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HOUSE BILL NO. 2257

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 3.2-6540 and 3.2-6540.1 of the Code of Virginia, relating to dangerous and vicious dogs; emotional distress.*

Patron—Pogge

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-6540 and 3.2-6540.1 of the Code of Virginia are amended and reenacted as follows:

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

A. As used in this section, "dangerous dog" means:

1. A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a companion animal that is a dog or cat or killed a companion animal that is a dog or cat. A canine or canine crossbreed is not a dangerous dog if, upon investigation, a law-enforcement officer or animal control officer finds that (i) 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) both animals are owned by the same person; or (iii) such attack occurred on the property of the attacking or biting dog's owner or custodian; or

2. A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person. A canine or canine crossbreed is not a dangerous dog if, upon investigation, a law-enforcement officer or animal control officer finds that the injury inflicted by the canine or canine crossbreed upon a person consists solely of a single nip or bite resulting only in a scratch, abrasion, or other minor injury.

B. 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 shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, or for other good cause, that the dog is not dangerous or a threat to the community.

C. 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 may 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. 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. The court, upon finding the animal to be a dangerous dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages *and emotional distress damages* to any person injured by the animal or whose companion animal was injured or killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner.

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.

D. No canine or canine crossbreed shall be found to be a dangerous dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited.

E. No animal shall be found to be a dangerous 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

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59 dog that was engaged in the performance of its duties as such at the time of the acts complained of
60 shall be found to be a dangerous dog. No animal that, at the time of the acts complained of, was
61 responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or
62 custodian's property, shall be found to be a dangerous dog.

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

65 G. The owner of any animal found to be a dangerous dog shall, within 30 days of such finding,
66 obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee
67 of \$150, in addition to other fees that may be authorized by law. The local animal control officer or
68 treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a
69 dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the
70 collar and tag at all times. By January 31 of each year, until such time as the dangerous dog is
71 deceased, all certificates obtained pursuant to this subsection shall be updated and renewed for a fee of
72 \$85 and in the same manner as the initial certificate was obtained. The animal control officer shall post
73 registration information on the Virginia Dangerous Dog Registry.

74 H. All dangerous dog registration certificates or renewals thereof required to be obtained under this
75 section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of
76 the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed;
77 and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside
78 the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the
79 proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under
80 this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence
81 that (a) their residence is and will continue to be posted with clearly visible signs warning both minors
82 and adults of the presence of a dangerous dog on the property and (b) the animal has been permanently
83 identified by means of electronic implantation. All certificates or renewals thereof required to be
84 obtained under this section shall only be issued to persons who present satisfactory evidence that the
85 owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The
86 owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least
87 \$100,000.

88 I. While on the property of its owner, an animal found to be a dangerous dog shall be confined
89 indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its
90 escape or direct contact with or entry by minors, adults, or other animals. While so confined within the
91 structure, the animal shall be provided for according to § 3.2-6503. When off its owner's property, an
92 animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to
93 cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it
94 from biting a person or another animal.

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

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

106 L. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

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

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

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

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

M. 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.

Whenever an owner or custodian of an animal found to be a dangerous dog is charged with a violation of this section, the animal control officer shall confine the dangerous dog 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.

Upon conviction, the court may (i) order the dangerous dog to be disposed of by a local governing body pursuant to § 3.2-6562 or (ii) grant the owner up to 30 days to comply with the requirements of this section, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the dangerous dog to be disposed of by a local governing body pursuant to § 3.2-6562. The court, in its discretion, may order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time that the animal is disposed of or returned to the owner.

N. 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 and fees due to the State Veterinarian for maintenance of the Virginia Dangerous Dog Registry, 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.

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

§ 3.2-6540.1. Vicious dogs; penalties.

A. As used in this section:

"Serious injury" means an injury having a reasonable potential to cause death or any injury other than a sprain or strain, including serious disfigurement, serious impairment of health, or serious impairment of bodily function and requiring significant medical attention.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person, (ii) inflicted serious injury to a person, 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 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 vicious. The animal control officer shall 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 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 vicious dog, may order the owner, custodian, or harbinger thereof to pay restitution for actual damages and emotional distress damages to any person injured by the animal or to the estate of any person killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such vicious dog from the time the animal is taken into custody until such time as the animal is disposed of. 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 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 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 vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a vicious dog.

182 D. Any owner or custodian of a canine or canine crossbreed or other animal whose willful act or
183 omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross,
184 wanton, and culpable as to show a reckless disregard for human life and is the proximate cause of such
185 dog or other animal attacking and causing serious injury to any person is guilty of a Class 6 felony. The
186 provisions of this subsection shall not apply to any animal that, at the time of the acts complained of,
187 was responding to pain or injury or was protecting itself, its kennel, its offspring, a person, or its
188 owner's or custodian's property, or when the animal is a police dog that is engaged in the performance
189 of its duties at the time of the attack.

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