

1 HB231
2 126428-5
3 By Representatives Fincher, Barton, Davis, Buskey, Kennedy,
4 Bracy, Sessions, Ison and Gaston (N & P)
5 RFD: Mobile County Legislation
6 First Read: 08-FEB-12

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall only apply in Mobile
20 County in those areas of the county outside the corporate
21 limits of any municipality.

22 Section 2. The following words shall have the
23 following meanings:

24 (1) ANIMAL CONTROL OFFICER. Any person employed by
25 Mobile County who performs animal control functions or any
26 person who performs animal control functions who is employed

1 by an entity under agreement or contract with the county to
2 perform animal control functions or to enforce this act.

3 (2) ATTACK. Aggressive physical contact initiated by
4 a dog.

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

8 (4) COUNTY. Mobile County.

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

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

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

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

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

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

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

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

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

18 c. Provides adequate ventilation and protection from
19 the elements.

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

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

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

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

7 (b) If a dog, which is unowned and has been reported
8 to be dangerous, bites a person, the dog may be quarantined
9 and destroyed pursuant to Section 3-7A-9(b), Code of Alabama
10 1975. For purposes of this subsection, "bites" means the same
11 as "has been exposed" as defined in Section 3-7A-1(5), Code of
12 Alabama 1975.

13 (c) If there is probable cause to believe that an
14 owned dog is dangerous or a nuisance and has caused serious
15 physical injury or has caused damage to real or personal
16 property, the law enforcement officer or animal control
17 officer shall impound the dog pending disposition of a
18 petition to declare a dog to be dangerous or a nuisance. The
19 county may impound the dog at the county pound as described in
20 Section 3-7A-7, Code of Alabama 1975, or may enter into an
21 agreement with an animal shelter or licensed veterinarian to
22 secure and impound dangerous or nuisance dogs pursuant to this
23 section. The owner of the dog shall be liable to the county
24 for the costs and expenses incurred in impounding, feeding,
25 and providing veterinary care or treatment for the dog.

26 (d) The district attorney shall be authorized to
27 file a petition in the district court to declare the dog

1 dangerous or a nuisance. The owner of the dog shall be served
2 with a copy of the petition.

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

8 (f) The court hearing shall be held as soon as
9 practicable. At the hearing, the district attorney shall
10 present evidence that the dog is a dangerous dog or a nuisance
11 dog as defined by this act.

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

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

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

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

3 (1) When an injury or damage was sustained by a
4 person who, at the time of injury or damage, was committing a
5 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, or 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 or a nuisance.

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

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

11 a. A current certificate of rabies vaccination.

12 b. A current photograph of the dog.

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

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

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

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

25 g. If the owner of the dangerous or nuisance dog is
26 not the owner of the property where the dog is kept, proof
27 that the owner of the dog has obtained from the property owner

1 written permission for the dangerous or nuisance dog to be
2 kept there.

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

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

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

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

24 (e) Prior to a dangerous or a nuisance dog being
25 sold or given away, the owner shall advise the new prospective
26 owner in writing that the dog has been declared to be
27 dangerous or a nuisance by a court and shall provide the

1 animal control authority or county health department
2 information on where the dog is registered, the name, address,
3 and the telephone number of the new owner. The new owner shall
4 comply with all of the requirements of this act.

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

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

20 (b) If a dog that has previously been declared
21 dangerous, when unprovoked, attacks, assaults, wounds, or
22 causes severe physical injury, or kills a human being, the
23 owner or keeper of the dog shall be guilty of a Class C felony
24 punishable by a fine of not more than five thousand dollars
25 (\$5,000) or imprisonment of not more than two years, or both.
26 The dog control authority may confiscate and, after the
27 expiration of 10 working days after the owner has been

1 notified, destroy the dangerous dog. The 10-day time period
2 shall allow the owner to request a due process hearing. The
3 owner shall be responsible for payment of all boarding costs
4 and other fees as may be required to humanely and safely keep
5 the dog during any appeal procedure.

6 (c) If a dog that has not been declared dangerous,
7 attacks and causes severe injury to or death of any human, and
8 the owner of the dog had prior knowledge of the dangerous
9 propensities of the dog yet demonstrated a reckless disregard
10 of the propensities under the circumstances, the owner of the
11 dog shall be guilty of a misdemeanor punishable by a fine of
12 not more than three hundred dollars (\$300) for the first
13 offense and, for a second or subsequent offense, punishable by
14 a fine of not more than six hundred dollars (\$600). In
15 addition, the dog shall be immediately confiscated by an
16 animal control authority, held for 10 business days after the
17 owner is given written notification, and thereafter destroyed
18 in an expeditious and humane manner. This 10-day period shall
19 allow the owner to request a due process hearing. The owner
20 shall be responsible for payment of all boarding costs and
21 other fees as may be required to humanely and safely keep the
22 dog during any appeal procedure.

23 (d) This section shall not be construed to repeal
24 other criminal laws. Whenever conduct prescribed by any
25 provision of this act is also prescribed by any other
26 provision of law, the provision which carries the more serious
27 penalty shall be applied.

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

6 Section 9. A law enforcement officer may enforce
7 this act by immediately removing the dog to an appropriate
8 facility, without requirement for a warrant or pending due
9 process, or both, if in responding to an incident covered by
10 this act, he or she determines that the dog poses a threat to
11 the public safety, regardless of the actions, omissions, or
12 intent of the owner.

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

15 Section 11. The provisions of this act are
16 severable. If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

19 Section 12. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Mobile County
Legislation..... 08-FEB-12

Read for the second time and placed
on the calendar 1 amendment 20-MAR-12

Read for the third time and passed
as amended..... 22-MAR-12

Yeas 44, Nays 0, Abstains 39

Greg Pappas
Clerk