SPONSOR: Sen. Townsend & Sen. Walsh & Rep. K. Williams & Rep. Bush
Sen. Wilson; Reps. Griffith, Osienski, Spiegelman

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 269
AS AMENDED BY
HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO DOGS.

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

Section 1. Amend § 1327, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 Justice of the Peace Court or by voluntary acceptance of the dog owner ~~pursuant to~~ under subchapter V of Chapter 30F of Title 16;

Section 2. Amend § 3041F, 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:

§ 3041F. Definitions.

As used in this subchapter:

(6) "Domestic animal" means any dog, cat, poultry, or livestock.

Section 3. Amend § 3048F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3048F. Dogs running at large.

(a) (1) ~~No dog, unless~~ Unless exempted under this section, ~~shall be permitted to~~ a dog may not run at large outside at any ~~time, and~~ time. A dog must be secured by means of a leash that is capable of physically restraining the movement of the dog. A dog is not at large if it is within the real property limits of its owner, or on private property with permission, or within a vehicle being driven or parked.

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(3) Allowing a dog to run at large is a ~~violation.~~ violation of this section and carries the following penalties: ~~Any owner or custodian who violates this subsection shall be fined not less than $25 or more than $50 for a first violation. For each subsequent offense occurring within 12 months of a prior offense, the person shall be fined not less than $50 or more than $100. The minimum fine for a subsequent offense is not subject to suspension.~~

a. For a first violation, a civil penalty of $50.

b. For a subsequent violation within 12 months of a prior violation, a civil penalty of $200. The minimum civil penalty for a subsequent violation may not be suspended.

~~(c) Whoever, being the owner, custodian, possessor, or harborer of any female dog, allows such dog to run or remain at large in this State while in heat shall be fined not less than $50 nor more than $100. For each subsequent offense occurring within 12 months of a prior offense, the owner, custodian, possessor, or harborer shall be fined not less than $100 or more than $200. The minimum fine for a subsequent offense shall not be subject to suspension. Allowing a female dog to run at large while in heat is a violation.~~

(d) Whoever, being the owner, custodian, possessor, or harborer of any dog that while running at large and without provocation, bites a ~~person, shall be fined not less than $100 nor more than $500. For each subsequent offense involving the same dog, such owner, custodian, possessor, or harborer shall be fined not less than $750 or more than $1,500. The minimum fines provided for in this subsection, $100 for the first offense and $750 for each subsequent offense, shall not be subject to suspension.~~ human being or domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner, will be penalized as follows:

(1) For a first violation, a civil penalty of $500.

(2) For a subsequent violation, a civil penalty of $1,000. The minimum civil penalty for a subsequent violation may not be suspended.

~~(e) Upon conviction in any court of an offense under subsection (d) of this section, the court shall cause a report to be forwarded to the Department. Said report shall contain the name of the defendant, the name of the dog, the license number of the dog, the date of the offense, and the date of conviction. The Department shall maintain these reports for a period of 3 years.~~

Section 4. Amend § 3050F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3050F. Dogs deemed personal property; theft; penalty.

(c) No person ~~shall~~ may confine any dog which is not that person's own lawful property without contacting the Department within ~~48~~ 24 hours of confining such dog and providing the Department with a complete description of the dog,

the exact location of the premises on which such dog is to be detained, and the name of the owner or tenant of such property.

Section 5. Amend § 3054F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3054F. Impounding of ~~dog~~ dogs running at large.

Any dog found running at large contrary to any of the provisions of this chapter may be impounded and disposed of ~~under such rules and regulations as the Department adopts.~~ as provided for in subchapter I of this chapter and any additional rules and regulations the Department may adopt. ~~Any~~ No impounded dog ~~shall not~~ may be disposed of through humane euthanasia without 5 days' ~~written~~ notification to the owner of the dog, if ownership can be determined, unless earlier disposal through humane euthanasia is recommended by a doctor of veterinary medicine.

Section 6. Amend § 3071F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3071F. Definitions.

For the purposes of this subchapter:

(11) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, serious or prolonged impairment of health, or serious or prolonged loss or impairment of the function of any bodily organ.

Section 7. Amend § 3073F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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:~~ acts listed under § 3076F(a) or § 3077F(a) of this title.

~~(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) Caused physical injury to a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner, on more than one occasion in a 12-month period. For purposes of this paragraph (a)(4), "physical injury" means impairment of physical condition and substantial pain.~~

(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.

(2) Unless the dog owner agrees to the proposed conditions, the Department shall file a civil action with the Justice of the Peace Court within ~~5~~ 15 business days after impoundment of the dog and identification of the dog's owner and notice to the dog owner.

Section 8. Amend § 3074F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3074F. Exceptions.

(a) Notwithstanding ~~§ 3073F of this title,~~ any provision of this chapter, no dog ~~shall~~ may be considered dangerous or potentially dangerous if a physical injury or serious physical injury was sustained by any of the following:

(1) A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing, or assaulting the dog, its offspring, or its owner, or was committing or attempting to commit a crime.

(2) A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing, or assaulting the ~~dog.~~ dog, its offspring, or its owner.

(b) Notwithstanding ~~§ 3073F of this title,~~ any provision of this chapter, no dog ~~shall~~ may be considered dangerous or potentially dangerous if the dog was protecting or defending its offspring or a ~~person~~ human being within the immediate vicinity of the dog from an attack or assault.

(c) Notwithstanding ~~§ 3073F of this title,~~ any provision of this chapter, no military, correctional, or police-owned dogs ~~shall~~ may be considered dangerous or potentially dangerous if the attack or injury to a ~~person~~ human being or domestic animal occurs while the dog is performing duties as expected.

Section 9. Amend § 3076F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(3) Inflicted physical injury upon a human being or 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, or a dog's owner voluntarily agrees to the designation of dangerous, it ~~shall be~~ is 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~~ enclosure or, when outside of the proper ~~enclosure~~ enclosure, the dog is all of the following:

a. ~~securely~~ Securely ~~muzzled~~ muzzled. ~~and restrained~~

b. Restrained by a substantial ~~chain or leash, not exceeding 6 feet,~~ leash that is not retractable and does not exceed 6 feet. ~~and~~

c. ~~under~~ Under the physical control of a responsible ~~adult, or caged.~~ adult.

(4) The dog owner displays, in a conspicuous manner, a sign on the dog owner's premises warning that a dangerous dog is on the premises. The sign ~~shall~~ must 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~~ a domestic animal, has been moved to another address, or dies.

(6) The dog is licensed.

(7) The dog is vaccinated for rabies.

(8) The dog is microchipped, and the microchip is registered to the owner.

~~(6)~~ (9) The dog owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.

Section 10. Amend § 3077F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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.~~

(3) On more than one occasion, chased or pursued a human being, in an apparent attitude of attack, upon the streets, sidewalks, or any public or private property, other than on the dog owner's property.

~~(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.~~

(4) On more than one occasion, caused unprovoked physical injury to a domestic animal, if the domestic animal was on the property of its owner or under the immediate control of its owner.

(5) On more than one occasion, behaved in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more human beings, companion animals, farm animals, or domestic animals.

(c) If the Justice of the Peace Court declares a dog to be potentially dangerous, or a dog's owner voluntarily agrees to the designation of potentially dangerous, it ~~shall be~~ is 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.~~ neutered.

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

(3) When off the owner's premises, the dog is all of the following:

a. Securely muzzled.

b. ~~restrained~~ Restrained by a substantial ~~chain or leash, not exceeding 6 feet,~~ leash that is not retractable and does not exceed 6 feet. ~~and is~~

c. ~~under~~ Under the physical control of a responsible adult.

(4) The dog owner displays, in a conspicuous manner, a sign on the dog owner's premises warning that a potentially dangerous dog is on the premises. The sign must 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 domestic animal, has been moved to another address, or dies.

(6) The dog is licensed.

(7) The dog is vaccinated for rabies.

(8) The dog is microchipped, and the microchip is registered to the owner.

~~(4)~~ (9) The dog owner meets any other condition that the Justice of the Peace Court has deemed reasonable, given the circumstances of the case.

(d)(1) ~~If~~ For a dog declared to be potentially dangerous under this section before [the effective date of this Act], 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~~ will no longer be deemed a potentially dangerous dog.

(2) Paragraph (d)(1) of this section does not apply to a dog declared to be potentially dangerous on or after [the effective date of this Act].

Section 11. Amend § 3079F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

~~(a) For a violation of § 3076F(b)(4) or (b)(6) or § 3077F(c)(1), (c)(2), (c)(3) or (c)(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.~~

(a) Possessing a dangerous dog in violation of § 3076F(b) of this title or a potentially dangerous dog in violation of § 3077F(c) of this title is punishable as follows:

(1) For a first violation, a civil penalty of $500.

(2) For a subsequent violation, a civil penalty of $1,000.

~~(d)~~ (b) 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~~ must 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)~~ § 3074F(a) or (b) of this title.

~~(e)~~ (c) 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 on the dog owner's property, in an apparent attitude of attack, the dog shall~~ commits any of the acts listed under § 3077F(a) of this title must 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.~~ dangerous or the dog owner may voluntarily accept the designation of dangerous.

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

Section 12. Amend § 3081F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 determines the dog is dangerous but does not order euthanasia, or the dog owner voluntarily accepts the designation of dangerous, the dog owner ~~shall~~ must comply with all conditions that the Court orders under ~~§ 3076F(b)(6)~~ § 3076F(b) 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, or the dog owner voluntarily accepts the designation of potentially dangerous, the dog owner ~~shall~~ must comply with all conditions that the Court orders under ~~§ 3077F(c)(4)~~ § 3077F(c) 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.

Section 13. Sections 9 and 10 of this Act apply to a dog that is declared dangerous or potentially dangerous by the Justice of the Peace Court or by voluntary acceptance by the owner on or after the effective date of this Act.