

FIRST REGULAR SESSION

SENATE BILL NO. 184

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Read 1st time January 13, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0563S.011

AN ACT

To amend chapter 273, RSMo, by adding thereto four new sections relating to dangerous dogs, with penalty provisions.

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

Section A. Chapter 273, RSMo, is amended by adding thereto four new sections, to be known as sections 273.033, 273.036, 273.038, and 273.039, to read as follows:

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

2. If a person has, on at least two occasions, complained to the county sheriff or to the appropriate animal control authority in his or her jurisdiction that a dog, not on a leash, has trespassed on property that such person owns, rents, or leases or on any property that constitutes such person's residence, and when at least one of the prior two complaints was motivated by reasonable apprehension for such person's safety or the safety of another person or apprehension of substantial damage to livestock or property, then any subsequent trespass by such dog shall constitute prima facie evidence that such person was in reasonable apprehension of imminent harmful contact. The county sheriff or animal control authority to which any complaint under this section is made shall notify the owner of the 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 who is engaged in or attempting to engage in a
31 criminal activity as defined in subsection 4 of section 273.038 at the
32 time of the apprehension of imminent harmful contact, or to a person
33 for any damage or injury to any person or property other than the dog
34 itself that may result from actions taken in an attempt to injure or kill
35 such dog nor shall it be construed to provide an absolute defense to the
36 violation of a local ordinance prohibiting the discharge of firearms.

273.036. 1. The owner of any dog that bites, without substantial
2 provocation, any person while such person is on or in a public place,
3 or lawfully on or in a private place, including the property of the owner
4 of the dog, is strictly liable for damages suffered by persons bitten,
5 regardless of the former viciousness of the dog or the owner's
6 knowledge of such viciousness. Owners of dogs shall also be strictly
7 liable for any damage to property or livestock proximately caused by
8 their dogs.

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

273.038. 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 is guilty of a class B misdemeanor
4 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 custodian 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 custodian
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 custodian 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 custodian of
32 the dog to pay the costs associated with the animal's keeping and care
33 during the pending appeal.

34 4. Notwithstanding any provision of sections 273.033 to 273.039
35 to the contrary, if a dog attacks or bites a person who is engaged in or
36 attempting to engage in a criminal activity at the time of the attack, the
37 owner is not guilty of any crime specified under this section or section
38 273.036 and is not civilly liable under this section or section 273.036,
39 nor shall such dog be destroyed as provided in subsection 2 of this
40 section, nor shall such person engaged in or attempting to engage in a
41 criminal activity at the time of the attack be entitled to the defenses set
42 forth in section 273.033. For purposes of this section "criminal activity"
43 shall not include the act of trespass upon private property under
44 section 569.150, RSMo, as long as the trespasser does not otherwise
45 engage in, attempt to engage in, or have intent to engage in other

46 criminal activity nor shall it include any trespass upon private
47 property by a person under the age of twelve under section 569.140,
48 RSMo.

273.039. 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 273.039.

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