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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ANIMALS; PROVIDING THAT PIT BULLS ARE DANGEROUS DOGS; ADDING NEW REGISTRATION REQUIREMENTS UNDER THE DANGEROUS DOG ACT; REQUIRING IMPOUNDMENT OF A DANGEROUS DOG WHEN AN OWNER DOES NOT COMPLY WITH REGISTRATION REQUIREMENTS; CLARIFYING PROVISIONS IN THE DANGEROUS DOG ACT.

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

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

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

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

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

A. "animal control authority" means an entity

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1 authorized to enforce the animal control laws of a city, county
2 or state, whether acting alone or in concert with other
3 governmental authorities. In those areas not served by an
4 animal control authority, the sheriff or municipal law
5 enforcement shall carry out the duties of the animal control
6 authority under the Dangerous Dog Act;

7 B. "dangerous dog" means a dog that:

8 (1) caused the death of or a serious injury to
9 a person or domestic animal; or

10 (2) is a pit bull;

11 C. "owner" means a person who possesses, harbors,
12 keeps or has control or custody of a dog or, if that person is
13 under the age of eighteen, that person's parent or guardian;

14 D. "pit bull" means a dog that is an American pit
15 bull terrier, an American Staffordshire terrier or a
16 Staffordshire bull terrier or a dog displaying the majority of
17 physical traits of any one or more of those breeds or
18 exhibiting distinguishing characteristics that substantially
19 conform to the standards established by the American kennel
20 club or the united kennel club for any of those breeds;
21 provided that "pit bull" does not include a dog that is
22 registered with the American kennel club or the united kennel
23 club as a purebred American pit bull terrier, American
24 Staffordshire terrier or Staffordshire bull terrier;

25 [~~D~~] E. "potentially dangerous dog" means a dog

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1 that may reasonably be assumed to pose a threat to public
2 safety as demonstrated by the following behaviors:

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

5 (2) chasing or menacing a person or domestic
6 animal in [~~an~~] a highly aggressive manner and without
7 provocation; or

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

11 ~~E.]~~ F. "proper enclosure" means secure confinement
12 indoors or outdoors, such as in a fenced yard, locked pen or
13 other structure, that is designed to prevent the animal from
14 escaping the confined area and young children from entering the
15 confined area but does not include an electronic collar, an
16 invisible fence or confinement by chaining, restraining or
17 otherwise affixing the animal to a stationary object; and

18 [~~F.]~~ G. "serious injury" means a physical injury
19 that results in permanent or protracted loss or impairment of
20 the function of any bodily member or organ, broken bones,
21 multiple bites or disfiguring lacerations requiring sutures or
22 reconstructive surgery."

23 **SECTION 3.** Section 77-1A-4 NMSA 1978 (being Laws 2005,
24 Chapter 61, Section 4) is amended to read:

25 "77-1A-4. SEIZURE OF DOG--PETITION TO COURT.--

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1 A. If an animal control authority has probable
2 cause to believe that a dog is a dangerous dog and [~~poses an~~
3 ~~imminent threat to public safety~~] is not registered pursuant to
4 Section 77-1A-5 NMSA 1978, the animal control authority may
5 apply to a court of competent jurisdiction in the county where
6 the animal is located for a warrant to seize the animal.

7 B. If an animal control authority has probable
8 cause to believe that a dog is a potentially dangerous dog and
9 poses a threat to public safety, the animal control authority
10 may apply to a court of competent jurisdiction in the county
11 where the animal is located for a warrant to seize the animal.

12 C. After seizure, the animal control authority
13 shall impound the dog pending disposition of the case or until
14 the owner has fulfilled the requirements for a certificate of
15 registration pursuant to the provisions of Section [~~5 of the~~
16 ~~Dangerous Dog Act~~] 77-1A-5 NMSA 1978.

17 D. After seizure of the dog:

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

22 (2) the animal control authority may, within
23 fourteen days after seizure of the dog, bring a petition in
24 court seeking a determination of whether the dog is dangerous
25 or potentially dangerous. If the court finds, by clear and

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1 convincing evidence, that the dog is dangerous and [~~poses an~~
2 ~~imminent threat to public safety~~] is not registered pursuant to
3 Section 77-1A-5 NMSA 1978 or that the dog is potentially
4 dangerous and poses a threat to public safety, the court shall
5 order the owner to comply with the registration and handling
6 requirements for the dog and obtain a certificate of
7 registration within thirty days or have the dog humanely
8 destroyed. If the court does not make the required findings
9 pursuant to this paragraph, the court shall immediately order
10 the release of the dog to its owner.

11 E. If the owner does not admit that the dog is
12 dangerous or potentially dangerous and the animal control
13 authority does not bring a petition in court within fourteen
14 days of seizure of the dog, the court shall immediately order
15 the release of the dog to its owner.

16 F. If the owner admits that the dog is dangerous
17 and transfers ownership of the dog to the animal control
18 authority, the animal control authority may humanely destroy
19 the dog.

20 G. A determination that a dog is not dangerous or
21 potentially dangerous shall not prevent an animal control
22 authority from making a subsequent application for seizure
23 based on the dog's subsequent behavior."

24 SECTION 4. Section 77-1A-5 NMSA 1978 (being Laws 2005,
25 Chapter 61, Section 5) is amended to read:

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1 "77-1A-5. REGISTRATION AND HANDLING REQUIREMENTS FOR
2 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.--

3 A. An animal control authority shall issue a
4 certificate of registration to the owner of a potentially
5 dangerous dog if the owner establishes that:

6 (1) the owner is able to keep the dog under
7 control at all times;

8 (2) a license, if applicable, has been issued
9 pursuant to the requirements of the jurisdiction;

10 (3) the dog has a current rabies vaccination;

11 (4) the owner has a proper enclosure for the
12 dog;

13 (5) the owner has paid an annual fee, if
14 applicable, established by the animal control authority to
15 register a potentially dangerous dog;

16 (6) the dog has been spayed or neutered;

17 (7) the dog has been implanted with a
18 microchip containing owner identification information that is
19 also provided to the animal control authority; and

20 (8) the owner has entered the dog in a
21 socialization and behavior program approved or offered by the
22 animal control authority.

23 B. If a dog previously determined to be potentially
24 dangerous has not exhibited any of the behaviors specified in
25 Subsection [D] E of Section [~~2 of the Dangerous Dog Act~~]

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1 77-1A-2 NMSA 1978 for thirty-six consecutive months, the owner
2 may request the animal control authority in the jurisdiction to
3 lift the requirements for registration pursuant to this
4 section. If the animal control authority has no reasonable
5 basis to believe that the dog has exhibited the behaviors
6 specified, it shall relieve the owner of the requirements of
7 this section.

8 C. An animal control authority shall issue a
9 certificate of registration to the owner of a dangerous dog if
10 the owner, in addition to the requirements of Subsection A of
11 this section, establishes that:

12 (1) the owner has paid an annual fee, if
13 applicable, established by the animal control authority to
14 register a dangerous dog;

15 (2) the owner has written permission of the
16 property owner or homeowner's association where the dangerous
17 dog will be kept, if applicable;

18 (3) the dangerous dog will be maintained
19 exclusively on the owner's property except for medical
20 treatment or examination;

21 (4) when the dangerous dog is removed from the
22 owner's property, the dog shall be caged or muzzled and
23 restrained with a lead no longer than four feet, and the dog
24 shall be under complete control of a person eighteen years of
25 age or older at all times;

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1 (5) the dangerous dog will not be transported
2 in a vehicle that might allow the dog to escape or gain access
3 to any person or animal outside the vehicle; ~~[and]~~

4 (6) a clearly visible warning sign with a
5 conspicuous warning symbol indicating that there is a dangerous
6 dog on the premises is posted where the dog is kept and is
7 visible from a public roadway or from fifty feet, whichever is
8 less;

9 (7) the owner will submit to the photographing
10 or permanent marking of the dangerous dog for purposes of
11 identification;

12 (8) the owner has obtained and will maintain
13 liability insurance in the amount of one hundred thousand
14 dollars (\$100,000) covering any injury or damage that may be
15 caused by the dangerous dog and will furnish proof of such
16 insurance upon demand to the animal control authority; and

17 (9) the owner will notify the animal control
18 authority at least thirty calendar days before the cancellation
19 or nonrenewal of the liability insurance policy.

20 D. An animal control authority ~~[may]~~ shall order
21 the immediate impoundment ~~[or humane destruction]~~ of a dog
22 registered as a dangerous dog or previously determined to be a
23 dangerous dog if the owner fails to abide by the conditions for
24 registration, confinement or handling set forth in this
25 section."

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

3 "77-1A-6. PROHIBITED ACTS--PENALTIES.--

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

6 (1) keep the dog without a valid certificate
7 of registration;

8 (2) violate the registration and handling
9 requirements for the dog;

10 (3) fail to notify the animal control
11 authority immediately upon:

12 (a) the escape of the dog; or

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

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

17 (5) fail to notify the animal control
18 authority within twenty-four hours if the dog has been sold or
19 given away and provide the name, address and telephone number
20 of the new owner of the dog;

21 (6) fail to surrender the dog to an animal
22 control authority for safe confinement pending a determination
23 of the case when there is reason to believe that the dog poses
24 [~~an imminent~~] a threat to public safety; or

25 (7) fail to comply with special handling or

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1 care requirements for the dog that a court has ordered.

2 B. Whoever violates a provision of Subsection A of
3 this section is guilty of a misdemeanor and shall be sentenced
4 in accordance with the provisions of Section 31-19-1 NMSA 1978
5 and, for a second or subsequent offense, is guilty of a fourth
6 degree felony and shall be sentenced in accordance with the
7 provisions of Section 31-18-15 NMSA 1978.

8 C. An owner of a dangerous or potentially dangerous
9 dog that causes serious injury or death to a domestic animal,
10 without provocation, is guilty of a fourth degree felony and
11 shall be sentenced in accordance with the provisions of Section
12 31-18-15 NMSA 1978.

13 D. An owner of a dangerous or potentially dangerous
14 dog that causes serious injury to a human being, without
15 provocation, is guilty of a third degree felony and shall be
16 sentenced in accordance with the provisions of Section 31-18-15
17 NMSA 1978.

18 E. An owner of a dangerous or potentially dangerous
19 dog that causes the death of a human being, without
20 provocation, is guilty of a third degree felony resulting in
21 the death of a human being and shall be sentenced in accordance
22 with the provisions of Section 31-18-15 NMSA 1978.

23 F. Prosecution pursuant to this section requires
24 a showing that:

25 (1) [~~an~~] the owner knew or should have known

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1 of the propensity of ~~[a]~~ the dog to inflict serious injury;
2 ~~[or]~~

3 (2) the dog had previously been found by a
4 court to be a dangerous or potentially dangerous dog; or

5 (3) the dog was a pit bull and the owner
6 failed to comply with the registration and handling
7 requirements pursuant to Section 77-1A-5 NMSA 1978."

8 SECTION 6. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2012.