

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 286 (Senator Zirkin)
Judicial Proceedings and Finance

**Animals - Civil Liability and Insurance Coverage for Dogs and Court Costs for
Animal-Related Crimes**

This bill (1) alters the standard of liability in actions for personal injury or death caused by a dog; (2) prohibits insurers from engaging in specified exclusionary practices with respect to homeowner's or renter's insurance policies; and (3) requires circuits courts and the District Court to impose additional court costs in specified court cases involving crimes against animals.

While the bill has an overall effective date of June 1, 2014, those provisions addressing court fees are effective October 1, 2014.

Fiscal Summary

State Effect: General fund revenues increase by \$500 in FY 2015 and by \$1,995 each year thereafter from additional court costs in District Court. Special fund revenues may increase minimally in FY 2014 or 2015 for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee. 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 at this time. General fund expenditures increase by \$15,661 in FY 2015 from increased computer programming costs for the Judiciary and distribution to local jurisdictions of general fund revenues from animal-related crimes court costs in the District Court. General fund expenditures increase by \$1,995 each year thereafter from distribution of collected court costs. Potential minimal increase in special fund expenditures to the extent that the bill results in increased payments for tort claims involving State law enforcement dogs. Potential minimal reduction in future special fund expenditures to the extent that the Department of Natural Resources falls under the purview of the *Solesky* decision. Leashed dogs are generally permitted in State parks.

Local Effect: Local revenues for animal shelters increase by \$972 in FY 2015 and \$3,885 each year thereafter from collected court costs in cases involving animal-related crimes; this may defray local funds currently used for animal shelters. Potential minimal increase in local expenditures if the bill results in increased payments for tort claims involving local law enforcement dogs. Potential minimal impact on local government housing authorities from decreased liability for future dog bite claims occurring on public housing property. Potential minimal impact if the bill reduces future claims/litigation for injuries sustained at local government parks or dog runs. 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 surrendering their pets or continued willingness by the public to adopt these dogs.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Liability for Personal Injury or Death Caused by Dog: The bill establishes that an owner, keeper, or harbinger of a dog is liable for damages for personal injury or death caused by the dog, regardless of (1) the dog's breed or heritage and (2) 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.

The common law of liability relating to attacks by dogs against humans that existed on April 1, 2012, applies to an action for personal injury or death caused by a dog, regardless of the dog's breed or heritage, against a person other than the owner, keeper, or harbinger of the dog.

These provisions do not affect any other common law or statutory cause of action or any other common law or statutory defense or immunity, including contributory negligence. These provisions apply prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before June 1, 2014.

The bill expresses the intent of the General Assembly that these provisions abrogate the holding of the Maryland Court of Appeals in *Tracey v. Solesky*, 427 Md. 627 (2012).

Homeowner's or Renter's Insurance for Dog Owners, Keepers, or Harborers: The bill prohibits an insurer from (1) refusing to underwrite a risk or deny, cancel, or refuse to

renew homeowner's or renter's insurance coverage for an applicant or insured solely because the applicant or insured owns, keeps, or harbors a specific breed of dog or (2) excluding coverage under a homeowner's or renter's insurance policy for a specific breed of dog owned, harbored, or kept by an applicant or insured.

These prohibitions apply to all policies of homeowner's or renter's insurance issued, delivered, or renewed in the State on or after June 1, 2014.

Court Costs for Cases Involving Animal-related Crimes: Beginning October 1, 2014, the District Court must impose a \$35 fee and the circuit court must impose a \$45 fee on a defendant who is convicted of, sentenced to probation before judgment for, or pleads *nolo contendere* to any of the following offenses: (1) animal abuse or neglect; (2) attending dogfights or cockfights; (3) felony aggravated cruelty to animals (general); (4) felony aggravated cruelty to animals (dogfighting); and (5) felony aggravated cruelty to animals (cockfighting). These costs are in addition to any other costs required by law.

Revenues from these fees must be paid to the Comptroller, who must divide the revenues according to the county in which the court that collected the fee is located and pay each county its respective share of the fee revenue annually. Each county must use these fee revenues to fund the county's animal shelter.

Current Law: 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.

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.

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.

Liability for Dogs in Other States: Thirty-two states have modified the common law by enacting a statute that imposes strict liability for any dog bite, including a first bite, under specified circumstances. Typical exceptions to strict liability include provocation of the dog and trespassing or commission of a tort or crime.

Of the 32 states with strict liability statutes, 21 states have statutes that can be described accurately as being broad in their scope. The other 11 strict liability states have relatively limited statutes because of various provisions relating to the (1) identity of the victim; (2) place of the attack; and (3) type of damages eligible for recovery. In the remaining 18 states and the District of Columbia, a claim for an injury caused by a dog is governed almost exclusively by the common law. (Hawaii and the District of Columbia have statutorily modified the common law governing a negligence claim based on a dog injury but have not enacted a strict liability statute. Although New York and North Carolina have enacted a strict liability statute that applies only if the dog was previously declared dangerous, their statutes should not be considered as significantly modifying the common law.) For a list of the states that fall into the categories listed above, please refer to **Exhibit 1**.

Exhibit 1
Civil Liability for Injury or Death Caused by Dog
(November 2013)

Common law negligence for any injury or death caused by a dog owned, kept, or harbored by a person	Alaska, Arkansas, Hawaii, Idaho, Kansas, Maryland, Mississippi, Nevada, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Texas, Vermont, Virginia, Wyoming, and the District of Columbia
States that have modified the common law by enacting a statute that imposes strict liability for any dog bite, including a first bite, under specified circumstances	Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wisconsin
States with “broad” strict liability statutes	Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio, South Carolina, Utah, Washington, and Wisconsin
States with relatively limited strict liability statutes	Alabama, Colorado, Georgia, Indiana, Maine, Montana, Oklahoma, Pennsylvania, Rhode Island, Tennessee, and West Virginia

Source: Department of Legislative Services

The effect of a broad strict liability statute for dog bites on the availability and affordability of homeowner’s insurance is not identifiable. A representative of the Property Casualty Insurers Association of America stated that there are so many factors that affect the cost and availability of homeowner’s insurance it would be impossible to identify the impact of liability standards for dog bites.

A comparison of the average homeowner's and renter's insurance premiums for each state reported by the Insurance Information Institute (I.I.I.) does not reveal a pattern of premium levels associated with the different state liability standards for dog bites.

Homeowner's Insurance in Maryland – Coverage for Dog Owners: According to MIA, in 2012 there were approximately 130 admitted insurers and 15 surplus lines insurers that were actively writing homeowner's insurance in the State. Of these insurers, the top 10 insurers/insurer groups wrote approximately 85% of the homeowner's insurance market, by premium volume, in Maryland.

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; Kyiapso, 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.

Dog Bite Claims in the United States and State Farm Insurance Company: According to I.I.I., in 2011, approximately 2.2% of the total losses paid nationwide for claims under homeowner's insurance were for all liability claims, including dog bite claims, and 97.8% of the total losses paid were for property damage claims. While liability claims constitute a small percentage of the total losses paid, I.I.I. reports that dog bites accounted for more than one-third of all homeowner's insurance liability claims paid out in the United States during 2012, costing nearly \$490 million (16,459 claims). I.I.I. found that the cost of the average dog bite claim increased by 51.4% between 2003 and 2012. The average nationwide cost for a dog bite claim was \$29,752 in 2012.

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.

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 Revenues: 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 affects fewer than 25 insurers. *For illustrative purposes*, if 25 insurers file new policy forms, special fund revenues increase by \$3,125 in fiscal 2014 or 2015. 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 as a result of the bill cannot be reliably estimated at this time.

Assuming steady case volume, general fund revenues increase by \$499 in fiscal 2014 and by \$1,995 each year thereafter due to the bill's imposition of an additional court cost in District Court cases involving animal-related crimes.

According to the Judiciary, for fiscal 2012 and 2013, there were an average of 57 cases involving animal-related cases in the District Court that resulted in a conviction, probation before judgment, or *nolo contendere*. Applying the bill's \$35 court cost for District Court cases to this caseload results in additional general fund revenues of \$499 in fiscal 2014, accounting for the October 1, 2014 effective date applicable to the court cost provisions of the bill. General fund revenues increase by \$1,995 for each full fiscal year thereafter. Although the bill requires a specified distribution and use of these revenues, the bill does not create a special fund for these revenues.

State Expenditures: General fund expenditures increase by \$15,661 in fiscal 2015 from increased computer programming costs for the Judiciary and distribution to local jurisdictions of general fund revenues from animal-related crimes court costs in the District Court. General fund expenditures increase by \$1,995 each year thereafter from distribution of collected court costs.

The bill requires the collection of an additional court cost in cases involving animal-related crimes resulting in a conviction or a disposition of probation before

judgment or *nolo contendere* and distribution of collected monies to local jurisdictions according to the location of the court that imposed the cost. Implementation of these functions requires computer programming to (1) impose the cost in cases according to offense and disposition; and (2) track collected court costs by county. Computer reprogramming of cash registers and the multiple computers systems used by the Judiciary requires approximately 253.2 hours of computer reprogramming, at a cost of \$15,163 in fiscal 2015.

Special fund expenditures may increase minimally to the extent that the bill increases payments in tort actions involving State law enforcement dogs. State tort claims under the Maryland Tort Claims Act are paid through the State Insurance Trust Fund. As of November 2013, at least six states with strict liability dog bite/injury statutes have specific exceptions for military/police dogs in the course of their official duties and at least five states have exceptions when the injured party was committing a crime or not acting peaceably at the time of the injury. The Department of State Police advises that there were five instances in which a State Police dog bit a person during calendar 2013. Any increase in administrative duties for MIA can be handled with existing resources.

Local Fiscal Effect: Assuming steady case volume, local revenues increase by \$972 in fiscal 2015 and by \$3,885 each fiscal year thereafter from assessed District Court and circuit court costs in cases involving animal-related crimes. Additional local revenues for animal shelters may defray local funds currently dedicated to shelters.

In fiscal 2012 and 2013, there was an average of 42 circuit court cases involving animal-related crimes that resulted in a conviction or a disposition of probation before judgment or *nolo contendere*. Applying the bill's \$45 court cost in these cases results in increased local revenues of \$473 in fiscal 2014 and \$1,890 for each full fiscal year thereafter.

Local expenditures may increase minimally to the extent that the bill results in increased payments for tort claims involving local law enforcement dogs.

To the extent that a local government is considered a landlord or individual/entity with the authority to control the presence of a pit bull or a mixed-breed pit bull on public housing premises, local governments may experience a minimal decrease in expenditures from dog bite claims that may have occurred under the ruling's strict liability standard. However, this fiscal and policy note assumes that local housing authorities would have eventually enacted policies to prohibit the presence of affected dogs (other than service animals) in response to the court's ruling.

The Housing Authority of Baltimore City (HABC) is the landlord for approximately 11,000 dwelling units of public housing. Baltimore City has historically advised that pit bulls, mixed-breed pit bulls, and other specified breeds of dogs are not permitted on

public housing premises under HABC's pet policy, which is incorporated into the lease. HABC's property managers are responsible for lease enforcement due to pet policy violations. Since the ruling imposes a greater liability on HABC as a landlord, the ruling may result in a change in HABC's insurance coverage and may require HABC to hire additional property managers/monitoring personnel in the future to ensure that pit bulls and mixed-breed pit bulls are not being harbored in HABC's residential properties. The extent of this need cannot be reliably estimated at this time, but any future expenditures for increased insurance premiums and additional monitors will be avoided as a result of the bill's reinstatement of common law liability for dog bite claims against landlords.

Small Business Effect: The bill has a meaningful impact on landlords who would otherwise experience decreased rental revenues due to instituting dog bans in response to the ruling. The bill also has a meaningful impact on landlords who accept dog-owning tenants and would otherwise experience increased insurance premiums, decreased liability coverage, and/or increased claims for damages from dog bite injuries as a result of the court's ruling, offset in part by increased revenues from higher rental rates for dog-owning tenants. Animal-related small businesses (veterinarians, kennels, etc.) may also experience a meaningful reduction in future expenditures for insurance coverage and liability claims as a result of the bill. The bill may also have a meaningful impact on small business animal shelters due to fewer abandoned or euthanized pit bulls and mixed-breed pit bulls as a result of fewer renters surrendering their pets or continued willingness by the public to adopt these dogs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Department of State Police, Treasurer's Office, Montgomery County, Department of Legislative Services

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