

HOUSE BILL 80

D3
HB 618/13 – JUD

EMERGENCY BILL
(PRE-FILED)

4lr0370

By: **Delegate Smigiel**

Requested: August 1, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Civil Actions – Liability for Personal Injury or Death Caused by Dog

FOR the purpose of establishing that the owner of a dog running at large is liable for damages for personal injury or death caused by a dog bite, under certain circumstances; establishing certain exceptions; establishing that certain common law is retained as to certain owners of real property and certain other persons; providing for the construction and application of this Act; stating the intent of the General Assembly; defining a certain term; making this Act an emergency measure; and generally relating to civil liability for personal injury or death caused by dogs.

BY adding to

Article – Courts and Judicial Proceedings

Section 3–1901 to be under the new subtitle “Subtitle 19. Liability for Personal Injury or Death Caused by Dog”

Annotated Code of Maryland

(2013 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

SUBTITLE 19. LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY DOG.

3–1901.

(A) (1) IN THIS SECTION, “OWNER OF A DOG” INCLUDES A CUSTODIAL PARENT OR GUARDIAN OF A MINOR WHO IS AN OWNER OF A DOG.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) “OWNER OF A DOG” DOES NOT INCLUDE A VETERINARY HOSPITAL, A COMMERCIAL KENNEL, AN ANIMAL SHELTER, A UNIT OF STATE OR LOCAL GOVERNMENT THAT CONDUCTS ANIMAL CONTROL, A DOG WALKER, A KEEPER OR HARBORER OF A DOG, OR A PET SHOP, OR AN EMPLOYEE OF A VETERINARY HOSPITAL, A COMMERCIAL KENNEL, AN ANIMAL SHELTER, A UNIT OF STATE OR LOCAL GOVERNMENT THAT CONDUCTS ANIMAL CONTROL, A DOG WALKER, A KEEPER OR HARBORER OF A DOG, OR A PET SHOP, AS TO A DOG BEING TREATED, BOARDED, SHELTERED, CONTROLLED, WALKED, KEPT, HARBORED, OR OFFERED FOR ADOPTION OR SALE.

(B) (1) (I) THIS PARAGRAPH APPLIES ONLY TO A PERSONAL INJURY OR DEATH CAUSED BY A BITE FROM A DOG RUNNING AT LARGE.

(II) THIS PARAGRAPH DOES NOT APPLY TO A SERVICE DOG DESCRIBED UNDER § 13-104 OF THE LOCAL GOVERNMENT ARTICLE.

(III) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN OWNER OF A DOG IS LIABLE FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY THE DOG, REGARDLESS OF WHETHER THE DOG HAS SHOWN ANY VICIOUS OR DANGEROUS PROPENSITIES OR WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN OF THE DOG’S VICIOUS OR DANGEROUS PROPENSITIES.

(2) AN OWNER OF A DOG IS NOT LIABLE UNDER THIS SECTION FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY THE DOG IF:

(I) THE INJURED OR DECEASED INDIVIDUAL PROVOKED THE DOG;

(II) THE INJURED OR DECEASED INDIVIDUAL WAS COMMITTING OR ATTEMPTING TO COMMIT A CRIMINAL OFFENSE ON THE REAL PROPERTY OF THE OWNER OF THE DOG OR AGAINST THE OWNER OF THE DOG;

(III) THE INJURED OR DECEASED INDIVIDUAL WAS TRESPASSING OR ATTEMPTING TO TRESPASS ON THE REAL PROPERTY OF THE OWNER OF THE DOG;

(IV) THE DOG WAS BEING USED BY AN EMPLOYEE OF A GOVERNMENTAL UNIT IN MILITARY OR POLICE WORK IF THE EMPLOYEE WAS COMPLYING WITH A WRITTEN POLICY ADOPTED BY THE GOVERNMENTAL UNIT ON THE NECESSARY AND APPROPRIATE USE OF A DOG IN MILITARY OR POLICE WORK AND THE INJURY OCCURRED AS A RESULT OF:

1. REASONABLE USE OF FORCE; OR

2. TRAINING OR A TRAINING EXERCISE IN SUPPORT OF THE DOG'S DUTIES IN MILITARY OR POLICE WORK;

(V) THE INJURED OR DECEASED INDIVIDUAL WAS CONTRIBUTORILY NEGLIGENT;

(VI) THE INJURED OR DECEASED INDIVIDUAL ASSUMED THE RISK OF THE DOG CAUSING THE INDIVIDUAL'S PERSONAL INJURY OR DEATH;

(VII) THE OWNER OF THE DOG HAS ANY OTHER COMMON LAW OR STATUTORY DEFENSE OR IMMUNITY THAT EXISTED AS OF APRIL 1, 2012, AND THAT WOULD BE AVAILABLE IN ANY OTHER PERSONAL INJURY ACTION OR WRONGFUL DEATH ACTION AGAINST THE OWNER OF A DOG; OR

(VIII) THE DOG IS IN THE TEMPORARY CUSTODY OR CONTROL OF A VETERINARY HOSPITAL, A COMMERCIAL KENNEL, AN ANIMAL SHELTER, A UNIT OF STATE OR LOCAL GOVERNMENT THAT CONDUCTS ANIMAL CONTROL, A DOG WALKER, A KEEPER OR HARBORER OF THE DOG, OR A PET SHOP.

(C) (1) THIS SUBSECTION DOES NOT APPLY TO AN OWNER OF A DOG THAT CAUSES PERSONAL INJURY OR DEATH.

(2) IN AN ACTION AGAINST AN OWNER OF REAL PROPERTY OR OTHER PERSON WHO HAS THE RIGHT TO CONTROL THE PRESENCE OF A DOG ON THE PROPERTY, INCLUDING A LANDLORD, CONDOMINIUM COUNCIL OF UNIT OWNERS, COOPERATIVE HOUSING CORPORATION, OR HOMEOWNERS ASSOCIATION FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY A DOG, THE COMMON LAW OF LIABILITY RELATING TO ATTACKS BY DOGS AGAINST HUMANS THAT EXISTED ON APRIL 1, 2012, IS RETAINED AS TO THE OWNER OF REAL PROPERTY OR OTHER PERSON WHO HAS THE RIGHT TO CONTROL THE PRESENCE OF A DOG ON THE PROPERTY WITHOUT REGARD TO THE BREED OR HERITAGE OF THE DOG.

(3) IN AN ACTION AGAINST A PERSON WHO IS NOT AN OWNER OF A DOG FOR DAMAGES FOR PERSONAL INJURY OR DEATH CAUSED BY A DOG, THE COMMON LAW OF LIABILITY RELATING TO ATTACKS BY DOGS AGAINST HUMANS THAT EXISTED ON APRIL 1, 2012, IS RETAINED AS TO THE PERSON WITHOUT REGARD TO THE BREED OR HERITAGE OF THE DOG.

(D) THIS SECTION DOES NOT AFFECT:

- (1) ANY OTHER COMMON LAW OR STATUTORY CAUSE OF ACTION;**
- (2) ANY OTHER COMMON LAW OR STATUTORY DEFENSE OR IMMUNITY; OR**
- (3) ANY LAW THAT GOVERNS PROVOCATION, CRIMINAL INTENT, ASSUMPTION OF RISK, OR CONTRIBUTORY NEGLIGENCE.**

SECTION 2. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, it is the intent of the General Assembly that this Act abrogate the holding of the Court of Appeals in Tracey v. Solesky, 427 Md. 627 (2012).

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.