessary, including necropsy if required, to determine cause of the animal's death
77 and shall record such cause. The cause of death shall, if requested, be furnished to the animal's owner and to the court
78 handling the complaint relative to the animal. Disposition of the animal's remains shall be coordinated with the animal's
79 owner and, provided a complaint has been filed, with the court handling the complaint.

80 Section 2. Amend §3043F, Title 16 of the Delaware Code by making deletions as shown by strike through and
81 insertions as shown by underline as follows and redesignating accordingly:

82 § 3043F. Inspections of facilities and premises; suspension of kennel or retail dog outlet license.

(b) Any animal welfare officer having probable cause to believe a violation of § 3044F of this title has or is taking place may enter upon the premises of the owner or custodian of any dog subject to such violation for purposes of investigating whether a violation of § 3044F of this title has occurred, provided that the investigation can be conducted without the animal welfare officer having to enter a dwelling house or other structure used in connection therewith. An animal welfare officer may enter into a dwelling house or other structure only under either of the following circumstances:

(1) With the permission of the owner or occupant of the dwelling house or other structure.

(2) Pursuant to a legally obtained search warrant, ~~and while accompanied by a police officer. The animal welfare officer is not required to be accompanied by a police officer under this subsection if the animal welfare officer is also a police officer as that term is defined in § 1911 of Title 11.~~

Section 3. Amend §3073F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3073F. Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; hearing procedures.

(a) An animal welfare officer shall seize and impound a dog suspected of being dangerous or potentially dangerous when the officer has reasonable cause to believe that the dog has engaged in 1 or more of the following:

(1) Killed or inflicted physical injury or serious physical injury upon a human being.

(2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(3) Chased or pursued a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.

(4) ~~[Repealed.]~~ Caused physical injury to a domestic animal, provided the domestic animal was on the property of its owner or under the control of its owner, on more than one occasion in a 12 month period.

(b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The Department shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the Department may dispose of the dog in accordance with this subchapter.

(c) The owner of any seized and impounded dog has a right to a hearing to determine whether the dog is dangerous or potentially dangerous.

(1) The Justice of the Peace Court is the Court of original and exclusive jurisdiction for hearings under this subsection.

(2) Unless the owner agrees to the proposed conditions, the The Department shall file a civil action with the Justice of the Peace Court within ~~72 hours~~ 5 business days after impoundment of the dog and of the identification of the dog's owner and notice to the owner. ~~Unless the owner agrees to proposed conditions.~~

Section 4. Amend §§3076F – 3081F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 3076F. Finding to declare a dog dangerous; duties of owner.

(a) The Justice of the Peace Court may declare a dog to be dangerous if it finds by clear and convincing evidence that the dog has done any of the following:

(1) Killed or inflicted physical injury or serious physical injury upon a human being.

(2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(3) ~~[Repealed.]~~ Inflicted physical injury upon a domestic animal after the dog has been declared potentially dangerous under §3077F of this title.

(b) If the Justice of the Peace Court declares a dog to be dangerous, it shall be unlawful for any person to keep or maintain such dog unless all of the following occur:

(1) The dog is spayed or neutered.

(2) The dog owner procures and maintains liability insurance in the amount of at least \$100,000, covering any damage or injury which may be caused by such dog.

(3) The dog is confined by its owner within a proper enclosure, and whenever outside of the proper enclosure the dog is securely muzzled and restrained by a substantial chain or leash, not exceeding 6 feet, and under the control of a responsible adult, or caged.

(4) The dog owner displays, in a conspicuous manner, a sign on the owner's premises warning that a dangerous dog is on the premises. The sign shall be visible and legible from the public highway or 100 feet, whichever is less.

(5) The dog owner immediately notifies the Department when the dog is loose, unconfined, has attacked a human being or another domestic animal, has been moved to another address, or dies.

(6) The owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.

(c) It shall be unlawful for the owner of a dangerous dog to sell, offer for sale, or give away said dog to any other person other than the Department. If a dangerous dog is given to the Department, the dog shall be disposed of by euthanasia in accordance with subchapter I of this chapter.

§ 3077F. Finding to declare a dog potentially dangerous; duties of owner.

(a) The Justice of the Peace Court may declare a dog to be potentially dangerous if it finds by clear and convincing evidence that the dog has done any of the following:

(1) Attacked or inflicted physical injury upon a human being.

(2) Attacked or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(3) Chased or pursued a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.

(4) Caused physical injury to a domestic animal on more than one occasion in a 12 month period, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(b) If the Justice of the Peace Court declares a dog to be potentially dangerous, it shall be unlawful for any person to keep or maintain the dog unless all of the following occur:

(1) The dog is spayed or neutered, provided the Justice of the Peace Court ordered the spaying or neutering as part of its decision in declaring the dog to be potentially dangerous.

(2) While on the dog owner's property, the dog is kept indoors or within a securely fenced yard from which it cannot escape.

(3) When off the owner's premises, the dog is restrained by a substantial chain or leash, not exceeding 6 feet, and is under the physical control of a responsible adult.

(4) The owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.

(c) If there are no additional instances of the behavior described in subsection (a) of this section within a 24-month period from the date the dog is declared potentially dangerous, the dog shall no longer be deemed a potentially dangerous dog.

§ 3078F. Liability of owner for costs of impoundment.

If the Justice of the Peace Court declares a dog dangerous or potentially dangerous, the Court shall include in its judgment the costs associated with the care of the dog while in the Department's custody. Prior to reclaiming the dog, the

owner must reimburse the Department the amount indicated in the judgment or establish a payment plan approved by the Court. If the owner does not take either action within 10 days after judgement, ownership of the dog reverts to the Department and the Department shall dispose of the dog by euthanasia in accordance with subchapter I of this chapter. If a dog is determined to be nondangerous under § 3080F of this title, the owner shall not be liable for the costs of impoundment.

§ 3079F. Violations by owners of dangerous or potentially dangerous dogs; penalties.

(a) For a violation of § 3076F(b)(4) or (b)(6) or § 3077F(b)(1), (b)(2), (b)(3) or (b)(4) of this title, the owner of the dangerous dog or potentially dangerous dog shall be fined not less than \$50 nor more than \$100. For a subsequent offense within 3 years of the original court ruling or acceptance of conditions concerning dangerous or potentially dangerous dogs, the owner shall be fined not less than \$100 or more than \$200.

(b) For a violation of § 3076F(b)(1) or (b)(5) of this title, the owner of the dangerous dog shall be fined not less than \$100 or more than \$250. For a subsequent offense within 3 years of the original court ruling or acceptance of conditions concerning dangerous or potentially dangerous dogs, the owner shall be fined not less than \$250 or more than \$500.

(c) For a violation of § 3076F(b)(2), (b)(3), or (c) of this title, the owner of the dangerous dog shall be fined not less than \$250 or more than \$1,000. For a subsequent offense within 3 years of the original court ruling or acceptance of conditions concerning dangerous or potentially dangerous dogs, the owner shall be fined not less than \$500 or more than \$2,000.

(d) After a dog has been declared dangerous under § 3076F(a) of this title, only a dog that, without provocation, kills, attacks, or inflicts physical injury or serious physical injury upon a human being or domestic animal shall be seized and impounded by the Department and disposed of by euthanasia in accordance with subchapter I of this chapter. For purposes of this subsection, "provocation" means any of the exceptions to finding a dog dangerous or potentially dangerous contained in 3074F(a) or (b) of this title.

(e) After a dog has been declared potentially dangerous under §3077F of this title, a dog that inflicts physical injury upon a domestic animal, or a dog that chases or pursues a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack, the dog shall be seized and impounded by the Department and the Department may file a civil action for a hearing to determine whether the dog is dangerous.

(e)(f) Any fine imposed for a violation of this subchapter may not be suspended to any amount less than the minimum prescribed fine. The Justice of the Peace Court shall remit all fines imposed following a conviction for violation of this subchapter to the Department.

§ 3080F. Finding to declare a dog nondangerous.

If the Department fails to demonstrate by clear and convincing evidence that a dog is dangerous pursuant to § 3076F of this title or potentially dangerous pursuant to § 3077F of this title, the Justice of the Peace Court shall declare the dog to be nondangerous. Despite a finding that the dog is nondangerous, the Justice of the Peace Court may impose any condition deemed reasonable, given the circumstances of the case.

§ 3081F. Disposition of dogs determined to be dangerous or potentially dangerous or nondangerous; appeal.

(a) If the Justice of the Peace Court determines that a dog is dangerous, the Court may direct the Department to dispose of the dog by euthanasia in accordance with subchapter I of this chapter. If the Justice of the Peace Court does not order euthanasia, the owner shall comply with all conditions that the Court orders under § 3076F(b)(6) of this title, within 30 days from the date of the order. The Justice of the Peace Court may order the dog to remain in the custody of the State until all conditions have been met.

(b) If the Justice of the Peace Court determines that a dog is potentially dangerous, the owner shall comply with all conditions that the Court orders under § 3077F(b)(4) of this title, within 30 days from the date of the order. The Justice of the Peace Court may order the dog to remain in the custody of the State until all conditions have been met.

(c) If another incident occurs within the period of time allowed for compliance under subsection (a) or (b) of this section, the Department shall immediately seize the dog and dispose of it in accordance with subchapter I of this chapter.

(d) If the Justice of the Peace Court determines a dog to be nondangerous, the dog shall be released to its owner, subject to any conditions imposed under § 3080F of this title.

(e) The Department or the owner, if the Justice of the Peace orders the dog to be euthanized, may appeal the Justice of the Peace Court's decision to the Court of Common Pleas within 15 days of the entry of the decision. The Court of Common Pleas shall review the appeal on the record. The filing of an appeal acts as a stay of the Justice of the Peace Court's decision, pending final disposition of the appeal. The appellant shall pay the cost of transcribing the Justice of the Peace Court recording and all documents must be submitted to the Court of Common Pleas within 15 days of filing an appeal.

Section 5. Amend §1327, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1327. Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor.

(b) For the purposes of this section, "dangerous animal" means any dog or other animal which:

(1) Had been declared dangerous or potentially dangerous by the ~~Dog Control Panel~~ Justice of the Peace Court pursuant to subchapter ~~III~~ V of Chapter ~~17~~ 30F of Title ~~7~~ 16;

(2) Had been trained for animal fighting, or that has been used primarily or occasionally for animal fighting;

(3) Had been intentionally trained so as to increase its viciousness, dangerousness or potential for unprovoked attacks upon human beings or other animals; or

(4) Has an individualized and known propensity, tendency or disposition, specific to the individual dog, for viciousness, dangerousness or unprovoked attacks upon human beings or other animals.

Section 6. Amend §5916, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5916. Uniform pay plan; hazardous duty pay.

(e) No employee of any department or agency shall receive hazardous duty pay, except those specifically included in the following paragraphs:

(1) Employees, otherwise qualified, who are employed by the Department of Correction (or its successor agency).

(2) Employees, otherwise qualified, who are employed by the Delaware Psychiatric Center (or its successor agency) and who are assigned to programs for the criminally insane.

(3) Employees, otherwise qualified, who are employed by the Department of Services for Children, Youth and Their Families and are assigned to work in the Division of Youth Rehabilitative Services facilities.

(4) Employees, otherwise qualified, who are employed by the Department of Health and Social Services Office of Animal Welfare and are assigned to the animal control and cruelty enforcement program.

~~(4)~~ (5) Casual seasonal employees performing the same job duties as those eligible employees identified in subsections (1), (2), (3), (4) shall also be deemed eligible. The amount of the monthly hazardous duty pay supplement shall be prorated based on the actual hours worked.

~~(5)~~ (6) Employees employed in the Prison Education Program as authorized in Chapter 24 of Title 14 whose primary job location is within the institutions.

SYNOPSIS

This bill brings animal control laws up to date with the office of animal welfare authority. The bill updates the dangerous dog law to allow for more thorough investigation prior to civil filings, add provisions for dogs that repeatedly attack or threaten to attack people and animals in the community, and establishes a deadline for filing appeals after dangerous dog rulings. Finally, the bill recognizes enforcement actions of animal welfare officers within the law pertaining to Hazard Pay.