

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 285
Finance

(Senator Zirkin)

Homeowner's and Renter's Insurance - Coverage for Dog Owners

This bill prohibits an insurer from refusing to issue or renew a homeowner's or renter's insurance policy solely because the applicant or insured owns a dog, regardless of the breed of dog. The bill prohibits a homeowner's or renter's insurance policy that provides liability coverage from excluding coverage for bodily injury, property damage, or medical payments arising out of direct physical contact with a dog owned by or under the care, custody, or control of an insured under the policy.

The bill applies to all homeowner's or renter's insurance policies issued, delivered, or renewed in the State on or after October 1, 2014.

Fiscal Summary

State Effect: Minimal increase in special fund revenue for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fees in FY 2015. Review of filings can be handled with existing budgeted resources. General fund revenues increase from State insurance premium taxes due to increased premiums resulting from mandated coverage for dogs. Any such impact cannot be reliably estimated.

Local Effect: Potential meaningful impact on local government animal shelters and animal control units if the bill reduces the number of pit bulls and mixed-breed pit bulls abandoned and/or euthanized in the future as a result of fewer renters or homeowners surrendering their pets or continued willingness by the public to adopt these dogs.

Small Business Effect: None.

Analysis

Current Law: Generally, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by the application of standards that are reasonably related to the insurer's economic and business purposes.

Standards reasonably related to economic and business purposes do not require statistical validation. In the case of homeowner's insurance, these include, but are not limited to:

- a material misrepresentation in connection with the application, policy, or presentation of a claim;
- nonpayment of premium;
- a change in the physical condition or contents of the premises or dwelling that results in an increase in a hazard insured against and that, if present and known to the insurer prior to the issuance of the policy, would not have resulted in the issuance of the policy;
- a conviction of arson within the past five years or another crime that directly increases the hazard insured against within the past three years; or
- the claims history of the insured where the insured makes more than three claims within the past three years.

Insurers can write homeowner's and renter's insurance policies that exclude coverage for losses caused by specific breeds or mixed breeds of dogs, but they must inform policyholders of which types of dogs are not covered. Chapter 406 of 2013 requires an insurer that offers homeowner's or renter's insurance that does not provide coverage for losses caused by specific breeds of dogs to provide to an applicant or insured, at the time of application or issuance of a policy and at each renewal of a policy, written notice that (1) states the policy does not provide coverage for losses caused by specific breeds or specific mixed breeds of dogs and (2) identifies the specific breeds or specific mixed breeds of dogs that are not covered. The Act applies to all homeowner's or renter's insurance policies issued, delivered, or renewed in the State on or after January 1, 2014.

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.

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.

Homeowner's and Renter's Insurance in Maryland – Coverage for Dog Owners: According to MIA, in September 2013, 1 of the top 10 insurers/insurer groups had a policy liability exclusion for losses caused by specific breeds of dogs and 2 of the top 10 insurers/insurer groups had underwriting standards that apply to specific breeds of dogs. For one of those two insurers/insurer groups, the underwriting standards prohibit offering or renewing coverage for specific breeds. The other insurer/insurer group requires a referral of an owner of one of the specific breeds to its underwriting department for additional review before binding coverage.

The breeds included in breed-specific underwriting guidelines or that require the applicant to be referred to the underwriting department for further review are Alaskan Malamute; American Staffordshire Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier (“Pit Bull” breeds); Akita; Boerbel; Chow Chow; Doberman Pinscher; English Bull Terrier; German Shepherd; Kyiapsu; Mastiff, American Bondogge Mastiff,

Neapolitan Mastiff; Presa Canario (Dogo Canario, Canary Dog, Peroo Basto, Verdino); Rottweiler; Siberian Husky; Wolf Hybrid; and any dog that is a mix of an ineligible dog breed.

From 2009 to June 2012, MIA received three complaints regarding either the cancellation or nonrenewal of a homeowner's insurance policy due to a dog bite claim and another seven complaints regarding the denial of a claim, binder cancellation, refusal to underwrite, or cancellation or nonrenewal of a homeowner's insurance policy due to a possession of a restricted breed. During the one-year period from June 2012 to June 2013, MIA received nine complaints regarding dog-related insurer actions. In the course of the MIA investigation of those complaints, nonrenewal notices or cancellation notices were rescinded or withdrawn in six of the nine cases.

State Farm Insurance Company, the largest writer of homeowner's insurance nationwide and in Maryland, reported that it does not refuse insurance in any state based on the customer's breed of dog and bases its underwriting decisions on the dog's behavior, not the breed. According to the company, the general assumption is that the cost of the premium will go up for dog bites, but it is difficult to determine what portion of the premium is attributable to coverage for dog bites. The company paid out more than \$109 million for nearly 3,800 dog bite claims in 2011 and \$108 million for 3,670 dog bite claims in 2012. In Maryland, the company paid out 51 dog bite claims (homeowner's and commercial) during 2012, resulting in approximately \$1,584,676 in paid claims, with an average cost per claim of \$31,072.

Dog-related Insurance Provisions in Other States: Pennsylvania statute and an administrative decision in Michigan both preclude an insurer from refusing to issue or renew coverage due to a specific breed of dog being part of the household. West Virginia, Massachusetts, New York, and New Jersey all introduced bills in 2013 that would not allow the breed of a dog to be used as consideration by an insurer when issuing or renewing a policy, but all of the bills were unsuccessful.

For more information on dog bite liability and insurance coverage, please see the Department of Legislative Services report: *Dog Bites in Maryland and Other States*, available at http://dlslibrary.state.md.us/publications/OPA/I/DogBite_2013.pdf.

State Effect: MIA reports that some insurers have previously filed liability exclusions for dogs or breeds of dog. Because the bill prohibits these exclusions, those insurers have to file new policy forms and pay a \$125 fee per filing. MIA estimates that this will affect fewer than 25 insurers. *For illustrative purposes*, if 25 insurers file new policy forms, special fund revenues increase \$3,125. MIA also advises that some insurers may propose to change rates based on the mandated coverage for dogs; if so, general fund revenues increase due to the State-imposed 2% premium tax on insurance policies. This also may

result in additional filing fees of \$125, but the number of insurers that will alter their rates cannot be reliably estimated at this time.

Additional Information

Prior Introductions: SB 296 of 2013 received an unfavorable report from the Senate Finance Committee.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

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