

1 HB439
2 126306-2
3 By Representatives Patterson, Johnson (W), Sanderford,
4 Williams (P), McCutcheon and Hall (Constitutional Amendment)
5 RFD: Madison County Legislation
6 First Read: 05-APR-11

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ENROLLED, An Act,

To propose an amendment to the Constitution of Alabama of 1901, relating to Madison County and relating to dogs within those areas of Madison County outside the corporate limits of any municipality; to establish a procedure by which a dog can be declared dangerous and be humanely destroyed or a dog found to be dangerous, but which has not caused serious physical injury to a person, can be returned to the owner if certain registration requirements are met and the dog is securely enclosed; to provide for penalties; and to provide immunity for county officers and employees.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to the Constitution of Alabama of 1901, is proposed and shall become valid as a part of the Constitution when all requirements of this act are fulfilled:

PROPOSED AMENDMENT

Section 1. The people of the State of Alabama find and declare that: Certain dogs are an increasingly serious and widespread threat to the safety and welfare of citizens of this state by virtue of their unprovoked attacks on, and associated injury to, individuals; these attacks are in part attributable to the failure of owners to confine and properly train and control these dogs; existing laws inadequately

1 address this problem; and it is therefore appropriate and
2 necessary to impose requirements on the owners of dangerous
3 dogs.

4 Section 2. The provisions of this constitutional
5 amendment are applicable to those areas of Madison County
6 outside the corporate limits of any municipality.

7 Section 3. The following words shall have the
8 following meanings:

9 (1) ANIMAL CONTROL OFFICER. Any person employed by
10 Madison County who performs animal control functions.

11 (2) ATTACK. Aggressive physical contact initiated by
12 a dog.

13 (3) BITTEN. Seized with the teeth so that the skin
14 of the person seized has been gripped or has been wounded or
15 pierced.

16 (4) DANGEROUS DOG. A dog, regardless of its breed,
17 that has bitten, attacked, or caused physical injury to a
18 human being, without provocation, or has repeatedly bitten or
19 caused physical injury to humans, except a dog used by law
20 enforcement officials for legitimate law enforcement purposes,
21 a certified guide dog for the blind, a hearing dog for the
22 deaf, or a service dog for the disabled.

23 (5) DOG. All members of the canine family including
24 dog hybrids.

1 (6) IMPOUNDED. Taken into the custody of law
2 enforcement, the county pound, or an animal control authority
3 or provider of animal control services to Madison County.

4 (7) OWNER. A person, firm, corporation, or
5 organization having a right of property in a dog, or who keeps
6 or harbors a dog, or who has a dog in his or her care or acts
7 as the custodian of a dog, or who permits a dog to remain on
8 or about any premises occupied by him or her.

9 (8) PHYSICAL INJURY. An injury as defined in Section
10 13A-1-2(12), Code of Alabama 1975.

11 (9) PROPER ENCLOSURE OF A DANGEROUS DOG. An
12 enclosure for the confinement of a dog that has been declared
13 dangerous which is suitable to prevent the entry of the
14 general public and:

15 a. Is capable of being locked with a key or
16 combination lock when the dog is within the structure.

17 b. Has secure sides and a secure top attached at all
18 sides. All four sides of the fence or pen must be sunk at
19 least two feet into the ground or the fence or pen must be
20 built over a concrete pad to prevent the animal from digging
21 out.

22 c. Provides adequate ventilation and protection from
23 the elements.

1 d. Exhibits a sign conspicuously posted upon the pen
2 or the structure containing the following: "Dangerous Dog - No
3 Trespassing."

4 e. The enclosure shall be constructed to allow the
5 dog to stand normally and without restriction and shall be not
6 less than four times the length of the dog and two times the
7 width of the dog.

8 (10) SERIOUS PHYSICAL INJURY. An injury as defined
9 in Section 13A-1-2(14), Code of Alabama 1975.

10 Section 4. (a) An animal control officer or law
11 enforcement officer shall investigate any incident involving
12 any dog reported to be dangerous.

13 (b) If a dog that is unowned and has been reported
14 to be dangerous bites a person, the dog may be quarantined and
15 destroyed pursuant to Section 3-7A-9(b), Code of Alabama 1975.
16 For the purposes of this subsection, "bites" means the same as
17 "has been exposed" as defined in Section 3-7A-1(5), Code of
18 Alabama 1975.

19 (c) If there is probable cause to believe that an
20 owned dog is dangerous and has caused serious physical injury
21 to a human being, a law enforcement officer or animal control
22 officer shall impound the dog pending disposition of a
23 petition to declare a dog to be dangerous. Madison County may
24 impound the dog at the county pound as described in Section
25 3-7A-7, Code of Alabama 1975, or may enter into an agreement

1 with an animal shelter or licensed veterinarian to secure and
2 impound dangerous dogs pursuant to this section. The owner of
3 the dog shall be liable to Madison County for the costs and
4 expenses incurred in impounding, feeding, and providing
5 veterinary care or treatment for the dog.

6 (d) The district attorney, county attorney, or the
7 designee of either, shall be authorized to file a petition in
8 the district court to declare the dog that caused physical
9 injury to a human being in Madison County to be dangerous. The
10 owner of the dog shall be served with a copy of the petition.

11 (e) A dog that is the subject of a dangerous dog
12 investigation may not be relocated and ownership shall not be
13 transferred pending the outcome of the investigation and
14 hearing to determine whether to declare the dog to be
15 dangerous.

16 (f) The court hearing shall be held as soon as
17 practicable. At the hearing, the district attorney, county
18 attorney, or the designee of either, shall present evidence
19 that the dog is dangerous and whether the dog caused serious
20 physical injury to a human being.

21 (1) If the court determines that the dog is
22 dangerous and has caused serious physical injury or death to a
23 human being, the court shall order the dog to be humanely
24 euthanized by a licensed veterinarian or an authorized animal
25 control official.

1 (2) If the court determines that the dog is
2 dangerous, but has not caused serious physical injury or death
3 to a human being or other animal, the court shall issue orders
4 authorized by this section.

5 (g) The pleading and practice in all cases to
6 petition the court to declare a dog to be dangerous under this
7 section shall be in accordance with the Alabama Rules of Civil
8 Procedure unless otherwise specified by this amendment. The
9 court may tax all costs of the proceedings including
10 attorney's fees and expert witness fees to the owner of the
11 dog.

12 Section 5. (a) A dog may not be declared dangerous
13 in any of the following circumstances:

14 (1) When an injury or damage was sustained by a
15 person who at the time of the injury or damage was committing
16 a willful trespass or other tort upon premises occupied by the
17 owner or custodian of the dog with the intent to commit a
18 crime or was committing a crime; was teasing, tormenting,
19 abusing, or assaulting the dog; or who can be shown to have
20 repeatedly, in the past, provoked, tormented, abused, or
21 assaulted the dog.

22 (2) When the dog was protecting or defending a
23 person within the immediate vicinity of the dog from an
24 unjustified attack or assault.

1 (3) When the dog was responding to pain or injury or
2 protecting itself, its kennel, or its offspring.

3 (4) When a person or domestic animal was disturbing
4 the natural functions of the dog such as sleeping or eating.

5 (b) Neither growling nor barking, or both, shall
6 alone constitute grounds upon which to find a dog to be
7 dangerous.

8 Section 6. (a) If a court determines that a dog is
9 dangerous, but does not order that the dog be destroyed
10 because evidence was insufficient to determine that the dog
11 caused serious physical injury, in addition to any other
12 requirements imposed by the court, within 30 days of the
13 issuance of the order declaring the dog to be dangerous, the
14 owner of the dog shall register the dog with the Madison
15 County Animal Control Department. All certificates of
16 registration required to be obtained under this section shall
17 only be issued to persons 18 years of age or older who present
18 evidence of the following:

19 (1) A current certificate of rabies vaccination.

20 (2) A current photograph of the dog.

21 (3) That the dog will be confined to a proper
22 enclosure when the dog is outdoors and unattended.

23 (4) That the dog has been neutered or spayed, unless
24 medically not needed.

1 (5) That the dog has been permanently identified by
2 tattooing or injecting an identification microchip using
3 standard veterinary procedures and practices, and the name,
4 address, and phone number of the veterinarian performing the
5 identification procedure.

6 (6) A policy of insurance, such as homeowner's, or a
7 surety bond in the amount of not less than one hundred
8 thousand dollars (\$100,000) covering the medical or veterinary
9 costs, or both, resulting from any future dangerous actions of
10 the dog.

11 (7) If the owner of the dangerous dog is not the
12 owner of the property where the dog is kept, the owner of the
13 dog must obtain from the property owner written permission for
14 the dangerous dog to be kept there.

15 (8) A notarized affidavit from the owner of the
16 dangerous dog stating that the dog will be under the control
17 of a person 18 years or older when the dog is not in a proper
18 enclosure or inside a building and that the dog will not be
19 allowed outside the property of its owner except in
20 emergencies or for normal or necessary medical or
21 health-related treatment.

22 (b) If the owner fails to provide a proper enclosure
23 for the dangerous dog or fails to provide a certification of
24 dangerous dog registration to the court within 30 days of the

1 issuance of the court's declaration that the dog is dangerous,
2 the dog shall be humanely euthanized.

3 (c) The owner of the dangerous dog shall pay an
4 annual fee to register the dog pursuant to the provisions of
5 this amendment. The amount of the dangerous dog registration
6 fee shall be established by the Madison County Commission. The
7 payment of the dangerous dog registration fee shall be in
8 addition to any regular dog licensing fee required by Madison
9 County.

10 (d) An animal control officer or law enforcement
11 officer may make whatever inquiry is deemed necessary to
12 ensure compliance with this amendment and any court order
13 issued pursuant to this amendment.

14 (e) Prior to a dangerous dog being sold or given
15 away, the owner shall advise the new prospective owner in
16 writing that the dog has been declared to be dangerous by a
17 court and shall provide the Madison County Animal Control
18 Department the name, address, and telephone number of the new
19 owner. The new owner shall comply with all of the requirements
20 of this amendment.

21 Section 7. The owner of a dog which has been
22 declared to be dangerous by a court may petition the district
23 court to remove the dangerous dog designation 18 months after
24 the judicial declaration was issued. A copy of the petition
25 shall be served upon the district attorney or county attorney.

1 The court may remove the dangerous dog designation and
2 eliminate any requirements of this amendment if the owner of
3 the dog has not violated this amendment and any orders of the
4 court, and if the court is satisfied from the evidence that
5 the dog is no longer dangerous.

6 Section 8. (a) If a dog that has previously been
7 declared by a court to be dangerous, when unprovoked, shall
8 cause serious physical injury or kill a human being the owner
9 of the dog shall be guilty of a Class C felony.

10 (b) If a dog that has not been declared by a court
11 to be dangerous, attacks and causes serious physical injury or
12 death to any human being, and the owner of the dog had prior
13 knowledge of the dangerous propensities of the dog, yet
14 demonstrated a reckless disregard of the propensities under
15 the circumstances, the owner of the dog shall be guilty of a
16 Class A misdemeanor.

17 (c) In addition to any fines imposed by the court, a
18 person guilty of violating subsections (a) and (b) of this
19 section shall pay all expenses, including, but not limited to,
20 shelter, food, veterinary expenses for boarding and veterinary
21 expenses necessitated by impoundment of the dog, medical
22 expenses incurred by a victim from an attack by a dangerous
23 dog, and other expenses required for the destruction of the
24 animal.

1 (d) An owner of a dog declared to be dangerous by a
2 court who does not contain the dog in a proper enclosure shall
3 be guilty of a Class C misdemeanor.

4 (e) An owner of a dog declared to be dangerous by a
5 court who has been adjudicated guilty of subsection (d) and
6 subsequently fails to contain a dangerous dog in a proper
7 enclosure shall be guilty of a Class B misdemeanor.

8 Section 9. Nothing in this amendment shall be
9 construed to repeal other criminal laws. Whenever conduct
10 prescribed by any provision of this amendment is also
11 prescribed by any other provision of law, the provision which
12 carries the more serious penalty shall be applied.

13 Section 10. (a) Nothing in this amendment shall be
14 construed to restrict or negate the requirements of the rabies
15 control law contained in Sections 3-7A-1 to 3-7A-16,
16 inclusive, Code of Alabama 1975.

17 (b) Nothing in this amendment is designed to
18 abrogate any civil remedies available under statutory or
19 common law.

20 Section 11. Any person who knowingly makes a false
21 report to a law enforcement officer or an animal control
22 officer that a dog is dangerous is guilty of a Class C
23 misdemeanor.

24 Section 12. Madison County, its district attorney
25 and its county attorney and any of its, or their employees or

1 agents, and the individual issuing the dangerous dog
 2 certificate or registration shall be immune from any and all
 3 liability for any actions taken or for any failure to act
 4 pursuant to this amendment.

5 Section 13. The Madison County Commission shall
 6 establish the date on which these provisions shall become
 7 effective.

8 Section 2. An election upon the proposed amendment
 9 shall be held in accordance with Amendment 555 to the
 10 Constitution of Alabama of 1901, now appearing as Section
 11 284.01 of the Official Recompilation of the Constitution of
 12 Alabama of 1901, as amended, and the election laws of this
 13 state.

14 Section 3. The appropriate election official shall
 15 assign a ballot number for the proposed constitutional
 16 amendment on the election ballot and shall set forth the
 17 following description of the substance or subject matter of
 18 the proposed constitutional amendment:

19 "Relating to Madison County, proposing an amendment
 20 to the Constitution of Alabama of 1901, for those areas of
 21 Madison County outside the corporate limits of any
 22 municipality, to establish a procedure by which a dog can be
 23 declared dangerous and humanely destroyed or returned to the
 24 owner if certain requirements are met and the dog is securely

1 enclosed, to provide immunity for county officers and
2 employees, and to provide for penalties.

3 "Proposed by Act _____."

4 This description shall be followed by the following
5 language:

6 "Yes () No ()."

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 26-MAY-11.

Greg Pappas
Clerk

Senate

02-JUN-11

Passed