

7454

I N S E N A T E

May 3, 2016

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to dog attacks

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 123 of the agriculture and markets law, as amended
2 by chapter 392 of the laws of 2004, such section as renumbered and
3 subdivisions 1 and 2 as amended by section 18 of part T of chapter 59 of
4 the laws of 2010, and subdivisions 7 and 8 as amended by chapter 526 of
5 the laws of 2005, is amended to read as follows:
6 S 123. Dangerous dogs. 1. Any person who witnesses an attack or
7 threatened attack, or in the case of a minor, an adult acting on behalf
8 of such minor, may make a complaint of an attack or threatened attack
9 upon a person, companion animal as defined in section three hundred
10 fifty of this chapter, farm animal as defined in such section three
11 hundred fifty, or a domestic animal as defined in subdivision seven of
12 section one hundred eight of this article to a dog control officer or
13 police officer of the appropriate municipality. Such officer shall imme-
14 diately inform the complainant of his or her right to commence a
15 proceeding as provided in subdivision two of this section and, if there
16 is reason to believe the dog [is a dangerous dog] CAUSED INJURY TO A
17 PERSON, COMPANION ANIMAL, FARM ANIMAL OR DOMESTIC ANIMAL, the officer
18 shall forthwith commence such proceeding himself or herself.
19 2. Any person who witnesses an attack or threatened attack, or in the
20 case of a minor, an adult acting on behalf of such minor, may, and any
21 dog control officer or police officer as provided in subdivision one of
22 this section shall, make a complaint under oath or affirmation to any
23 municipal judge or justice of such attack or threatened attack. There-
24 upon, the judge or justice shall immediately determine if there is prob-
25 able cause to believe the dog [is a dangerous dog] CAUSED INJURY TO A
26 PERSON, COMPANION ANIMAL, FARM ANIMAL OR DOMESTIC ANIMAL, and if so,
27 shall issue an order to any dog control officer, peace officer, acting
28 pursuant to his or her special duties, or police officer directing such

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 officer to immediately seize such dog and hold the same pending judicial
2 determination as provided in this section. Whether or not the judge or
3 justice finds there is probable cause for such seizure, he or she shall,
4 within five days and upon written notice of not less than two days to
5 the owner of the dog, hold a hearing on the complaint. The petitioner
6 shall have the burden at such hearing to prove the dog [is a "dangerous
7 dog"] CAUSED INJURY TO A PERSON, COMPANION ANIMAL, FARM ANIMAL OR DOMES-
8 TIC ANIMAL by clear and convincing evidence. If satisfied that the dog
9 [is a dangerous dog] CAUSED INJURY TO A PERSON, COMPANION ANIMAL, FARM
10 ANIMAL OR DOMESTIC ANIMAL, the judge or justice shall then order neuter-
11 ing or spaying of the dog, microchipping of the dog and one or more of
12 the following as deemed appropriate under the circumstances and as
13 deemed necessary for the protection of the public:

14 (a) evaluation of the dog by a certified applied behaviorist, a board
15 certified veterinary behaviorist, or another recognized expert in the
16 field and completion of training or other treatment as deemed appropri-
17 ate by such expert. The owner of the dog shall be responsible for all
18 costs associated with evaluations and training ordered under this
19 section;

20 (b) secure, humane confinement of the dog for a period of time and in
21 a manner deemed appropriate by the court but in all instances in a
22 manner designed to: (1) prevent escape of the dog, (2) protect the
23 public from unauthorized contact with the dog, and (3) to protect the
24 dog from the elements pursuant to section three hundred fifty-three-b of
25 this chapter. Such confinement shall not include lengthy periods of
26 tying or chaining;

27 (c) restraint of the dog on a leash by an adult of at least twenty-one
28 years of age whenever the dog is on public premises;

29 (d) muzzling the dog whenever it is on public premises in a manner
30 that will prevent it from biting any person or animal, but that shall
31 not injure the dog or interfere with its vision or respiration; or

32 (e) maintenance of a liability insurance policy in an amount deter-
33 mined by the court, but in no event in excess of one hundred thousand
34 dollars for personal injury or death resulting from an attack by such
35 dangerous dog.

36 3. Upon a finding that a dog [is dangerous] CAUSED INJURY TO A PERSON,
37 COMPANION ANIMAL, FARM ANIMAL OR DOMESTIC ANIMAL, the judge or justice
38 may order humane euthanasia or permanent confinement of the dog if one
39 of the following aggravating circumstances is established at the judi-
40 cial hearing held pursuant to subdivision two of this section:

41 (a) the dog, without justification, attacked a person causing serious
42 physical injury or death; or

43 (b) the dog has a known vicious propensity as evidenced by a previous
44 unjustified attack on a person, which caused serious physical injury or
45 death; or

46 (c) the dog, without justification, caused serious physical injury or
47 death to a companion animal, farm animal or domestic animal, and has, in
48 the past two years, caused unjustified physical injury or death to a
49 companion or farm animal as evidenced by a ["dangerous dog"] finding
50 pursuant to the provisions of this section.

51 An order of humane euthanasia shall not be carried out until expiration
52 of the thirty day period provided for in subdivision five of this
53 section for filing a notice of appeal, unless the owner of the dog has
54 indicated to the judge in writing, his or her intention to waive his or
55 her right to appeal. Upon filing of a notice of appeal, the order shall
56 be automatically stayed pending the outcome of the appeal.

1 4. A dog shall not be [declared dangerous] SUBJECT TO THE PROVISIONS
2 OF SUBDIVISION THREE OF THIS SECTION if the court determines the conduct
3 of the dog (a) was justified because the threat, injury or damage was
4 sustained by a person who at the time was committing a crime or offense
5 OF VIOLENCE upon the owner or custodian of the dog or upon the property
6 of the owner or custodian of the dog; (b) was justified because the
7 injured, threatened or killed person was tormenting, abusing, assaulting
8 or physically threatening the dog or its offspring, or has in the past
9 tormented, abused, assaulted or physically threatened the dog or its
10 offspring; (c) was justified because the dog was responding to pain or
11 injury, or was protecting itself, its owner, custodian, or a member of
12 its household, its kennels or its offspring; or was justified because
13 the injured, threatened or killed companion animal, farm animal or
14 domestic animal was attacking or threatening to attack the dog or its
15 offspring. Testimony of a certified applied behaviorist, a board certi-
16 fied veterinary behaviorist, or another recognized expert shall be rele-
17 vant to the court's determination as to whether the dog's behavior was
18 justified pursuant to the provisions of this subdivision.

19 5. (a) The owner of a dog [found to be a "dangerous dog" pursuant to
20 this section] may appeal [such] A determination UNDER THIS SECTION,
21 and/or the court's order concerning disposition of the dog to the court
22 having jurisdiction to hear civil appeals in the county where the
23 ["dangerous dog"] finding was made. The owner shall commence such appeal
24 by filing a notice of appeal with the appropriate court within thirty
25 days of the final order pursuant to this section. Court rules governing
26 civil appeals in the appropriate jurisdiction shall govern the appeal of
27 a determination under this section.

28 (b) Upon filing a notice of appeal from an order of humane euthanasia
29 pursuant to this section, such order shall be automatically stayed pend-
30 ing final determination of any appeal. In all other circumstances, the
31 owner of the dog may make application to the court to issue a stay of
32 disposition pending determination of the appeal.

33 6. The owner of a dog who, through any act or omission, negligently
34 permits his or her dog to bite a person, service dog, guide dog or hear-
35 ing dog causing physical injury shall be subject to a civil penalty not
36 to exceed four hundred dollars in addition to any other applicable
37 penalties.

38 7. The owner of a dog who, through any act or omission, negligently
39 permits his or her dog to bite a person causing serious physical injury
40 shall be subject to a civil penalty not to exceed one thousand five
41 hundred dollars in addition to any other applicable penalties. Any such
42 penalty may be reduced by any amount which is paid as restitution by the
43 owner of the dog to the person or persons suffering serious physical
44 injury as compensation for unreimbursed medical expenses, lost earnings
45 and other damages resulting from such injury.

46 7-A. THE OWNER OF ANY DOG SHALL BE LIABLE FOR ALL INJURIES AND DAMAGES
47 SUFFERED BY ANY PERSON WHO IS BITTEN BY THE DOG WHILE IN A PUBLIC PLACE
48 OR LAWFULLY IN A PRIVATE PLACE, INCLUDING THE PROPERTY OF THE OWNER OF
49 THE DOG, REGARDLESS OF THE FORMER VICIOUSNESS OF THE DOG OR THAT OWNER'S
50 KNOWLEDGE OF SUCH VICIOUSNESS. A PERSON IS LAWFULLY UPON THE PRIVATE
51 PROPERTY OF SUCH OWNER WITHIN THE MEANING OF THIS SUBDIVISION WHEN HE OR
52 SHE IS ON SUCH PROPERTY IN THE PERFORMANCE OF ANY DUTY IMPOSED UPON HIM
53 OR HER BY THE LAWS OF THIS STATE OR BY THE LAWS OR POSTAL REGULATIONS OF
54 THE UNITED STATES, OR WHEN HE OR SHE IS ON SUCH PROPERTY UPON THE INVI-
55 TATION, EXPRESS OR IMPLIED, OF THE OWNER OF THE DOG, THE OWNER OR LESSEE
56 OF THE PROPERTY, OR ANY PERSON AUTHORIZED TO GRANT SUCH PERMISSION. IT

1 SHALL NOT BE A DEFENSE TO LIABILITY UNDER THIS SECTION THAT THE OWNER:
2 (A) EXERCISED THE UTMOST CARE TO PREVENT THE DOG FROM BITING, OR (B) DID
3 NOT HAVE CUSTODY OR CONTROL OF THE DOG AT THE TIME OF THE BITING. IT
4 SHALL NOT BE A DEFENSE TO LIABILITY UNDER THIS SECTION THAT THE DOG DID
5 NOT INTEND TO INJURE THE VICTIM, OR THAT THE DOG'S ACTION WAS PLAYFUL,
6 MISCHIEVOUS, OR OTHERWISE NOT VICIOUS.

7 7-B. EVERY PERSON WHO OWNS, HARBORS, KEEPS, OR IS IN TEMPORARY
8 POSSESSION OF A DOG SHALL BE REQUIRED TO PROVIDE IN WRITING THE OFFICIAL
9 REGISTRATION NUMBER OF THE DOG AND THAT PERSON'S NAME AND ADDRESS, AND
10 THE NAME AND ADDRESS OF THE OWNER OF THE DOG IF THAT PERSON IS NOT THE
11 OWNER, TO ANYONE WHOM THE DOG HAS INJURED OR DAMAGED, OR THE PARENTS IF
12 THE VICTIM WAS A MINOR, AT THE TIME OF THE INCIDENT OR AS SOON AS POSSI-
13 BLE THEREAFTER, WHETHER OR NOT REQUESTED TO PROVIDE SUCH INFORMATION,
14 AND TO ANYONE WHO REQUESTS SUCH INFORMATION AFTER WITNESSING A VIOLATION
15 OF ANY LAW INVOLVING THAT DOG.

16 7-C. THE OWNER OF ANY DOG SHALL PROVIDE A COPY OF ITS MOST RECENT
17 PROOF OF RABIES VACCINATION TO ANYONE WHOM THE DOG HAS INJURED, OR THE
18 PARENTS OF AN INJURED MINOR, AT THE TIME OF THE INCIDENT OR AS SOON AS
19 POSSIBLE THEREAFTER, WHETHER OR NOT REQUESTED TO PROVIDE SUCH INFORMA-
20 TION. IF THE DOG NEVER RECEIVED SUCH VACCINATION, A WRITTEN STATEMENT TO
21 THAT EFFECT SHALL BE PROVIDED TO THE PERSON WHO WAS INJURED, OR THE
22 PARENTS OF AN INJURED MINOR.

23 8. The owner of a dog who, through any act or omission, negligently
24 permits his or her dog, which had previously been determined to [be
25 dangerous pursuant to this article] HAVE CAUSED PHYSICAL INJURY, to bite
26 a person causing serious physical injury, shall be guilty of a misdemea-
27 nor punishable by a fine of not more than three thousand dollars, or by
28 a period of imprisonment not to exceed ninety days, or by both such fine
29 and imprisonment in addition to any other applicable penalties. Any such
30 fine may be reduced by any amount which is paid as restitution by the
31 owner of the dog to the person or persons suffering serious physical
32 injury as compensation for unreimbursed medical expenses, lost earnings
33 and other damages resulting from such injury.

34 9. If any dog, which had previously been determined by a judge or
35 justice to [be a dangerous dog, as defined in section one hundred eight
36 of this article] HAVE CAUSED INJURY AS SET FORTH IN SUBDIVISION THREE OF
37 THIS SECTION, shall without justification kill or cause the death of any
38 person who is peaceably conducting himself or herself in any place where
39 he or she may lawfully be, regardless of whether such dog escapes with-
40 out fault of the owner, the owner shall be guilty of a class A misdemea-
41 nor in addition to any other penalties. PENALTIES AND LIABILITY UNDER
42 THIS SECTION SHALL NOT APPLY WHERE THE DOG WAS IN THE CUSTODY OF AN
43 ANIMAL TRAINER, ANIMAL BEHAVIORIST, GROOMER, VETERINARIAN, OR AN AGENT
44 OR EMPLOYEE OF ANY OF THE FOREGOING, FOR THE PURPOSE OF RENDERING A
45 PROFESSIONAL SERVICE IN EXCHANGE FOR COMPENSATION.

46 10. The owner or lawful custodian of a [dangerous] dog WHO shall HAVE
47 CAUSED INJURY AS SET FORTH IN SUBDIVISION THREE OF THIS SECTION, except
48 in the circumstances enumerated in subdivisions four and eleven of this
49 section, be strictly liable for medical costs resulting from injury
50 caused by such dog to a person, companion animal, farm animal or domes-
51 tic animal.

52 11. The owner shall not be liable pursuant to subdivision six, seven,
53 eight, nine or ten of this section if the dog was coming to the aid or
54 defense of a person during the commission or attempted commission of a
55 murder, robbery, burglary, arson, rape in the first degree as defined in
56 subdivision one or two of section 130.35 of the penal law, criminal

1 sexual act in the first degree as defined in subdivision one or two of
2 section 130.50 of the penal law or kidnapping within the dwelling or
3 upon the real property of the owner of the dog and the dog injured or
4 killed the person committing such criminal activity.

5 12. Nothing contained in this section shall limit or abrogate any
6 claim or cause of action any person who is injured by a dog with a
7 vicious disposition or a vicious propensity may have under common law or
8 by statute. The provisions of this section shall be in addition to such
9 common law and statutory remedies.

10 13. Nothing contained in this section shall restrict the rights and
11 powers derived from the provisions of title four of article twenty-one
12 of the public health law relating to rabies and any rule and regulation
13 adopted pursuant thereto.

14 14. Persons owning, possessing or harboring dangerous dogs shall
15 report the presence of such dangerous dogs pursuant to section two
16 hundred nine-cc of the general municipal law.

17 15. THE RIGHTS AND REMEDIES SET FORTH BY THIS SECTION ARE CUMULATIVE
18 AND NOT EXCLUSIVE OF ANY OTHER RIGHTS OR REMEDIES THAT MAY BE AVAILABLE
19 TO THE INJURED PARTIES, INCLUDING WITHOUT LIMITATION ACTIONS BASED ON
20 GENERAL NEGLIGENCE AND NEGLIGENCE PER SE.

21 S 2. This act shall take effect immediately.