

**The Florida Senatem**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 334

INTRODUCER: Judiciary Committee and Senator Montford

SUBJECT: Severe Injuries Caused by Dogs

DATE: January 8, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 334 revises procedures for use by animal control authorities and hearing officers in investigating an attack by a dog, classifying a dog as dangerous, and ordering the destruction of a dog. The process provided in law generally consists of an investigation, an initial determination of sufficient cause at a hearing, a final determination, and an appeal to the county court.

Under current law, a dog owner may present extenuating evidence in a hearing to determine whether to classify a dog as a dangerous dog as the result of a dog bite or attack. However, current law does not allow extenuating evidence if the bite or attack resulted in a severe injury to or death of a human. The bill authorizes a hearing officer to consider evidence in determining whether to destroy a dog that has caused severe injury to, but not the death of, a human.

Under current law, while the classification process is pending the dog may be impounded. This bill authorizes animal control authorities to immediately confiscate a dog if the dog has caused severe injury to a human.

Currently, after an initial determination of sufficient cause to classify a dog as dangerous, an animal control authority must provide notice to the owner. An owner may then challenge sufficient cause or proposed requirements through a hearing. After a hearing officer has issued a final determination, the owner may appeal the finding in county court.

This bill requires an animal control authority to include in the notice of sufficient cause the requirement that an owner obtain a certificate of registration for the dangerous dog. The owner may then challenge both the finding of sufficient cause and the proposed requirements. The bill also changes the court of jurisdiction for appeals from a county to a circuit court.

## 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.<sup>1</sup> 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.<sup>2</sup> An owner may be a person or an entity possessing, harboring, keeping, or having control or custody of a dog or a parent of a child under the age of 18 who has a dog.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

### 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.<sup>7</sup>

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<sup>1</sup> 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.

<sup>2</sup> Section 767.03, F.S.

<sup>3</sup> Section 767.11(7), F.S.

<sup>4</sup> Section 767.04, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 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.

### *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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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

- 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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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<sup>8</sup> Section 767.11(5) and (6), F.S.

<sup>9</sup> Section 767.12(1)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 767.12(1)(b), F.S.

<sup>12</sup> Section 767.12(1)(c), F.S.

<sup>13</sup> Section 767.12(1)(d), F.S.

<sup>14</sup> Section 767.12(2), F.S.

<sup>15</sup> Section 767.12(3), F.S.

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.<sup>16</sup>

### **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.

#### ***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.<sup>17</sup> 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.<sup>18</sup>

#### ***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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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<sup>16</sup> Section 767.12(7), F.S.

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

<sup>18</sup> Section 767.13(1), F.S.

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

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

<sup>21</sup> Section 767.13(4), F.S.

### **III. Effect of Proposed Changes:**

#### **Determination of Destroying a Dog**

Current law appears to require any dog that causes a severe injury to or death of a person to be destroyed, whether previously classified as a dangerous dog or not. This bill authorizes a hearing officer or a judge to consider the nature and circumstances of the injury and the likelihood of future harm if a severe injury to a person was caused by an unclassified dog. Owners are currently afforded a similar opportunity to present extenuating circumstances in classification hearings. The bill adds that dogs classified as dangerous due to an incident that causes severe injury to a human being may be destroyed in an expeditious and humane manner, depending on the circumstances.

The bill does not limit any local government from adopting an ordinance to address the safety and welfare concerns caused by attacks on persons or domestic animals.

#### **Investigation of a Dog Causing Injury but Unclassified as Dangerous**

Under current law, the process of determining whether a dog is dangerous begins with an investigation by an animal control officer. The bill specifies additional procedures and allows an animal control authority to take additional actions if the dog has caused severe injury to a human. Upon investigation, the animal control authority may immediately confiscate, quarantine, or impound the dog. However, the dog may not be destroyed until the case is over. If the dog is taken from the owner while the case is pending, the bill requires the owner to pay boarding costs and fees to humanely and safely keep the dog. If a hearing is not timely requested regarding the classification or proposed requirements, the determination by the animal control authority as to such issue shall become final.

Under current law, a person may appeal a final determination of an animal control authority to a county court. The bill replaces the court of jurisdiction for an appeal from the county court to the circuit court.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

## D. Other Constitutional Issues:

### **Due Process for Deprivation of Property**

At least one county court has ruled s. 767.13(2), F.S., unconstitutional based on a deprivation of property without due process.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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 rights.<sup>25</sup>

This bill authorizes a court to consider mitigating circumstances in determining whether to destroy a dog, not previously classified as dangerous, which caused a severe injury to a human. The change appears to address the issue raised by the court.

### **Non-Delegation Doctrine<sup>26</sup>**

A court has also found s. 767.13(2), F.S., gives an unconstitutional delegation of discretion to animal control authorities.<sup>27</sup> “The statute provides the animal control authorities with no guided authority to select the severity of consequences for a dog’s actions.”<sup>28</sup> It is well established in Florida law that authority granted to a government enforcement agency without clear, specific legislative guidance is unconstitutional.<sup>29</sup> The court held that the absence of guidance for an animal control authority’s application of ss. 767.12 or 767.13(2), F.S., results in an unconstitutional delegation of power to these authorities.<sup>30</sup>

<sup>22</sup> 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).

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

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at pg. 4-5. See also, *Manatee County vs. Paul Gartenberg*, 2015-CA-003844, (Manatee Cty. Cir. Ct. 2015).

<sup>26</sup> FLA. CONST., art. II, s.3.

<sup>27</sup> *Manatee County*, at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* See also, *Barrow v. Holland*, 125 So.2d 749, 752 (Fla. 1960); *Mahon v. Cnty. of Sarasota*, 177 So.2d 665, 667 (Fla. 1965); *Dickinson v. State*, 227 So.2d 36, 37 (Fla. 1969); *High Ridge Mgmt. Corp v. State*, 354 So.2d 377, 380 (Fla. 1977).

<sup>30</sup> *Manatee County*, at 9.

### **Jurisdiction of Circuit and County Court**

Article V of the State Constitution provides for the jurisdiction of courts as follows:

- County court jurisdiction is determined by the Legislature.<sup>31,32</sup>
- Jurisdiction of appeals and the direct review of administrative action resides in the circuit court when provided by the Legislature.<sup>33</sup>

The Legislature has generally granted circuit courts, rather than county courts, appellate jurisdiction over appeals from final administrative orders of local government code enforcement boards.

Therefore, changing the court having jurisdiction over an appeal of a decision by a county animal control authority to a circuit court, instead of a county court, is consistent with constitutional requirements.

### **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.

The Office of the State Courts Administrator (OSCA) does not expect additional judicial workload as a result of shifting cases from county court to circuit, or from the other provisions of the bill. OSCA notes that dangerous dog-related cases are primarily resolved by local hearing officers and not judges.

### **VI. Technical Deficiencies:**

None.

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<sup>31</sup> Article V, s. 6(b), Fla. Const., provides, in part “The county courts shall exercise the jurisdiction prescribed by general law.”

<sup>32</sup> “The county judge’s courts have no jurisdiction except that which is conferred upon them by the constitution and by statutory enactment, and such as may be incidentally necessary to the execution of these powers.” *In re Estate of Brown v. Brown*, 134 So.2d 290, 293 (Fla. 2d DCA 1961).

<sup>33</sup> Article V, s. 5(b), Fla. Const., provides, in part, “The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power of direct review of administrative action prescribed by general law.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 767.12, 767.13, 767.14, and 767.16.

This bill creates the following sections of the Florida Statutes: 767.135 and 767.136.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Judiciary on December 1, 2015:**

- Changes the court of appeal having jurisdiction over a decision of an animal control authority from a county court to a circuit court;
- Authorizes an animal control authority to immediately confiscate a dog that caused a severe injury to a human;
- Prohibits animal control authorities from destroying a dog during the pendency of a case; and
- Requires an animal control authority to include in the written notice to the owner proposed requirements such as a certificate of registration.

**B. Amendments:**

None.