

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 8, 1998 Revised: _____

Subject: Dangerous Dogs

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute redefines the term “dangerous dog”; restores original language to section providing confiscation of dogs that attack and cause severe injury or death to any human and provides penalty for owner; places restrictions on persons that received a withholding of adjudication or an adjudication of guilt for cruelty to animals; moves the process for a hearing on a dangerous dog classification to the county court; limits the application of dangerous dog controls pending final resolution; requires owners from other jurisdictions to notify animal control authority of the dangerous dog when moved to a new jurisdiction; provides penalties for dog owners allowing their dogs to run as a pack if the pack injures a person; and provides an effective date of July 1, 1998.

This bill substantially amends sections 767.11, 767.13, 828.12, 767.12, and 784.05, Florida Statutes.

II. Present Situation:

Dangerous Dogs

Currently s. 767.11, F.S., defines a “dangerous dog” as a dog that according to the records of the appropriate authority:

- Has aggressively bitten, attacked, endangered, or inflicted severe injury to a human;
- Has more than once severely injured or killed a domestic animal while off its owner’s property;
- Has been used in dog fighting or is trained for dog fighting; or
- Has, unprovoked, chased or approached a person in a menacing fashion or in apparent attitude of attack, if sworn to by a person.

The definition of “dangerous dog” is of import in s. 767.13, F.S., which provides that a dog owner is guilty of a first degree misdemeanor if the owner’s dog has been previously declared dangerous and the dog attacks or bites a person or a domestic animal without provocation, and that a dog owner is guilty of a third degree felony if their dog has previously been declared dangerous and attacks and causes severe injury to or the death of any human. In either of the above circumstances, such a dog is to be immediately confiscated by an animal control authority, placed in quarantine, if necessary, or impounded for 10 business days after the owner is given written notification, during which time the owner may request a hearing under s. 767.12, F.S.

Section 767.13, F.S., also provides that the dog is to be destroyed in an expeditious manner, that the owner is to pay for all boarding costs and other fees to house the dog during any appeal procedure, and that the dog may not be destroyed while the appeal is pending. An owner is not guilty of any crime under this section if their dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack.

In addition, the section provides that even if a dog that has not been declared dangerous, but causes severe injury to or death of any human, the dog will be confiscated by an animal control authority and is to be held for 10 business days, pending the owner’s request for a hearing, and thereafter destroyed. An owner is guilty of a second degree misdemeanor if the owner had prior knowledge of the animal’s dangerous propensities, yet “demonstrated a reckless disregard” for such propensities under the circumstances.

Section 767.12, F.S., provides that an animal control authority is to investigate reported incidents involving a suspected dangerous dog. A dog that is the subject of such an investigation is to be kept confined by the owner, may not be relocated or have its ownership transferred pending the outcome of the investigation. This section provides an exclusion from the classification if the threat, injury or damage was sustained by a person who was unlawfully on the property, harassing the dog or its owner, or if the dog was protecting a human from an unjustified attack.

After investigation, the animal control authority is to make an initial determination (a “sufficient cause finding”) whether to classify the dog as dangerous. The animal control authority is to provide written notice to the owner, and the owner may request a hearing, the procedures of which are to be established by the local governing authority. After the hearing, if the dog is classified as a dangerous dog, the animal control authority must provide written notice to the owner, and the owner may file a written request for a hearing in the county court to appeal the classification.

Within 14 days after the classification as a dangerous dog by the animal control authority or the classification is upheld by the county court on appeal, the owner must register the dog and renew the certificate annually. A fee may be imposed for the certificate, and to obtain a certificate, an owner must show that: the owner is 18 years of age; the dog is currently vaccinated for rabies; the owner has a proper enclosure to confine the dog and has posted warning signs; and the dog has permanent identification (such as a tattoo or electronic implantation).

The owner is to notify the animal control authority if the dangerous dog is loose, has bitten a human or attacked another animal, is sold, dies, or moved. If sold or given away, the owner is to provide the animal control authority with the name address and telephone number of the new owner. The new owner must comply with all requirements of this statute, and must notify the animal control authority in the new jurisdiction. The dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Hunting dogs are exempt from the dangerous dog provisions when engaged in a legal hunt, training, or exhibition. Dogs used by law enforcement are exempt as well. Any violation of this statute is a noncriminal infraction, punishable by a fine of not more than \$500.

Cruelty to Animals

Section 828.12, F.S., currently provides that any person who treats any animal in a cruel or inhumane manner is guilty of a first degree misdemeanor. A person who intentionally commits an act to any animal which results in the cruel death or excessive or repeated infliction of unnecessary pain or suffering is guilty of a third degree felony. This section also provides that veterinarians are immune from criminal or civil liability for their part in an investigation of cruelty to animals.

Section 828.073, F.S., provides a mechanism by which any law enforcement officer or any agent appointed under s. 828.03, F.S., may lawfully take custody of any animal found neglected or cruelly treated by removing the animal. If the animal is seized, the officer or agent must provide for the animal until a court determines that either:

- The owner is able to provide adequately for the animal and the animal is to be returned, or
- The owner is unable or unfit to care for the animal, in which case the court may order the animal to be sold at a public auction or be destroyed or disposed of as the local animal control authority deems fit.

A court may order that other animals that are in the custody of the owner that were not seized by the officer or agent be turned over to the officer or agent, and may enjoin the owner's further possession or custody of other animals.

Culpable Negligence

Section 784.05, F.S., currently provides that any person who, through culpable negligence, exposes another person to personal injury or inflicts actual personal injury on another commits a second degree misdemeanor, punishable by up to a year imprisonment, a fine of up to \$1000. The statute currently provides an upgraded penalty (a third degree felony) for violating the above by storing or leaving a loaded firearm within the reach or easy access of a minor if the minor inflicts injury or death upon himself or herself or another. This section provides exceptions, provides time limitations with regard to the arrest of a family member under this section, and defines "minor" as one less than 16 years of age.

III. Effect of Proposed Changes:

Section 1. Amends s. 767.11, F.S., altering one of four possible criteria for defining a “dangerous dog.” This section removes the requirement that a dog severely injure or kill a domestic animal more than once before being defined as a dangerous dog and instead requires that a dog has, without provocation, severely injured or killed a domestic animal while off the owner’s property.

Section 2. Restores the original language to s. 767.13, F.S., requiring that a dog that has not been classified as dangerous must cause severe injury or death of a human prior to an animal control authority’s required confiscation of the dog. If such an attack occurs and the dog is confiscated, this section provides that if the dog owner had prior knowledge of the dog’s dangerous propensities and demonstrated a reckless disregard for such propensities, the owner is guilty of a second degree misdemeanor, punishable by up to 60 days imprisonment or by a fine not to exceed \$500, or both.

This section also requires that an owner will be responsible for payment of all boarding costs to house the animal pending final resolution, conforming this section’s language with that of section 4 of this committee substitute.

Section 3. Creates an additional subsection in s. 828.12, F.S. This section provides that a person who receives a withholding of adjudication or and adjudication of guilt for cruelty to animals forfeits all domestic animals that were the subject of the violation to either the municipal, county or local humane society, as determined by the arresting officer or state attorney, without any additional procedure being required.

This section also provides that a person who possesses a domestic animal after having received a withholding of adjudication or an adjudication of guilt for cruelty to animals is guilty of a first degree misdemeanor, punishable by up to 1 year imprisonment or a fine up to \$1000, or both. This provision does not apply if:

- A court issues an order permitting the person to possess domestic animals upon a showing that the animals will be well treated, or
- The person receives at least 30 percent of his or her annual gross income from the sale or resale of domestic animals, or the sale of a domestic animal product, and has all required licenses.

The second exception does not prohibit a court from ordering a person not to possess a domestic animal as a condition of probation.

This section also provides that all wildlife held by one who has received a withholding of adjudication or an adjudication of guilt for cruelty to animals is to be forfeited to the Florida Game and Fresh Water Fish Commission for adoption or euthanasia, without any further proceeding required. The commission is to determine whether such person is to possess wildlife in the future pursuant to ch. 372, F.S., and the commission’s rules.

Section 4. Amends s. 767.12, F.S., to alter the hearing and appeal process regarding the classification of dangerous dogs. This section deletes the initial required “sufficient cause” finding by the local animal control authority, the subsequent hearing, and the “appeal” to the county court after the animal control authority has determined that a dog is dangerous. This section requires the animal control authority to provide written notice to the owner once a dog has been classified as a dangerous dog and provides that the owner may file a written request for a hearing in the county court to challenge the classification. This hearing in county court is to take place within 21 days after receipt of the request, or as soon thereafter as practical. The owner must confine the dog pending the final resolution of the matter, however, the animal control authority may not impose any of the dangerous dog requirements in s. 767.12(2) or (4), F.S., until the county court case is resolved.

This section also requires that when a dangerous dog is sold or given away, the new owner must comply with all requirements of the statute and applicable local ordinances. The owner of an animal classified as dangerous in a jurisdiction outside the state, must also comply with the statute and local ordinances. The animal control authority must be notified by the owner of a dangerous dog so classified within this state or in another jurisdiction outside the state that the dog is in its jurisdiction.

This section exempts dogs from the provisions of this statute when engaged in any legal herding of cows or hogs, when the dog is protecting its young, or when the dog is protecting its food.

Section 5. Appends to s. 784.05, F.S., providing that any person who, through culpable negligence, exposes another person to personal injury or inflicts actual personal injury on another by knowingly permitting a dog or dogs owned by that person to run at large as a pack of dogs commits:

- If that pack of dogs inflicts significant injury on any person, a first-degree misdemeanor, punishable by up to 1 year imprisonment, or a fine of up to \$1000.
- If that pack of dogs inflicts an injury that results in death of any person, a third-degree felony, punishable by up to 5 years imprisonment, a fine of up to \$5000, or as a habitual felony offender if applicable under s. 775.084, F.S.

This section defines the term “pack of dogs” as “more than two dogs engaged in the same activity.”

Section 6. Provides an effective date of July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 1: One of the definitions of a “dangerous dog” is changed by this bill to include a dog that severely injures or kills a domestic animal while off the owner’s property without provocation. As it may be difficult to determine provocation among animals, the “without provocation” language may result in increased litigation costs for dog owners regarding which animal provoked the other.

Section 3: The bill requires that any person who has been adjudicated guilty or received a withheld adjudication for violation of s. 828.12, F.S., forfeits all animals that were the subject of the violation, which would have a fiscal impact (in the amount of the value of the animal) on a person in that falls into this category. In addition, s. 828.12, F.S., is expanded to provide a criminal penalty for a person owning an animal after having received a withholding of adjudication or an adjudication of guilt for violation of that section without any further procedure or judicial determination required. Although an exception is provided for persons who receive 30 percent or more of their annual gross income from the sale or resale of animals, persons who receive less than 30 percent of their income from the sale or resale of animals that fall under the scope of this statute will be unable to lawfully gain income from animals.

C. Government Sector Impact:

Section 1: This bill may open counties up to increased litigation and related costs because one of the definitions of a “dangerous dog” is changed by this bill to include a dog that

“. . . without provocation, severely injured or killed a domestic animal while off the owner’s property.” As it may be difficult to determine provocation among animals, the “without provocation” language may result in increased complaints to animal control authority, and when confiscation occurs, increased litigation costs for the animal control authority.

Section 4: This section removes the current process providing for a hearing before the animal control authority after the authority has notified the owner that sufficient cause exists for a finding that the dog is dangerous and removes the “appeal” to county court after the animal control authority determines a dog is dangerous. This section now provides that an owner may request a hearing before the county court after the animal control authority determines a dog is dangerous. This would appear to streamline the hearing process and obviate some concerns expressed by counties that the prior language requiring an “appeal” to a county court (which does not have appellate jurisdiction) was making litigation on this subject financially burdensome and hindering animal control authorities’ efforts to confiscate and dispose of dangerous dogs.

VI. Technical Deficiencies:

Page 8, lines 26-28, provide that a person violates the culpable negligence statute by “knowingly permitting a dog or dogs owned by that person to run at large as a pack of dogs. . . .” As this is a criminal statute, the language is to be strictly construed in favor of the defendant, and the language currently implies that a person charged under the statute would have to be the owner of all dogs in the pack, which would make the inclusion of the singular (“dog”) dispensable, as a dog cannot be a “pack” alone.

VII. Related Issues:

None.

VIII. Amendments:

None.