

1 HOUSE BILL 258

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Terry H. McMillan

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9  
10 AN ACT

11 RELATING TO THE DANGEROUS DOG ACT; CLARIFYING LIABILITY FOR DOG  
12 BITES; REMOVING THE REQUIREMENT THAT A DOG BE CLASSIFIED AS  
13 POTENTIALLY DANGEROUS OR DANGEROUS FOR THE OWNER TO BE CHARGED  
14 WITH A FELONY FOR AN INJURY CAUSED BY A DOG; ADDING PENALTIES.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the Dangerous Dog Act is  
18 enacted to read:

19 "[NEW MATERIAL] LIABILITY FOR DOG BITES--PROVOCATION AS A  
20 DEFENSE.--

21 A. The owner of a dog that bites a person when the  
22 person is in or on a public place or lawfully in or on a  
23 private place, including the property of the owner of the dog,  
24 is liable for damages suffered by the person bitten, regardless  
25 of the former viciousness of the dog or the owner's knowledge

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1 of its viciousness.

2 B. Nothing in this section shall permit the  
3 bringing of an action for damages against any governmental  
4 agency using a dog in military or police work if the bite  
5 occurred while the dog was used by a law enforcement official  
6 for legitimate law enforcement purposes.

7 C. Proof of provocation of the attack by the person  
8 injured shall be a defense to the action for damages. The  
9 issue of provocation shall be determined by whether a  
10 reasonable person would expect that the conduct or  
11 circumstances would be likely to provoke a dog."

12 SECTION 2. Section 77-1A-1 NMSA 1978 (being Laws 2005,  
13 Chapter 61, Section 1) is amended to read:

14 "77-1A-1. SHORT TITLE.--~~[This act]~~ Chapter 77, Article 1A  
15 NMSA 1978 may be cited as the "Dangerous Dog Act"."

16 SECTION 3. Section 77-1A-2 NMSA 1978 (being Laws 2005,  
17 Chapter 61, Section 2) is amended to read:

18 "77-1A-2. DEFINITIONS.--As used in the Dangerous Dog Act:

19 A. "animal control authority" means an entity  
20 authorized to enforce the animal control laws of a city, county  
21 or state, whether acting alone or in concert with other  
22 governmental authorities. In those areas not served by an  
23 animal control authority, the sheriff or municipal law  
24 enforcement shall carry out the duties of the animal control  
25 authority under the Dangerous Dog Act;

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1           B. "dangerous dog" means a dog that caused a  
2 serious injury to a person or domestic animal;

3           C. "minor injury" means a physical injury that  
4 results in outpatient medical treatment but does not rise to  
5 the level of serious injury;

6           [~~E.~~] D. "owner" means a person who possesses,  
7 harbors, keeps or has control or custody of a dog or, if that  
8 person is under the age of eighteen, that person's parent or  
9 guardian;

10           [~~D.~~] E. "potentially dangerous dog" means a dog  
11 that may reasonably be assumed to pose a threat to public  
12 safety as demonstrated by the following behaviors:

13                   (1) causing an injury to a person or domestic  
14 animal that is less severe than a serious injury;

15                   (2) chasing or menacing a person or domestic  
16 animal in an aggressive manner and without provocation; or

17                   (3) acting in a highly [~~aggressively~~]  
18 aggressive manner within a fenced yard or enclosure and  
19 appearing able to jump out of the yard or enclosure;

20           [~~E.~~] F. "proper enclosure" means secure confinement  
21 indoors or outdoors, such as in a fenced yard, locked pen or  
22 other structure, that is designed to prevent the animal from  
23 escaping the confined area and young children from entering the  
24 confined area but does not include chaining, restraining or  
25 otherwise affixing the animal to a stationary object; [~~and~~]

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1           [F.] G. "serious injury" means a physical injury  
2 that results in broken bones, multiple bites or disfiguring  
3 lacerations requiring sutures or simple reconstructive surgery;  
4 and

5           H. "severe injury" means a physical injury that  
6 results in prolonged or multiple hospitalizations or multiple  
7 reconstructive surgical procedures, or both."

8           SECTION 4. Section 77-1A-4 NMSA 1978 (being Laws 2005,  
9 Chapter 61, Section 4) is amended to read:

10           "77-1A-4. SEIZURE OF DOG--PETITION TO COURT.--

11           A. If an animal control authority has probable  
12 cause to believe that a dog is a dangerous dog, [~~and~~] a  
13 potentially dangerous dog or the dog poses an imminent threat  
14 to public safety, the animal control authority may apply to a  
15 court of competent jurisdiction in the county where the animal  
16 is located for a warrant to seize the animal.

17           ~~[B. If an animal control authority has probable~~  
18 ~~cause to believe that a dog is a potentially dangerous dog and~~  
19 ~~poses a threat to public safety, the animal control authority~~  
20 ~~may apply to a court of competent jurisdiction in the county~~  
21 ~~where the animal is located for a warrant to seize the animal.~~

22           G.] B. After seizure, the animal control authority  
23 shall impound the dog pending disposition of the case or until  
24 the owner has fulfilled the requirements for a certificate of  
25 registration pursuant to the provisions of Section [~~5 of the~~

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1 ~~Dangerous Dog Act]~~ 77-1A-5 NMSA 1978.

2 ~~[D-]~~ C. After seizure:

3 (1) the owner may admit that the dog is  
4 dangerous or potentially dangerous and comply with the  
5 requirements for a certificate of registration pursuant to  
6 Section ~~[5 of the Dangerous Dog Act]~~ 77-1A-5 NMSA 1978; or

7 (2) the animal control authority may, within  
8 fourteen days after seizure of the dog, bring a petition in  
9 court seeking a determination of whether the dog is dangerous  
10 or potentially dangerous. If the court finds, by clear and  
11 convincing evidence, that the dog is dangerous and poses an  
12 imminent threat to public safety or potentially dangerous and  
13 poses a threat to public safety, the court shall order the  
14 owner to comply with the registration and handling requirements  
15 for the dog and obtain a certificate of registration within  
16 thirty days or have the dog humanely destroyed. If the court  
17 does not make the required findings pursuant to this paragraph,  
18 the court shall immediately order the release of the dog to its  
19 owner.

20 ~~[E-]~~ D. If the owner does not admit that the dog is  
21 dangerous or potentially dangerous and the animal control  
22 authority does not bring a petition in court within fourteen  
23 days of seizure of the dog, the court shall immediately order  
24 the release of the dog to its owner.

25 ~~[F-]~~ E. If the owner admits that the dog is

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1 dangerous and transfers ownership of the dog to the animal  
2 control authority, the animal control authority may humanely  
3 destroy the dog.

4 ~~[G.]~~ F. A determination that a dog is not dangerous  
5 or potentially dangerous shall not prevent an animal control  
6 authority from making a subsequent application for seizure  
7 based on the dog's subsequent behavior."

8 SECTION 5. Section 77-1A-6 NMSA 1978 (being Laws 2005,  
9 Chapter 61, Section 6) is amended to read:

10 "77-1A-6. PROHIBITED ACTS--PENALTIES.--

11 A. It is unlawful for an owner of a dangerous or  
12 potentially dangerous dog to:

13 (1) keep the dog without a valid certificate  
14 of registration;

15 (2) violate the registration and handling  
16 requirements for the dog;

17 (3) fail to notify the animal control  
18 authority immediately upon:

19 (a) the escape of the dog; or

20 (b) an attack by the dog upon a human  
21 being or a domestic animal;

22 (4) fail to notify the animal control  
23 authority of the dog's death within five business days;

24 (5) fail to notify the animal control  
25 authority within twenty-four hours if the dog has been sold or

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1 given away and provide the name, address and telephone number  
2 of the new owner of the dog;

3 (6) fail to surrender the dog to an animal  
4 control authority for safe confinement pending a determination  
5 of the case when there is reason to believe that the dog poses  
6 an imminent threat to public safety; or

7 (7) fail to comply with special handling or  
8 care requirements for the dog that a court has ordered.

9 B. Whoever violates a provision of Subsection A of  
10 this section is guilty of a misdemeanor and shall be sentenced  
11 in accordance with the provisions of Section 31-19-1 NMSA 1978  
12 and, for a second or subsequent offense, is guilty of a fourth  
13 degree felony and shall be sentenced in accordance with the  
14 provisions of Section 31-18-15 NMSA 1978.

15 C. An owner of a [~~dangerous or potentially~~  
16 ~~dangerous~~] dog that causes serious injury or death to a  
17 domestic animal, without provocation, is guilty of a fourth  
18 degree felony and shall be sentenced in accordance with the  
19 provisions of Section 31-18-15 NMSA 1978.

20 D. An owner of a dog that causes minor injury to a  
21 human being, without provocation, is guilty of a misdemeanor  
22 and shall be sentenced in accordance with the provisions of  
23 Section 31-19-1 NMSA 1978.

24 [~~D.~~] E. An owner of a [~~dangerous or potentially~~  
25 ~~dangerous~~] dog that causes serious injury to a human being,

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1 without provocation, is guilty of a [~~third~~] fourth degree  
2 felony and shall be sentenced in accordance with the provisions  
3 of Section 31-18-15 NMSA 1978.

4 F. An owner of a dog that causes severe injury to a  
5 human being, without provocation, is guilty of a third degree  
6 felony and shall be sentenced in accordance with the provisions  
7 of Section 31-18-15 NMSA 1978.

8 [~~F.~~] G. An owner of a [~~dangerous or potentially~~  
9 ~~dangerous~~] dog that causes the death of a human being, without  
10 provocation, is guilty of a third degree felony resulting in  
11 the death of a human being and shall be sentenced in accordance  
12 with the provisions of Section 31-18-15 NMSA 1978.

13 [~~F.~~] H. Prosecution pursuant to this section  
14 requires a showing that:

15 (1) an owner knew of the propensity of a dog  
16 to inflict [~~serious~~] injury; or

17 (2) the dog had previously been found by a  
18 court to be a dangerous or potentially dangerous dog."

19 **SECTION 6. EFFECTIVE DATE.**--The effective date of the  
20 provisions of this act is July 1, 2013.