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HOUSE BILL NO. 2364

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 28, 2009)

(Patrons Prior to Substitute—Delegates Gilbert and Athey [HB 2321])

A *BILL to amend and reenact § 3.2-6540 of the Code of Virginia, relating to restitution for damages resulting from injury by dangerous or vicious dog.*

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-6540 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-6540. Control of dangerous or vicious dogs; penalties.

A. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. When a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous: (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite; (ii) if both animals are owned by the same person; (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian; or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

"Vicious dog" means a canine or canine crossbreed that has: (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § 3.2-6562. *The court, upon finding the animal to be a dangerous or vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal.* The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was: (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its

60 kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous
61 dog or a vicious dog.

62 D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal
63 guardian shall be responsible for complying with all requirements of this section.

64 E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding,
65 obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee
66 of \$50, in addition to other fees that may be authorized by law. The local animal control officer or
67 treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a
68 dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the
69 collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually
70 for the same fee and in the same manner as the initial certificate was obtained. The animal control
71 officer shall provide a copy of the dangerous dog registration certificate and verification of compliance
72 to the State Veterinarian.

73 F. All dangerous dog registration certificates or renewals thereof required to be obtained under this
74 section shall only be issued to persons 18 years of age or older who present satisfactory evidence: (i) of
75 the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed;
76 and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside
77 the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the
78 proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under
79 this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence
80 that: (i) their residence is and will continue to be posted with clearly visible signs warning both minors
81 and adults of the presence of a dangerous dog on the property; and (ii) the animal has been permanently
82 identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or
83 renewals thereof required to be obtained under this section shall only be issued to persons who present
84 satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000,
85 that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability
86 insurance, to the value of at least \$100,000.

87 G. While on the property of its owner, an animal found to be a dangerous dog shall be confined
88 indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its
89 escape or direct contact with or entry by minors, adults, or other animals. The structure shall be
90 designed to provide the animal with shelter from the elements of nature. When off its owner's property,
91 an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to
92 cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it
93 from biting a person or another animal.

94 H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of
95 Virginia Dangerous Dog Registry, as established under § 3.2-6542, within 45 days of such a finding by
96 any appropriate court.

97 The owner shall also cause the local animal control officer to be promptly notified of: (i) the names,
98 addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and
99 the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or
100 dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification
101 information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

102 I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon
103 learning of same, cause the local animal control authority to be notified if the animal: (i) is loose or
104 unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any
105 owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide
106 written notice to the appropriate local animal control authority for the old address from which the
107 animal has moved and the new address to which the animal has been moved.

108 J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

109 1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog
110 pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and
111 injures or kills a cat or dog that is a companion animal belonging to another person;

112 2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog
113 pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a
114 human being or attacks a human being causing bodily injury; or

115 3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or
116 containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show
117 a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking
118 and causing serious bodily injury to any person.

119 The provisions of this subsection shall not apply to any animal that, at the time of the acts
120 complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a
121 person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the

performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any training course required under § 3.2-6556.

M. The governing body of any locality may enact an ordinance parallel to this statute regulating dangerous and vicious dogs. No locality may impose a felony penalty for violation of such ordinances.