

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 73
Judiciary

(Delegate Simmons, *et al.*)

Judicial Proceedings

Civil Actions - Personal Injury or Death Caused by Dog - Rebuttable Presumption

This emergency bill establishes that in an action for damages against an owner of a dog for personal injury or death caused by the dog, evidence that the dog caused the personal injury or death creates a rebuttable presumption that the owner knew or should have known that the dog had vicious or dangerous propensities. Notwithstanding any other law or rule, the judge in a jury trial may not rule as a matter of law that the presumption has been rebutted before the jury returns a verdict.

However, the owner of a dog is strictly liable for any injury, death, or loss to person or property that is caused by the dog while the dog was running at large unless the injury, death, or loss was caused to the body or property of a person who was (1) committing or attempting to commit a trespass or other criminal offense on the property of the owner; (2) committing or attempting to commit a criminal offense against any person; or (3) teasing, tormenting, abusing, or provoking the dog.

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

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

The bill's provisions do not affect any other common law or statutory cause of action, defense, or immunity. The bill applies prospectively, and does not have any effect on or application to any cause of action arising before its effective date.

Fiscal Summary

State Effect: Special fund revenues may increase minimally in FY 2014 for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee. 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. 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

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.

Rebuttable Presumptions: Rebuttable presumptions generally exist in two varieties – ones that allocate the burden of persuasion and/or the initial production of evidence and ones that assist a party in a civil case or a criminal defendant by shifting the burden of the production of evidence to an opposing party.

Under the second type of rebuttable presumption, the existence of a basic fact (*e.g.*, the defendant's dog caused the personal injury or death) creates the presumption of the existence of a presumed fact (*e.g.*, the defendant/dog owner knew or should have known that the dog had vicious or dangerous propensities), the nonexistence of which must be proven by evidence presented by the party burdened by the presumption (the defendant/dog owner).

Under Maryland Rule 5-301, a presumption in a civil action imposes on the party against whom the presumption is directed the burden of producing evidence to rebut the presumption. If that party (the dog owner under this bill) produces evidence tending to disprove the presumed fact, the presumption retains the effect of creating a question to be decided by the trier of fact unless the court concludes that the evidence presented is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.

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.

The General Assembly passed House Bill 1203 of 2013 (Chapter 406), which 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 for or issuance of a policy and at each renewal of a policy, written notice that (1) states that 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 for which the policy does not provide coverage. 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.

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: To the extent that insurers alter their rates as a result of the bill, MIA special fund revenues may increase minimally in fiscal 2014 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 special fund revenues from insurance premium taxes cannot be reliably estimated at this time. The State imposes a 2% premium tax on insurance policies.

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 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.

The bill has no fiscal impact on Prince George's County. 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.

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: HB 78 of 2013, a similar bill, passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken. Its cross file, SB 160, passed both chambers with amendments. A conference committee report was adopted in both chambers, but the bill did not pass on third reading in the House before the conclusion of the 2013 legislative session.

Cross File: SB 247 (Senator Frosh, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Housing and Community Development, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Office of the Attorney General, *Washington Post*, *Maryland Practice – Volume 5 (Maryland Evidence State and Federal) (Second Edition)* (2001), Baltimore City, Prince George’s County, Department of Legislative Services

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