

1 SB232
2 190459-2
3 By Senators Livingston and Scofield
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 25-JAN-18

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8 SYNOPSIS: Existing law does not provide for procedures
9 for handling claims relating to potentially or
10 proven dangerous dogs.

11 This bill would create Emily's Law and would
12 establish the procedure by which a dog can be
13 declared dangerous.

14 This bill would authorize a county attorney,
15 municipal attorney, or municipal prosecutor to file
16 a petition with the district or municipal court to
17 declare a dog dangerous.

18 This bill would provide that a dangerous dog
19 which causes serious physical injury or death to a
20 person would be humanely destroyed.

21 This bill would provide that a dog found to
22 be dangerous, but which has not caused serious
23 physical injury to a person, could be returned to
24 the owner if certain registration requirements are
25 met and the dog is securely enclosed. This bill
26 would provide for penalties, including felony
27 penalties for violations of this act.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a
9 two-thirds vote unless: It comes within one of a
10 number of specified exceptions; it is approved by
11 the affected entity; or the Legislature
12 appropriates funds or provides a local source of
13 revenue to the entity for the purpose.

14 The purpose or effect of this bill would
15 require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a two-thirds
19 vote to become effective because it comes within
20 one of the specified exceptions contained in the
21 amendment.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to dogs; to create Emily's Law; to
2 establish a procedure by which a dog can be declared dangerous
3 and be humanely destroyed; to provide that a dog found to be
4 dangerous, but which has not caused serious physical injury to
5 a person, could be returned to the owner if certain
6 registration requirements are met and the dog is securely
7 enclosed; to provide for penalties; to provide immunity for
8 county officers and employees; and in connection therewith to
9 have as its purpose or effect the requirement of a new or
10 increased expenditure of local funds within the meaning of
11 Amendment 621 of the Constitution of Alabama of 1901, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. This act is known and may be cited as
16 Emily's Law.

17 Section 2. The Legislature finds that certain dogs
18 are an increasingly serious and widespread threat to the
19 safety and welfare of citizens of this state by virtue of
20 their unprovoked attacks on and associated injury to
21 individuals; that these attacks are in part attributable to
22 the failure of owners to confine and properly train and
23 control these dogs; that existing laws inadequately address
24 this problem; and that it is therefore appropriate and
25 necessary to impose a uniform set of state requirements on the
26 owners of dangerous dogs.

1 Section 3. For the purposes of this act, the
2 following words shall have the following meanings:

3 (1) ANIMAL CONTROL OFFICER. Any person employed by a
4 county or municipality who performs animal control functions
5 or any person who performs animal control functions who is
6 employed by an entity under agreement or contract with a
7 county or municipality to perform animal control functions or
8 to enforce this act.

9 (2) ATTACK. Aggressive physical contact initiated by
10 a dog.

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

14 (4) DANGEROUS DOG. A dog, regardless of its breed,
15 that has bitten, attacked, or caused physical injury, serious
16 physical injury, or death to a person without provocation,
17 except a dog used by law enforcement officials for legitimate
18 law enforcement purposes.

19 (5) DOG. All members of the canine family including
20 dog hybrids.

21 (6) IMPOUNDED. Taken into the custody of law
22 enforcement, the county pound, or an animal control authority
23 or provider of animal control services to the municipality or
24 county where the dangerous dog is found.

25 (7) OWNER. A person, firm, corporation, or
26 organization having a right of property in a dog, or who keeps
27 or harbors a dog, or who has a dog in his or her care or acts

1 as the custodian of a dog, or who permits a dog to remain on
2 or about any premises occupied by him or her.

3 (8) PHYSICAL INJURY. An injury as defined in Section
4 13A-1-2(12), Code of Alabama 1975.

5 (9) PROPER ENCLOSURE OF A DANGEROUS DOG. An
6 enclosure for the confinement of a dog that has been declared
7 dangerous that is suitable to prevent the entry of the general
8 public and that does all of the following:

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

11 b. Has secure sides and a secure top attached at all
12 sides. All four sides of the fence or pen must be sunk at
13 least two feet into the ground or the fence or pen must be
14 built over a concrete pad to prevent the dog from digging out.

15 c. Provides adequate ventilation and protection from
16 the elements.

17 d. Exhibits a sign conspicuously posted upon the pen
18 or the structure containing the following: "Dangerous Dog - No
19 Trespassing."

20 e. The enclosure shall be constructed to allow the
21 dog to stand normally and without restriction and shall be not
22 less than four times the length of the dog and two times the
23 width of the dog.

24 f. The enclosure shall be locked at all times while
25 the dog is inside the enclosure.

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

1 Section 4. (a) An animal control officer or law
2 enforcement officer shall investigate any incidents involving
3 any dog reported to be dangerous.

4 (b) If a dog, which is unowned and has been reported
5 to be dangerous, attacks a person, a law enforcement officer
6 or animal control officer shall impound the dog and the dog
7 shall be quarantined and may be destroyed pursuant to Section
8 3-7A-9(b), Code of Alabama 1975.

9 (c) If there is probable cause to believe that an
10 owned dog is dangerous and has caused physical injury, serious
11 physical injury, or death to a person, a law enforcement
12 officer or animal control officer shall impound the dog
13 pending the disposition of a petition to declare the dog to be
14 dangerous. The county or municipality may impound the dog at
15 the county pound as described in Section 3-7A-7, Code of
16 Alabama 1975, or may enter into an agreement with an animal
17 shelter or licensed veterinarian to secure and impound
18 dangerous dogs pursuant to this section. The owner of the dog
19 shall be liable to the county or municipality for the costs
20 and expenses incurred in impounding, feeding, and providing
21 veterinary care or treatment for the dog.

22 (d) The county attorney, municipal attorney, or
23 municipal prosecutor shall be authorized to file a petition in
24 the district court or municipal court to declare the dog that
25 caused physical injury, serious physical injury, or death to a
26 person in the jurisdiction of the county or municipality to be

1 dangerous. The owner of the dog shall be served with a copy of
2 the petition.

3 (e) A dog that is the subject of a dangerous dog
4 investigation may not be relocated and ownership may not be
5 transferred pending the outcome of the investigation and
6 hearing to determine whether to declare the dog to be
7 dangerous.

8 (f) The court hearing shall be held as soon as
9 practicable. At the hearing, the county attorney, municipal
10 attorney, or municipal prosecutor shall present evidence that
11 the dog is dangerous and whether the dog caused physical
12 injury, serious physical injury, or death to a person.

13 (1) If the court determines that the dog is
14 dangerous and has caused serious physical injury or death to a
15 person, the court shall order the dog to be humanely
16 euthanized by a licensed veterinarian or an authorized animal
17 control official.

18 (2) If the court determines that the dog is
19 dangerous, but has not caused serious physical injury or death
20 to a person, the court shall issue orders authorized by this
21 section.

22 (g) The pleading and practice in all cases to
23 petition the court to declare a dog to be dangerous under this
24 section shall be in accordance with the Alabama Rules of Civil
25 Procedure and rules of the courts governing municipal courts
26 in this state unless otherwise specified by this act. Any
27 judicial determination in municipal or district court that a

1 dog is dangerous may be appealed to the circuit court pursuant
2 to the requirements of the Alabama Rules of Civil Procedure.

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

5 (1) When an injury or damage was sustained by a
6 person who at the time of the injury or damage was committing
7 a willful trespass or other tort upon premises occupied by the
8 owner or custodian of the dog with the intent to commit a
9 crime or was committing a crime, or was teasing, tormenting,
10 abusing, or assaulting the dog, or who can be shown to have
11 repeatedly, in the past, provoked, tormented, abused, or
12 assaulted the dog.

13 (2) When the dog was protecting or defending a
14 person within the immediate vicinity of the dog from an
15 unjustified attack or assault.

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

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

20 (b) Neither growling nor barking, or both, shall
21 alone constitute grounds upon which to find a dog to be
22 dangerous.

23 Section 6. (a) If a court determines that a dog is
24 dangerous, but does not order that the dog be destroyed, the
25 owner of the dog shall comply with the following requirements
26 in addition to any other requirements imposed by the court:

1 (1) Within 30 days of the issuance of the order
2 declaring the dog to be dangerous, the owner of the dog shall
3 be required to annually register the dog with the animal
4 control authority in the jurisdiction in which the dog is
5 kept, or if there is no animal control authority in the
6 jurisdiction where the dog is kept, with the county health
7 department.

8 (2) All certificates of registration required to be
9 obtained under this section shall only be issued to persons 18
10 years of age or older who certify or provide evidence of all
11 of the following:

12 a. A current certificate of rabies vaccination.

13 b. A current photograph of the dog.

14 c. That the dog will be confined to a proper
15 enclosure when the dog is outdoors and unattended.

16 d. That the dog has been neutered or spayed, unless
17 medically not needed.

18 e. That the dog has been permanently identified by
19 tattooing or injecting an identification microchip using
20 standard veterinary procedures and practices, and the name,
21 address, and phone number of the veterinarian performing the
22 identification procedure.

23 f. A surety bond in the amount of not less than one
24 hundred thousand dollars (\$100,000) covering the medical or
25 veterinary costs, or both, resulting from any future dangerous
26 actions of the dog.

1 g. If the owner of the dangerous dog is not the
2 owner of the property where the dog is kept, the owner of the
3 dog must obtain from the property owner written permission for
4 the dangerous dog to be kept there.

5 h. A notarized affidavit from the owner of the
6 dangerous dog stating that the dog will be under the control
7 of a person 18 years or older when the dog is not in a proper
8 enclosure or inside a building and that the dog will not be
9 allowed outside of the property of its owner except in
10 emergencies or for normal or necessary medical or
11 health-related treatment.

12 (b) If the owner fails to provide a proper enclosure
13 for the dangerous dog or fails to provide a certification of
14 dangerous dog registration to the court within 30 days of the
15 issuance of the court's declaration that the dog is dangerous,
16 the dog shall be humanely euthanized.

17 (c) The owner of the dangerous dog shall pay an
18 annual fee to register the dog pursuant to this act. The
19 amount of the dangerous dog registration fee shall be
20 established by the municipality or county. The payment of the
21 dangerous dog registration fee shall be in addition to any
22 regular dog licensing fee required by any county or
23 municipality.

24 (d) An animal control officer or law enforcement
25 officer may make whatever inquiry is deemed necessary to
26 ensure compliance with this act and any court order issued
27 pursuant to this act. The animal control officer or law

1 enforcement officer is authorized to enter the property and
2 residence of the owner of the dangerous dog without a search
3 warrant or court order to ensure compliance with this act.

4 (e) Prior to a dangerous dog being sold or given
5 away, the owner shall advise the new prospective owner in
6 writing that the dog has been declared to be dangerous by a
7 court and shall provide the animal control authority or county
8 health department where the dog is registered, the name,
9 address, and telephone number of the new owner. The new owner
10 shall comply with all of the requirements of this act.

11 Section 7. (a) If a dog that has previously been
12 declared by a court to be dangerous, when unprovoked, attacks
13 and causes serious physical injury or death to a person, the
14 owner of the dog shall be guilty of a Class B felony.

15 (b) If a dog that has not been declared by a court
16 to be dangerous, when unprovoked, attacks and causes serious
17 physical injury or death to a person, and the owner of the dog
18 had prior knowledge of the dangerous propensities of the dog,
19 yet demonstrated a reckless disregard of the propensities
20 under the circumstances, the owner of the dog shall be guilty
21 of a Class C felony.

22 (c) If a dog that has previously been declared by a
23 court to be dangerous, when unprovoked, attacks and causes
24 physical injury to a person, the owner of the dog shall be
25 guilty of a Class A misdemeanor.

26 (d) If a dog that has not been declared by a court
27 to be dangerous, when unprovoked, attacks and causes physical

1 injury to a person, and the owner of the dog had prior
2 knowledge of the dangerous propensities of the dog, yet
3 demonstrated a reckless disregard of the propensities under
4 the circumstances, the owner of the dog shall be guilty of a
5 Class B misdemeanor.

6 (e) In addition to any fines imposed by the court, a
7 person guilty of violating subsection (a), (b), (c), or (d)
8 shall pay all expenses, including, but not limited to,
9 shelter, food, veterinary expenses for boarding, and
10 veterinary expenses necessitated by impoundment of the dog,
11 medical expenses incurred by a victim from an attack by a
12 dangerous dog, and other expenses required for the destruction
13 of the dog.

14 (f) An owner of a dog declared to be dangerous by a
15 court who does not contain the dog in a proper enclosure of a
16 dangerous dog shall be guilty of a Class C misdemeanor.

17 (g) An owner of a dog declared to be dangerous by a
18 court who has been adjudicated guilty of subsection (f) and
19 who subsequently fails to contain a dangerous dog in a proper
20 enclosure of a dangerous dog shall be guilty of a Class B
21 misdemeanor.

22 (h) An owner of a dog that is the subject of a
23 dangerous dog investigation who refuses to surrender the dog
24 to an animal control officer or law enforcement officer upon
25 the request of the animal control officer or the law
26 enforcement officer shall be guilty of a Class C misdemeanor.

1 (i) Any person who knowingly makes a false report to
2 a law enforcement officer or an animal control officer that a
3 dog is dangerous is guilty of a Class C misdemeanor.

4 Section 8. Nothing in this act shall be construed to
5 repeal other criminal laws. Whenever conduct prescribed by
6 this act is also prescribed by any other provision of law, the
7 provision which carries the more serious penalty shall be
8 applied.

9 Section 9. (a) Nothing in this act shall be
10 construed to restrict or negate the requirements of the rabies
11 control law contained in Sections 3-7A-1 to 3-7A-15,
12 inclusive, Code of Alabama 1975.

13 (b) Nothing in this act is designed to abrogate any
14 civil remedies available under statutory or common law.

15 (c) Nothing in this act shall be construed to
16 restrict the power of any county or municipality to adopt and
17 enforce ordinances or regulations that comply with at least
18 the minimum applicable standards set forth in this act.

19 Section 10. Nothing in this act shall be construed
20 to require any county to employ or make available an animal
21 control officer or other employee or agent to carry out any
22 requirements of this act.

23 Section 11. The county and municipality and any of
24 its employees or agents and the individual issuing the
25 dangerous dog certificate of registration shall be immune,
26 absent negligence, wantonness, recklessness, or deliberate

1 misconduct, from any and all liability for any actions taken
2 or for any failure to act pursuant to this act.

3 Section 12. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 13. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.