

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 334

INTRODUCER: Senator Montford

SUBJECT: Severe Injuries Caused by Dogs

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 334 revises the procedures for a hearing officer to determine whether a dog that attacks and causes a severe injury to a human should be destroyed. The bill specifically addresses dogs that have not been previously classified as dangerous dogs.

Florida law currently requires these dogs to be confiscated and destroyed by animal control authorities unless the owner of the dog prevails at a hearing. However, current law does not authorize affirmative defenses to be raised at a hearing to determine the destruction of the dog.

The bill requires a hearing officer to consider the same mitigating factors used by an animal control authority in classifying a dog as dangerous in determining whether to destroy a dog that has caused severe injury to a human but has not been classified as dangerous. The factors do not apply to a situation in which the dog has caused the death of a human. If the hearing officer finds the existence of any of the mitigating factors, the court may order the dog to be returned to the owner, with or without imposing restrictions.

II. Present Situation:

Financial Liability of Owners of Dogs

Under Florida law, the owner of a dog is liable for any damage done by the dog to any person, domestic animal, or livestock.¹ In a criminal or civil action against a person for killing or injuring a dog, satisfactory proof that the dog was killing a domestic animal or livestock is a good defense.² An owner may be a person or an entity possessing, harboring, keeping, or having

¹ Section 767.01, F.S. The term "livestock" is defined as grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas raised for private use or commercial purposes. Section 585.01(13), F.S.

² Section 767.03, F.S.

control or custody of a dog or a parent of a child under the age of 18 who has a dog.³ A dog owner is liable for damages if his or her dog bites a person while the person is in public, or lawfully in a private location, including the property of the owner.⁴ Liability attaches to the owner regardless of the former viciousness of the dog or the owner's knowledge of viciousness.

Florida provides two narrow limits or exceptions to liability. The liability of an owner for negligence is reduced by the percentage that the bitten person's negligence contributed to the biting incident.⁵ Also, if the injury takes place on the property of the owner on which the owner has prominently displayed a "Bad Dog" sign, unless the injured person is under the age of 6 or can show that damages are proximately caused by a negligent act or omission of the owner, the owner is not liable.⁶

Dangerous Dogs

Definition of Dangerous Dog

Florida law imposes specific requirements on the handling of dangerous dogs. A dangerous dog is defined as a dog that:

- Has aggressively bitten, attacked, endangered or inflicted severe injury on a person on public or private property;
- Has more than one time severely injured or killed a domestic animal while the dog is off the owner's property; or
- Has, when unprovoked, chased or approached a person in public in a menacing fashion, or with an attitude of attack.⁷

Process for Classification of Dogs as Dangerous

An animal control officer or employee is typically the person who would investigate an incident involving a dog. In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.⁸

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.⁹ A dog that is being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.¹⁰

The animal control authority may not declare a dog as dangerous if:

³ Section 767.11(7), F.S.

⁴ Section 767.04, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 767.11(1), F.S., requires an appropriate authority to document a dog as a dangerous dog. Section 767.11(2), F.S., further defines what is meant by "unprovoked" as that the victim whom while acting peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog. A severe injury is any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. Section 767.11(3), F.S.

⁸ Section 767.11(5) and (6), F.S.

⁹ Section 767.12(1)(a), F.S.

¹⁰ *Id.*

- The injured person was unlawfully on the property, or if lawfully on the property was tormenting, abusing, or assaulting the dog or its owner or a family member; or
- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.¹¹

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous and provide the owner an opportunity for a hearing before making a final determination. The animal control authority must provide written notice of sufficient cause to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has 7 calendar days from receiving the notice to file a written request for a hearing. The hearing officer must hold the hearing as soon as possible, no more than 21 calendar days, and no sooner than 5 days after receiving the request for hearing.¹²

Once a dog is classified as dangerous, the animal control authority must notify the owner by registered mail, certified hand delivery, or service. The owner has the right to appeal the decision in county court within 10 business days after receipt of the classification. The owner must confine the dog in a securely fenced or enclosed area pending the outcome of the appeal.¹³

Within 14 days after a dog is classified as dangerous or a classification is upheld by the county court, the owner must annually obtain from animal control a certificate of registration for the dog.¹⁴ The owner must immediately notify animal control if his or her dangerous dog is loose or unconfined; has bitten a person or attacked an animal; is sold, given away, or dies; or is otherwise moved to another address.¹⁵

Any person who violates any of the restrictions on owning a dangerous dog commits a noncriminal infraction, punishable by a fine of up to \$500.¹⁶

Attack by Dangerous Dog or Any Attack Resulting in Severe Injury or Death

Procedures different from the classification process above apply if an incident giving rise to an investigation was an attack by a dog that was previously classified as a dangerous dog or if the incident was the severe injury to or death of a human. Additionally, an attack by a dog that was previously classified as dangerous or an attack that causes a severe injury to or death of a human may result in the imposition of a criminal penalty on the dog's owner. In proceedings relating to a dog that has caused a severe injury to or death of a human, the statutes suggest that the mitigating factors used in the classification process above are immaterial.

¹¹ Section 767.12(1)(b), F.S.

¹² Section 767.12(1)(c), F.S.

¹³ Section 767.12(1)(d), F.S.

¹⁴ Section 767.12(2), F.S.

¹⁵ Section 767.12(3), F.S.

¹⁶ Section 767.12(7), F.S.

Dangerous Dog; No Severe Injury to or Death of Human

If a dangerous dog attacks or bites a person or domestic animal without provocation, the owner is guilty of a first degree misdemeanor, punishable by up to a year in jail and up to a \$1,000 fine.¹⁷ Additionally, the animal control authority must immediately confiscate the dog, place the dog in quarantine if necessary, or impound and hold the dog for 10 business days after the owner is notified in writing, and thereafter destroy the dog, unless the owner has requested a hearing during the 10 day timeframe. While the dog is boarded, the owner must pay all costs and other fees to board the dog humanely and safely.¹⁸

Dangerous Dog; Severe Injury to or Death of Human

If a dangerous dog causes severe injury to or death of a person, the owner commits a third degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.¹⁹ In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

Unclassified Dog; Severe Injury to or Death of Human

If a dog that has not been declared dangerous causes severe injury or death to a person, if the owner had prior knowledge of the dog's dangerous propensities but demonstrated reckless disregard, the owner commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.²⁰ In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

A dog may not be destroyed while an appeal is pending.²¹

III. Effect of Proposed Changes:

Current law requires dogs that have not been classified as dangerous but cause a severe injury to or death of a human to be confiscated and destroyed, unless the owner prevails at a hearing. However, current law does not specify guidelines for the hearing. This bill requires the hearing officer to consider certain mitigating factors if the dog has not caused the death of a human.

Factors for consideration are whether:

- The severe injury was sustained by a person who was unlawfully on the property;
- The severe injury was sustained by a person who was lawfully on the property but was tormenting, abusing, or assaulting the dog, its offspring, the owner, or a family member of the owner; or
- The dog was protecting or defending a person from unjustified attack who was within the immediate vicinity of the dog.

¹⁷ Sections 767.13(1), 775.082(4)(a), and 775.083(1)(d), F.S.

¹⁸ Section 767.13(1), F.S.

¹⁹ Sections 767.13(3), 775.082(3)(e), and 775.083(1)(c), F.S.

²⁰ Sections 767.13(2), 775.082(3)(b), and 775.083(1)(e), F.S.

²¹ Section 767.13(5), F.S.

These factors mirror those used by an animal control authority in determining whether to classify a dog, which has not caused a severe injury to or death of a human, as dangerous. If the hearing officer finds the existence of any one of the factors, the hearing officer is not required to order the destruction of the dog. Instead, the hearing officer may declare the dog a dangerous dog and impose restrictions on the dog owner or return the dog to the owner without restrictions.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities. However, county hearings to determine whether a dog that causes a severe injury to a human should be destroyed may become lengthier when a dog owner presents evidence of mitigating circumstances.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

At least one county court has ruled s. 767.13(2), F.S., unconstitutional based on a deprivation of property without due process.²² The court noted that Florida law authorizes dog owners to establish at a classification hearing extenuating circumstances by an attack of a dog but does not afford owners of dogs who cause severe injury but have not been classified as dangerous the same opportunity.²³ The court specifically noted:

It truly does defy logic that the owner of a dog facing potential classification as “dangerous” may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense ... may be raised by a person trying to prevent *execution* of his or her pet.²⁴

²² The Fourteenth Amendment of the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Dogs are considered property. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967).

²³ *IN RE: “Cody,”* Case No. 1999-33984 COCI, pg. 5 (7th Cty. Ct. 2003).

²⁴ *Id.* at 5.

The court concludes that s. 767.13(2), F.S., is unconstitutional as it is arbitrary and oppressive, and therefore violative of substantive due process.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Additional costs may result from lengthier hearings to determine whether a dog that causes a severe injury to a human should be destroyed because the bill authorizes dog owners to present mitigating evidence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 767.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ *Id.* at pg. 4-5.