

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 991

(Senator King)

Rules

Dogs - Discrimination Based on Breed, Type, or Heritage - Prohibited

This bill (1) establishes that a dog may not be determined to be potentially dangerous based solely on the breed, type, or heritage of the dog; (2) prohibits a county or municipality from enacting a local law or adopting an ordinance that prohibits a person from adopting, owning, keeping, or harboring a dog of a specific breed, type, or heritage or taking specified other actions based on the breed, type, or heritage of a dog; and (3) establishes that a homeowner or tenant, regardless of the terms of specified types of documents, may not be prohibited from owning, keeping, or harboring a dog of a specific breed, type, or heritage or be denied occupancy in or evicted from residential property solely because the person owns, keeps, or harbors a dog of a specific breed, type, or heritage.

The bill applies retroactively and must be applied to and interpreted to affect any local law or ordinance prohibiting the owning, keeping, or harboring of a dog and any document governing the owning, keeping, or harboring of a dog on residential property in effect on the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Special fund revenues may increase minimally in FY 2015 for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee if insurers alter their rates as a result of the bill. Any increase in administrative duties for MIA can be handled with existing resources. The bill's effect on general fund revenues from State insurance premium taxes cannot be reliably estimated at this time.

Local Effect: None. It is assumed that resources used to monitor compliance with local bans on specified breeds of dogs are reallocated to other local government responsibilities.

Small Business Effect: Potential meaningful effect on small businesses that rent or manage residential properties if, due to the bill's provisions (1) these businesses decide to ban all dogs instead of specified breeds or (2) these businesses increase their exposure to liability under the *Solesky* decision by allowing tenants or residents to keep all breeds of dogs, including pure bred pit bulls.

Analysis

Bill Summary: The bill prohibits a municipality or a county from determining a dog to be a nuisance, potentially dangerous, or inherently dangerous, or otherwise regulating a dog based on the breed, type, or heritage of the dog. The bill's restrictions on municipal or county ordinances or local laws may not be construed to prohibit a municipality or county from restricting the owning, keeping, or harboring of a dangerous or potentially dangerous dog.

The bill establishes that a homeowner or tenant, regardless of the terms of any contract, deed, covenant, restriction, instrument, declaration, rule, bylaw, lease agreement, rental agreement, or any other document, may not be prohibited from (1) owning, keeping, or harboring a dog of a specific breed, type, or heritage or (2) denied occupancy in or be evicted from residential property solely because the person owns, keeps, or harbors a dog of a specific breed, type, or heritage. However, the bill's provisions do not prohibit residential property restrictions that prohibit the owning, keeping, or harboring of (1) any dog, regardless of breed, type, or heritage or (2) a dangerous or potentially dangerous dog.

Current Law:

Dangerous and Potentially Dangerous Dogs: A "dangerous dog" is one that has killed or inflicted severe injury on a person without provocation or is determined to be potentially dangerous by a local government and, after that determination (1) bites a person; (2) kills or inflicts severe injury on a domestic animal when the dog is not on its owner's real property; or (3) attacks without provocation.

A local jurisdiction may determine that a dog is potentially dangerous if it finds that the dog has inflicted a bite on a person while on public or private real property; has killed or inflicted severe injury on a domestic animal when not on its owner's real property; or has attacked without provocation. The jurisdiction must notify the dog owner in writing of the reasons for its determination.

A dog owner may not leave a dangerous dog unattended on the owner's real property unless the dog is confined indoors, is in a securely enclosed and locked pen, or is in another structure designed to restrain the dog. A dog owner may not allow a dangerous dog to leave the owner's real property unless the dog is leashed and muzzled or is otherwise securely restrained and muzzled.

An owner of a dangerous or potentially dangerous dog who sells or gives the dog to another must provide, in writing, specified information about the new owner to the local government unit that made the determination about the dog and notify the new owner about the dog's dangerous or potentially dangerous behavior.

A person who violates these provisions is guilty of a misdemeanor and subject to a maximum fine of \$2,500.

Liability for Personal Injury or Death Caused by a Dog: In order to hold a dog owner strictly liable under the common law for an attack by the dog (regardless of breed), the victim must prove that the owner knew or should have known that the dog had vicious or dangerous propensities. On April 26, 2012, the Court of Appeals modified the common law by holding that a dog owner, or a landlord or other person having the right to control a dog's presence on the premises, is strictly liable on proof that (1) the dog that attacked the victim is a pit bull or a mixed-breed pit bull and (2) the owner, landlord, or other person knew or should have known that the dog is a pit bull or a mixed-breed pit bull. *Tracey v. Solesky*, 427 Md. 627 (2012). On August 21, 2012, the court reconsidered its decision and limited its application to purebred pit bulls.

Local Bans on Specified Breeds of Dogs: In 1996, Prince George's County enacted a ban on pit bulls. A person who owns a pit bull terrier registered with the county's Animal Management Division before February 3, 1997, may continue to harbor the animal so long as he/she maintains a current registration with the county. The ban affects the following breeds: Staffordshire Bull Terrier, American Staffordshire Terrier, American Pit Bull Terrier, or a dog that exhibits the characteristics of any one of these breeds more than any other breed of dog or has been registered at any time as a pit bull terrier. Violators are subject to a maximum fine of \$1,000 or up to six months imprisonment.

Background:

Post-Solesky Developments: The *Solesky* ruling drew criticism from dog owners, animal advocacy groups, landlords, and insurers as news reports emerged relating to landlords banning pit bulls and animal shelters preparing for an influx of pit bulls. In response, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls, which held hearings in June 2012. Common themes in the testimony at the hearings included (1) imposing strict liability on an owner of a dog regardless of breed in

lieu of breed-specific standards; (2) criticism of the lack of guidance as to what constitutes a pit bull or a mixed-breed pit bull; and (3) the negative effects on the housing rental market, including higher rents and insurance premiums for landlords and potential bans on all dogs or specific breeds.

The task force did not propose its own bill, but legislators introduced several different bills during the second special session of 2012. Some bills would have restored the common law, while others would have imposed strict liability for all breeds under specified circumstances. The General Assembly was unable to reach a consensus on legislation during the brief special session. During the 2013 session, legislators introduced bills that would have reversed the *Solesky* decision, but also would have established a rebuttable presumption that a dog owner knew or should have known that the dog had vicious or dangerous propensities if the dog caused an injury or death. Once again, the General Assembly could not reach a consensus, due in part to disagreement about the effect of proposed amendments on the availability and affordability of insurance for homeowners and renters.

State Revenues: To the extent that insurers alter their rates as a result of the bill, MIA special fund revenues may increase minimally in fiscal 2015 from the \$125 rate and form filing fee. The number of filings that may occur as a result of the bill is unknown. Given the number of variables used in calculating insurance premiums, the effect of the bill on general fund revenues from insurance premium taxes cannot be reliably estimated at this time. The State imposes a 2% premium tax on insurance policies.

Additional Information

Prior Introductions: None.

Cross File: HB 422 (Delegate Hixson, *et al.*) - Judiciary.

Information Source(s): Kent, Montgomery, and Worcester counties; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Secretary of State; Department of Legislative Services

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