

Department of Legislative Services
Maryland General Assembly
2012 Second Special Session

FISCAL AND POLICY NOTE

House Bill 3
Judiciary

(Delegate Kramer)

Civil Action - Liability for Damages Caused by Dog

This emergency bill establishes that, with exceptions, the “owner of a dog” is liable for damages for “serious personal injury” or death of an individual 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.

Under the bill, the common law that existed on January 1, 2012, must be applied to a (1) civil action for damages for personal injury, serious personal injury, or death caused by a dog against an owner of real property or another person who has the right to control the presence of the dog on the property (including a landlord but excluding the dog’s owner); and (2) a civil action against a dog owner for damages resulting from (nonserious) personal injury caused by a dog. The bill’s provisions do not affect any other common law or statutory cause of action, defense, or immunity.

The bill expresses the intent of the General Assembly that the bill’s provisions abrogate the holding of the Maryland Court of Appeals in *Tracey v. Solesky*, No. 53, September Term 2011. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before its effective date.

Fiscal Summary

State Effect: 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. Tort claims against a State agency are typically paid out of the State Insurance Trust Fund.

Local Effect: Potential minimal impact on local government housing authorities from decreased liability for future dog bite claims occurring on public housing property. 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. Potential minimal impact if the bill reduces future claims/litigation for injuries sustained at local government parks or dog runs.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The “owner of a dog” is a person who has a property right in a dog, keeps or harbors a dog, or is a custodial parent or guardian of a minor who does so. Veterinary hospitals, commercial kennels, pet shops, and the employees of these entities are not considered owners if the dog is being treated, boarded, or offered for sale. The bill defines “serious personal injury” as an injury that (1) creates a substantial risk of death; (2) causes serious permanent or serious protracted disfigurement; (3) causes serious permanent or serious protracted loss of function of any body part, organ, or mental faculty; or (4) causes serious permanent or serious protracted impairment of the function of any bodily member or organ.

The bill creates exceptions to the strict liability standard for owners of dogs that cause serious personal injury or death. The standard does not apply if the injured individual is at least seven years old and suffered serious personal injury as a result of (1) the individual’s contributory negligence; (2) the individual’s provocation of the dog; or (3) committing or attempting to commit a criminal trespass or other criminal offense on the dog owner’s real property. The bill also creates an exception from strict liability if the dog was being used by an employee of a governmental unit in military or police work under specified circumstances.

Current Law: In *Tracey v. Solesky*, No. 53, September Term 2011 (filed April 26, 2012), the Maryland Court of Appeals modified the common law rule relating to attacks by pit bulls and mixed-breed pit bulls against humans and established a strict liability standard with respect to the owning, harboring, or control of such dogs.

Civil Liability of Owners

Prior to the *Solesky* decision, the common law rule was that, regardless of breed, in order to hold a dog owner liable for damages to a person bitten by the owner’s dog, it must be

shown that the dog had a vicious propensity and that the vicious propensity or inclination was known to the owner. Although this is commonly referred to as the “one-bite rule,” a plaintiff seeking to recover damages for injuries caused by a dog bite is not required to prove that the dog actually bit someone prior to the attack. The owner’s knowledge of the dog’s vicious propensity “need only be such as to put him on his guard, and to require him as an ordinary prudent person to anticipate the act or conduct of the dog resulting in the injury for which the owner is sought to be held liable.” *Shields v. Wagman*, 350 Md. 666, 686 (1986), quoting *Bachman v. Clark*, 128 Md. 245, 248 (1916).

Civil Liability of Landlords

In two 1998 decisions, the Maryland Court of Appeals established the parameters of landlord liability for an attack by a tenant’s dog. Under the *Shields* case and *Matthews v. Amberwood Associates Limited Partnership*, 351 Md. 544, a landlord could be held liable to a third party for an attack by a tenant’s dog where the landlord had knowledge of the dog’s presence on the leased premises and knowledge of its vicious propensities, and the landlord maintained control over the leased premises.

In the *Shields* case, the court held that the landlord of a strip mall could be held liable for injuries to a business invitee and a tenant caused by another tenant’s dog in the parking lot since (1) the landlord controlled the common area where the injuries occurred; and (2) the landlord had the ability to control the dog’s presence at the strip mall by refusing to renew the month-to-month tenancy of the dog’s owner. The court also found that the evidence of the landlord’s knowledge that the dog’s presence posed a danger to those in the common area was sufficient to go to the jury.

In the *Matthews* case, a pit bull kept by a tenant in a leased apartment attacked and mauled the 16-month old son of the tenant’s guest in the apartment. The child later died from his injuries. The court determined that the landlord owed a duty to guests in the apartment complex since the owner maintained the dog inside the apartment and the common areas and the landlord had known about the dangerous pit bull for a considerable period of time. The court reasoned that the landlord retained control over the presence of the dog in the leased premises by virtue of a “no pets” clause in the lease, the breach of which would enable the landlord to bring a breach of lease action to terminate the tenancy.

Tracey v. Solesky

In *Tracey v. Solesky*, the Court of Appeals held that, on proof that a dog involved in an attack is a pit bull or a mixed-breed pit bull and that the owner, or other person having the right to control the dog’s presence on the subject premises (including a landlord who has a right to prohibit the dog on leased premises) knows, or has reason to know, that the dog is a pit bull or a mixed-breed pit bull, that person is liable for the resulting damages

caused to a plaintiff who is attacked by the dog on or from the owner's or lessor's premises. In that case, a plaintiff has established a *prima facie* case of negligence without the need to prove that the particular pit bull is dangerous. The case involved a pit bull that had escaped twice from what the Court described as an "obviously inadequate small pen" and attacked at least two boys at separate times on the same day. As a result of his mauling by the dog, Dominic Solesky, the second boy and the plaintiff in the case, sustained life-threatening injuries and underwent five hours of surgery to address the injuries. Solesky spent 17 days in the hospital, during which additional surgeries were performed, and then spent a year in rehabilitation. The trial court granted a judgment for Tracey, the defendant landlord, on the grounds that the evidence was insufficient to find her liable under Maryland's common law. The plaintiff took an appeal to the Court of Special Appeals, which reversed the trial court, finding that the evidence had been sufficient to create a valid jury issue as to the extent of the landlord's knowledge as to the dangerousness of the dog in respect to the common law standard. Both parties appealed the ruling to the Court of Appeals.

In the four-judge majority opinion, the Court of Appeals conceded that the trial court had correctly employed the existing common law rule in deciding for the landlord. The Court, however, modified the common law and held that, from this case forward, a new "strict liability" would be applied in dog bite cases involving a pit bull or a mixed-breed pit bull. From now on, once the plaintiff proves evidence that an attack was by a pit bull or a mixed-breed pit bull, a *prima facie* case of negligence on the part of the defendant would be established with no additional evidence of prior dangerousness required. The Court first reviewed the history of dog attack cases in the State involving pit bulls, noting that, over the last 13 years, at least seven instances of serious maulings by pit bulls had reached the appellate courts.

Justifying the change from the "one-bite" common law rule to a strict liability standard in pit bull cases, the Court cited precedents holding that the common law is subject to change not only by the General Assembly, but also by the Court in light of "modern circumstances or increased knowledge." To that end, the Court reviewed a number of recent studies that associated attacks by "pit bull-type" dogs with significantly higher mortality rates, higher hospital charges, and a higher risk of death compared to attacks by other breeds. The Court also quoted cases from other jurisdictions addressing the "inherent viciousness" of pit bulls that upheld breed-specific regulations as well as several jurisdictions that have some form of strict liability statute in which the finding of dangerousness of the particular attacking dog is not necessary to establish the elements of negligence. These sources, as well as "numerous instances of serious and often fatal attacks by pit bulls throughout the country, and especially in Maryland," persuaded the Court that the common law needed to be changed to a strict liability standard in relation to pit bulls and mixed-breed pit bulls. Remanding the case, the Court ordered the trial court to apply the new rule.

Three judges dissented, noting that no “expert testimony or factual predicate” was contained within the record of the case to support a factual finding that pit bulls and mixed-breed pit bulls were inherently dangerous. The dissent pointed out that, in accordance with the “well settled” common law standard of strict liability, the breed of the dog, standing alone, had never been considered a sufficient substitute for proof that a particular dog was dangerous or had a violent nature. Citing a long line of precedents decided by the common law “one-bite” rule, the dissenting judges accused the majority of unjustifiably violating the doctrine of *stare decisis*, which requires judges to follow precedent in all but the most unusual situations. Finally, the dissent called the new rule “unworkable” and questioned how it could be applied without a definition of what constitutes a “mixed-breed” pit bull. These issues, the dissenters argued, are best resolved by the Maryland General Assembly.

Attorneys for Ms. Tracey filed a motion for reconsideration with the Court of Appeals on May 25, 2012. Among other things, the motion included arguments that (1) the majority opinion failed to apply the rigorous standards typically used to reject *stare decisis* and revise the common law; (2) the Court’s determination that pit bulls and mixed-breed pit bulls are inherently dangerous and that strict liability attaches to a dog owner and landlord based only on knowledge of the dog’s breed was based on controversial science and “significant misconceptions”; (3) sufficient scientific evidence exists to contradict the scientific evidence cited in the majority opinion and the Court is not in a position in this case to arbitrate a scientific dispute; (4) even if it were appropriate for the Court to decide on the scientific dispute, the record established in the lower courts is insufficient for it to do so; (5) the Court’s decision was legislative in nature and, as such, was a violation of the separation of powers in the Maryland Constitution; and (6) breed-specific legislation is a task best left to the legislature. The motion asked the Court to immediately rule on the motion to reconsider its original decision in the *Solesky* case or, alternatively, consider holding its decision on the motion pending the conclusion of the second special session of 2012. The Soleskys filed an opposition to the motion for reconsideration on June 14, 2012.

On July 10, 2012, the Office of the Attorney General issued a letter of advice that the *Solesky* decision, *as it applies to the parties in the case*, is stayed by the motion for reconsideration. The letter went on to say that it is unclear how the motion for reconsideration affects individuals other than the parties in the case; however, absent clear precedent to the contrary, the Office of General Counsel to the Assembly believes that the motion for reconsideration also stays application of the Court’s ruling to individuals other than the parties in the case.

Contributory Negligence

Contributory negligence is conduct on the part of the injured party which falls below the standard to which the injured party should conform for self-protection, and it is a legally contributing factor (along with the defendant's negligence) in bringing about the plaintiff's harm. Under Maryland law, contributory negligence on the part of a plaintiff bars recovery by the plaintiff. See *Board of County Commissioner of Garrett County v. Bell Atlantic*, 346 Md. 160 (1997).

The standard for determining a child's negligence or contributory negligence is the care ordinarily exercised by children of the same age, capacity, discretion, and experience under the same or similar circumstances. As a matter of law, children below the age of five are incapable of contributory negligence. Maryland is one of five jurisdictions, along with Virginia, Alabama, North Carolina, and the District of Columbia, that retains the doctrine of contributory negligence.

Background: The *Solesky* ruling drew sharp criticism from dog owners, animal groups, and landlords. Common complaints about the decision included (1) the Court's departure from *stare decisis*; (2) the application of a different standard of liability to pit bulls and mixed-breed pit bulls based on questionable statistics and scientific studies; (3) the lack of guidance in the opinion as to what constitutes a pit bull or a mixed-breed pit bull; (4) no indication in the opinion as to when in a timeline of activity a person who has supervision of a dog (such as a veterinarian or dog groomer) is free from the strict liability standard; and (5) immediately holding landlords to a higher level of liability for dogs that are permitted under leases currently in effect regardless of the landlord's personal knowledge of the dog and without consideration to the lengthy legal process needed to remove a dog from a rental property when the dog is permitted under the lease.

Pit Bull Task Force

In response to the publicity and concerns of the public and business community regarding the *Solesky* ruling, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls. The task force met on two occasions in June 2012. During its initial meeting, the task force heard testimony from a series of panels regarding the impact of the Court's ruling. Common themes in the testimony included (1) imposing greater liability on all dog owners and emphasis on more responsible dog ownership (including spaying and neutering) in lieu of breed-specific standards; (2) the lack of guidance in the opinion as to what constitutes a pit bull or a mixed-breed pit bull; (3) the conflict between the ruling and a recent statement by the U.S. Department of Justice that breed-specific legislation contradicts the Americans with Disabilities Act; and (4) the ruling's effect on the rental market, including higher rents and insurance premiums for landlords and potential bans on all dogs in rental properties.

Civil Liability for Dog Bites in Other States

Thirty-three states have modified the common law by enacting a statute that imposes strict liability to *any* dog bite, including a first bite, under specified circumstances. While the applications of these statutes and exceptions to strict liability vary from state to state, none of the statutes encompasses a landlord and none is breed-specific. Strict liability statutes in New York and North Carolina only apply to a “dangerous dog,” which is a term that carries a statutory definition and typically involves a dog that has been the aggressor in a prior attack. Common exceptions to strict liability statutes include trespassing and provocation of the dog. Eight states (Arizona, California, Colorado, Indiana, Nebraska, New Hampshire, Tennessee, and Utah) exempt police or military dogs from strict liability. **Appendix 1** contains detailed information on how states approach civil liability for injury or death caused by a dog.

Dog Bite Data

According to the American Veterinary Medical Association’s (AVMA) *2007 U.S. Pet Ownership & Demographics Sourcebook*, more than 72 million dogs are household pets in the United States. The U.S. Centers for Disease Control and Prevention report that approximately 4.5 million people are bitten by dogs each year, and 20% of dog-bite victims require medical attention for related injuries. In 2006, more than 31,000 people underwent reconstructive surgery as a result of a dog bite. Children are more likely to receive medical attention for dog bite injuries, and children age five to nine have the highest rate of dog bite-related injuries.

In 2001, AVMA convened a Task Force on Canine Aggression and Human-Canine Interactions to recommend the most effective measures for reducing the incidences of dog bites and holding dog owners responsible for their dog’s behavior. Recommendations included identification and regulation of dangerous dogs, improved bite data reporting, and more comprehensive public education about dog behaviors.

According to a February 2012 report by AVMA, Ohio is the only state to have enacted breed-specific legislation at the state level. However, the portion of the statute that designates the pit bull breed as a “vicious dog” was eventually repealed. The report also identifies 12 states that statutorily prohibit breed-specific local ordinances and 9 states that have case law authorizing municipal adoption of breed specific ordinances. 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.

Local Fiscal Effect: 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 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) advises that it is currently the landlord for approximately 11,000 dwelling units of public housing. 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 pre-*Solesky* common law liability for dog bite claims against landlords.

Small Business Effect: Meaningful impact on landlords who would otherwise experience decreased rental revenues due to instituting dog bans in response to the ruling. 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. 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): American Veterinary Medical Association, Animal Legal and Historical Center, Department of Housing and Community Development, Department of Natural Resources, Maryland State Bar Association, Office of the Attorney General, Baltimore City, Prince George's County, *Washington Post*, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix 1
Civil Liability for Injury or Death Caused by Dog

Common law negligence for any injury or death caused by a dog owned, kept or harbored by a person	Alaska, Arkansas, Idaho, Kansas, Maryland, Mississippi, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Vermont, Virginia, and Wyoming
Strict liability against owner for any dog bite	Alabama, California, Delaware, Florida, Illinois, Iowa, Louisiana, Montana*, Nebraska, New Jersey, Oklahoma**, Tennessee, Washington, and Wisconsin
Strict liability for any dog bite against any person who owns or keeps a dog	Arizona, Colorado, Connecticut, Georgia, Hawaii, Indiana***, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Utah, and West Virginia
Strict liability against landlord	None
Exception to strict liability when the injured person provoked, tormented, or abused the dog	Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Washington
Exception to strict liability if injured person was trespassing or committing another tort and/or criminal offense	Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, South Carolina, Tennessee, and Washington
Exception to strict liability if injured person was not acting peaceably	Illinois, Indiana, and Minnesota
Strict liability only if dog was at large or outside owner/keeper's enclosure	District of Columbia, Georgia, Maine, Rhode Island, Tennessee, and West Virginia

*Montana's strict liability standard only applies to public places in incorporated municipalities or a private place where a person has a right to be, including the owner's property.

**Oklahoma's strict liability standard does not apply in "rural areas."

***Indiana's strict liability standard only applies when the injured person is a police officer, firefighter, postal worker, or other person at the location because of a legal duty.

Source: Animal Legal and Historical Center and Department of Legislative Services