

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

**SENATE BILLS NOS. 982,  
834 & 819**

94TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 4, 2008, with recommendation that the Senate Committee Substitute do pass.

4611S.03C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 578.025 and 578.030, RSMo, and to enact in lieu thereof eight new sections relating to dogs, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 578.025 and 578.030, RSMo, are repealed and eight  
2 new sections enacted in lieu thereof, to be known as sections 273.033, 273.035,  
3 273.036, 273.038, 578.025, 578.026, 578.028, and 578.030, to read as follows:

**273.033. 1. In any action for damages or a criminal prosecution**  
2 **against any person for killing or injuring a dog, a showing by a**  
3 **preponderance of the evidence that such person was in reasonable**  
4 **apprehension of imminent harmful contact by the dog or was acting to**  
5 **prevent such imminent harmful contact against another person by the**  
6 **dog shall constitute an absolute defense to criminal prosecution or civil**  
7 **liability for the killing or injuring of such animal.**

8 **2. If a person has, on at least two occasions, complained to the**  
9 **county sheriff or to the appropriate animal control authority in his or**  
10 **her jurisdiction that a dog, not on a leash, has trespassed on property**  
11 **that such person owns, rents, or leases or on any property that**  
12 **constitutes such person's residence, and when at least one of the prior**  
13 **two complaints was motivated by reasonable apprehension for such**  
14 **person's safety or the safety of another person or apprehension of**  
15 **substantial damage to livestock or property, then any subsequent**  
16 **trespass by such dog shall constitute prima facie evidence that such**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 person was in reasonable apprehension of imminent harmful  
18 contact. The county sheriff or animal control authority to which any  
19 complaint under this section is made shall notify the owner of the  
20 alleged trespassing dog of such complaint. Failure by a county sheriff  
21 or animal control authority to notify a dog owner under this subsection  
22 shall not invalidate or be construed in any way to limit any other  
23 provision of this subsection.

24 3. The court shall award attorney's fees, court costs, and all  
25 reasonable expenses incurred by the defendant in defense of any  
26 criminal prosecution or in any civil action brought by a plaintiff if the  
27 court finds that the defendant has an absolute defense as provided in  
28 subsection 1 of this section.

29 4. This section shall not be construed to provide an absolute  
30 defense to a person for any damage or injury to any person or property  
31 other than the dog itself that may result from actions taken in an  
32 attempt to injure or kill such dog nor shall it be construed to provide  
33 an absolute defense to the violation of a local ordinance prohibiting the  
34 discharge of firearms.

273.035. 1. The owner or possessor of any dog that bites any  
2 person while such person is on or in a public place, or lawfully on or  
3 in a private place, including the property of the owner or possessor of  
4 the dog, is strictly liable for damages suffered by persons bitten,  
5 regardless of the former viciousness of the dog or the owner's or  
6 possessor's knowledge of such viciousness. Owners or possessors of  
7 dogs shall also be strictly liable for any damage to property or livestock  
8 proximately caused by their dogs. If it is determined that the damaged  
9 party had fault in the incident, any damages owed by the owner or  
10 possessor of the biting dog shall be reduced by the same percentage  
11 that the damaged party's fault contributed to the incident. The  
12 provisions of this section shall not apply to dogs killing or maiming  
13 sheep or other domestic animals under section 273.020.

14 2. Any person who is held liable under the provisions of  
15 subsection 1 of this section shall pay a civil fine not exceeding one  
16 thousand dollars. The remedies provided by this section are in  
17 addition to and cumulative with any other remedy provided by statute  
18 or common law.

273.036. 1. If a dog, that has previously bitten a person or a

2 domestic animal without substantial provocation, bites any person on  
3 a subsequent occasion, the owner or possessor is guilty of a class B  
4 misdemeanor unless such attack:

5 (1) Results in severe injury to any person, in which case, the  
6 owner is guilty of a class A misdemeanor; or

7 (2) Results in severe injury to any person and any previous  
8 attack also resulted in severe injury to any person, in which case, the  
9 owner is guilty of a class D felony; or

10 (3) Results in the death of any person, in which case, the owner  
11 shall be guilty of a class C felony.

12 2. In addition to the penalty included in subsection 1 of this  
13 section, if any dog, that has previously bitten a person or a domestic  
14 animal without substantial provocation, bites any person on a  
15 subsequent occasion or if a dog that has not previously bitten a person  
16 attacks and causes severe injury to or the death of any human, the dog  
17 shall be seized immediately by an animal control authority or by the  
18 county sheriff. The dog shall be impounded and held for ten business  
19 days after the owner is given written notification and thereafter  
20 destroyed.

21 3. The owner or possessor of the dog that has been impounded  
22 may file a written appeal to the circuit court to contest the  
23 impoundment and destruction of such dog. The owner or possessor  
24 shall provide notice of the filing of the appeal to the animal control  
25 authority or county sheriff who seized the dog. If the owner or  
26 possessor files such an appeal and provides proper notice, the dog shall  
27 remain impounded and shall not be destroyed while such appeal is  
28 pending and until the court issues an order for the destruction of the  
29 dog. The court shall hold a disposition hearing within thirty days of  
30 the filing of the appeal to determine whether such dog shall be  
31 humanely destroyed. The court may order the owner or possessor of  
32 the dog to pay the costs associated with the animal's keeping and care  
33 during the pending appeal.

34 4. If a dog attacks or bites a person who is engaged in or  
35 attempting to engage in a criminal activity at the time of the attack  
36 other than trespass upon private property by a person under the age  
37 of twelve under section 569.150, RSMo, then the provisions of this  
38 section shall not apply.

273.038. Any dog that is owned, or the service of which is  
2 employed, by a law enforcement agency and that bites another animal  
3 or human in the course of their official duties is exempt from the  
4 provisions of sections 273.033 to 273.038.

578.025. 1. Any person who:

2 (1) Owns, possesses, keeps, or trains any dog, with the intent that such  
3 dog shall be engaged in an exhibition of fighting with another dog;

4 (2) For amusement or gain, causes any dog to fight with another dog, or  
5 causes any dogs to injure each other; or

6 (3) Permits any act as described in subdivision (1) or (2) of this subsection  
7 to be done on any premises under his charge or control, or aids or abets any such  
8 act is guilty of a class D felony.

9 2. Any person who is knowingly present, as a spectator, at any place,  
10 building, or structure where preparations are being made for an exhibition of the  
11 fighting of dogs, with the intent to be present at such preparations, or is  
12 knowingly present at such exhibition or at any other fighting or injuring as  
13 described in subdivision (2) of subsection 1 of this section, with the intent to be  
14 present at such exhibition, fighting, or injuring is guilty of a class A misdemeanor  
15 **for a first offense and a class D felony for a second or subsequent**  
16 **offense.**

17 3. Nothing in this section shall be construed to prohibit:

18 (1) The use of dogs in the management of livestock by the owner of such  
19 livestock or his employees or agents or other persons in lawful custody of such  
20 livestock;

21 (2) The use of dogs in hunting; or

22 (3) The training of dogs or the use of equipment in the training of dogs for  
23 any purpose not prohibited by law.

578.026. 1. Any duly authorized public health official or law  
2 enforcement officer may seek a warrant from the appropriate court to  
3 enable him or her to enter private property in order to inspect, care  
4 for, or impound dogs that are the subject of a violation of section  
5 578.025; provided, the sheriff of the county or city not within a county  
6 in which the warrant is to be served, or his or her designee, shall be  
7 notified upon application by the applicant of the search warrant. The  
8 sheriff, or his or her designee, shall participate in serving the search  
9 warrant. Any designee of the sheriff shall be a deputy sheriff or other

10 person certified as a peace officer under chapter 590, RSMo. The  
11 sheriff shall have a designee available at all times. All requests for  
12 such warrants shall be accompanied by an affidavit stating the  
13 probable cause to believe a violation of section 578.025 has occurred.

14       2. Any law enforcement officer or public health official, who has  
15 probable cause to believe a violation of section 578.025 has occurred  
16 and has the authority to make a lawful seizure, shall take possession of  
17 all dogs and all paraphernalia, implements, or other property or things  
18 used or employed, or about to be employed, in the violation of any of  
19 the provisions of section 578.025. Such law enforcement officer or  
20 official under this subsection or subsection 1 of this section, after  
21 taking possession of such dogs, paraphernalia, implements or other  
22 property or things, shall file with the court an affidavit stating therein  
23 a description of the property so taken and the time and place of the  
24 taking thereof together with the name of the person from whom the  
25 same was taken and the name of the person who claims to own such  
26 property, if known, and that the affiant has reason to believe and does  
27 believe, stating the ground of such belief, that the property so taken  
28 was used or employed, or was about to be used or employed, in such  
29 violation of section 578.025.

30       3. A person performing a lawful seizure of any dog that is the  
31 subject of a violation of section 578.025, whether under the authority  
32 of a warrant or not, shall:

33       (1) Be given a disposition hearing within thirty days of the filing  
34 of the request for the purpose of granting immediate disposition of the  
35 dogs impounded;

36       (2) Place impounded dogs in the care or custody of a  
37 veterinarian, the appropriate animal control authority, or an animal  
38 shelter. If no appropriate veterinarian, animal control authority, or  
39 animal shelter is available, the dog shall not be impounded unless it is  
40 diseased or disabled beyond recovery for any useful purpose;

41       (3) Humanely kill any dog impounded if it is determined by a  
42 licensed veterinarian that the dog is diseased or disabled beyond  
43 recovery for any useful purpose;

44       (4) Not be liable for any necessary damage to property if the dog  
45 has been lawfully seized.

46       4. The owner or possessor or any person claiming an interest in

47 any dog that has been impounded because of being the subject of a  
48 violation of section 578.025 may prevent disposition of the dog by  
49 posting bond or security in an amount sufficient to provide for the  
50 dog's care and keeping for at least thirty days, inclusive of the date on  
51 which the animal was taken into custody. Notwithstanding the fact  
52 that bond may be posted pursuant to this subsection, the authority  
53 having custody of the animal may humanely dispose of the dog at the  
54 end of the time for which expenses are covered by the bond or security,  
55 unless there is a court order prohibiting such disposition. Such order  
56 shall provide for a bond or other security in the amount necessary to  
57 protect the authority having custody of the dog from any cost of the  
58 care, keeping or disposal of the dog. The authority taking custody of  
59 a dog shall give notice of the provisions of this section by posting a  
60 copy of this section at the place where the dog was taken into custody  
61 or by delivering it to a person residing on the property.

62 5. The owner or possessor of any dog humanely killed pursuant  
63 to this section shall not be entitled to recover any damages related to,  
64 nor the actual value of, the dog if the dog was found by a licensed  
65 veterinarian to be diseased or disabled, or if the owner or possessor  
66 failed to post bond or security for the care, keeping and disposition of  
67 the dog after being notified of impoundment.

578.028. Any person who removes an electronic or radio  
2 transmitting collar from a dog without the permission of the owner of  
3 the dog with the intent to prevent or hinder the owner from locating  
4 the dog, is guilty of a class A misdemeanor. Upon a plea or finding of  
5 guilt, the court shall order that the defendant pay as restitution the  
6 actual value of any dog lost or killed as a result of such removal. The  
7 court may also order restitution to the owner for any lost breeding  
8 revenues.

578.030. [1.] The provisions of section 43.200, RSMo, notwithstanding,  
2 any member of the state highway patrol or other law enforcement officer may  
3 apply for and serve a search warrant, and shall have the power of search and  
4 seizure in order to enforce the provisions of sections 578.025 to 578.050.

5 [2. Any member of the state highway patrol or other law enforcement  
6 officer making an arrest under section 578.025 shall lawfully take possession of  
7 all dogs or other animals and all paraphernalia, implements, or other property  
8 or things used or employed, or about to be employed, in the violation of any of the

9 provisions of section 578.025. Such officer, after taking possession of such dogs,  
10 animals, paraphernalia, implements or other property or things, shall file with  
11 the court before whom the complaint is made against any person so arrested an  
12 affidavit stating therein the name of the person charged in such complaint, a  
13 description of the property so taken and the time and place of the taking thereof  
14 together with the name of the person from whom the same was taken and the  
15 name of the person who claims to own such property, if known, and that the  
16 affiant has reason to believe and does believe, stating the ground of such belief,  
17 that the property so taken was used or employed, or was about to be used or  
18 employed, in such violation of section 578.025. He shall thereupon deliver the  
19 property so taken to the court, which shall, by order in writing, place the same  
20 in the custody of an officer or other proper person named and designated in such  
21 order, to be kept by him until the conviction or final discharge of such person  
22 complained against, and shall send a copy of such order without delay to the  
23 prosecuting attorney of the county. The officer or person so named and  
24 designated in such order shall immediately thereupon assume the custody of such  
25 property and shall retain the same, subject to the order of the court before which  
26 such person so complained against may be required to appear for trial. Upon the  
27 conviction of the person so charged, all property so seized shall be adjudged by  
28 the court to be forfeited and shall thereupon be destroyed or otherwise disposed  
29 of as the court may order. In the event of the acquittal or final discharge without  
30 conviction of the person so charged, such court shall, on demand, direct the  
31 delivery of such property so held in custody to the owner thereof.]

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