STATE OF NEW YORK

731

2017-2018 Regular Sessions

IN SENATE

January 4, 2017

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:

Section 1. Section 123 of the agriculture and markets law, as amended by chapter 392 of the laws of 2004, such section as renumbered and subdivisions 1 and 2 as amended by section 18 of part T of chapter 59 of the laws of 2010, and subdivisions 7 and 8 as amended by chapter 526 of the laws of 2005, is amended to read as follows:

§ 123. Dangerous dogs. 1. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may make a complaint of an attack or threatened attack upon a person, companion animal as defined in section three hundred fifty of this chapter, farm animal as defined in such section three hundred fifty, or a domestic animal as defined in subdivision seven of section one hundred eight of this article to a dog control officer or police officer of the appropriate municipality. Such officer shall immediately inform the complainant of his or her right to commence a proceeding as provided in subdivision two of this section and, if there is reason to believe the dog [~~is a dangerous dog~~] **caused injury to a person, companion animal, farm animal or domestic animal**, the officer shall forthwith commence such proceeding himself or herself.

2. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may, and any dog control officer or police officer as provided in subdivision one of this section shall, make a complaint under oath or affirmation to any municipal judge or justice of such attack or threatened attack. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog [~~is a dangerous dog~~] **caused injury to a**

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

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person, companion animal, farm animal or domestic animal, and if so, shall issue an order to any dog control officer, peace officer, acting pursuant to his or her special duties, or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination as provided in this section. Whether or not the judge or justice finds there is probable cause for such seizure, he or she shall, within five days and upon written notice of not less than two days to the owner of the dog, hold a hearing on the complaint. The petitioner shall have the burden at such hearing to prove the dog [~~is a "dangerous dog"~~] **caused injury to a person, companion animal, farm animal or domestic animal** by clear and convincing evidence. If satisfied that the dog [~~is a dangerous dog~~] **caused injury to a person, companion animal, farm animal or domestic animal**, the judge or justice shall then order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

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

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

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

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

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

3. Upon a finding that a dog [~~is dangerous~~] **caused injury to a person, companion animal, farm animal or domestic animal**, the judge or justice may order humane euthanasia or permanent confinement of the dog if one of the following aggravating circumstances is established at the judicial hearing held pursuant to subdivision two of this section:

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

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

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

An order of humane euthanasia shall not be carried out until expiration of the thirty day period provided for in subdivision five of this section for filing a notice of appeal, unless the owner of the dog has

indicated to the judge in writing, his or her intention to waive his or her right to appeal. Upon filing of a notice of appeal, the order shall be automatically stayed pending the outcome of the appeal.

4. A dog shall not be [~~declared dangerous~~] **subject to the provisions of subdivision three of this section** if the court determines the conduct of the dog (a) was justified because the threat, injury or damage was sustained by a person who at the time was committing a crime or offense **of violence** upon the owner or custodian of the dog or upon the property of the owner or custodian of the dog; (b) was justified because the injured, threatened or killed person was tormenting, abusing, assaulting or physically threatening the dog or its offspring, or has in the past tormented, abused, assaulted or physically threatened the dog or its offspring; (c) was justified because the dog was responding to pain or injury, or was protecting itself, its owner, custodian, or a member of its household, its kennels or its offspring; or was justified because the injured, threatened or killed companion animal, farm animal or domestic animal was attacking or threatening to attack the dog or its offspring. Testimony of a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert shall be relevant to the court's determination as to whether the dog's behavior was justified pursuant to the provisions of this subdivision.

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

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

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

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

7-a. The owner of any dog shall be liable for all injuries and damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or that owner's knowledge of such viciousness. A person is lawfully upon the private property of such owner within the meaning of this subdivision when he or she is on such property in the performance of any duty imposed upon him or her by the laws of this state or by the laws or postal regulations of

the United States, or when he or she is on such property upon the invitation, express or implied, of the owner of the dog, the owner or lessee of the property, or any person authorized to grant such permission. It shall not be a defense to liability under this section that the owner: (a) exercised the utmost care to prevent the dog from biting, or (b) did not have custody or control of the dog at the time of the biting. It shall not be a defense to liability under this section that the dog did not intend to injure the victim, or that the dog's action was playful, mischievous, or otherwise not vicious.

7-b. Every person who owns, harbors, keeps, or is in temporary possession of a dog shall be required to provide in writing the official registration number of the dog and that person's name and address, and the name and address of the owner of the dog if that person is not the owner, to anyone whom the dog has injured or damaged, or the parents if the victim was a minor, at the time of the incident or as soon as possible thereafter, whether or not requested to provide such information, and to anyone who requests such information after witnessing a violation of any law involving that dog.

7-c. The owner of any dog shall provide a copy of its most recent proof of rabies vaccination to anyone whom the dog has injured, or the parents of an injured minor, at the time of the incident or as soon as possible thereafter, whether or not requested to provide such information. If the dog never received such vaccination, a written statement to that effect shall be provided to the person who was injured, or the parents of an injured minor.

8. The owner of a dog who, through any act or omission, negligently permits his or her dog, which had previously been determined to [~~be dangerous pursuant to this article~~] have caused physical injury, to bite a person causing serious physical injury, shall be guilty of a misdemeanor punishable by a fine of not more than three thousand dollars, or by a period of imprisonment not to exceed ninety days, or by both such fine and imprisonment in addition to any other applicable penalties. Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

9. If any dog, which had previously been determined by a judge or justice to [~~be a dangerous dog, as defined in section one hundred eight of this article~~] have caused injury as set forth in subdivision three of this section, shall without justification kill or cause the death of any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, regardless of whether such dog escapes without fault of the owner, the owner shall be guilty of a class A misdemeanor in addition to any other penalties. Penalties and liability under this section shall not apply where the dog was in the custody of an animal trainer, animal behaviorist, groomer, veterinarian, or an agent or employee of any of the foregoing, for the purpose of rendering a professional service in exchange for compensation.

10. The owner or lawful custodian of a [~~dangerous~~] dog who shall have caused injury as set forth in subdivision three of this section, except in the circumstances enumerated in subdivisions four and eleven of this section, be strictly liable for medical costs resulting from injury caused by such dog to a person, companion animal, farm animal or domestic animal.

11. The owner shall not be liable pursuant to subdivision six, seven, eight, nine or ten of this section if the dog was coming to the aid or

defense of a person during the commission or attempted commission of a murder, robbery, burglary, arson, rape in the first degree as defined in subdivision one or two of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one or two of section 130.50 of the penal law or kidnapping within the dwelling or upon the real property of the owner of the dog and the dog injured or killed the person committing such criminal activity.

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

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

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

15. The rights and remedies set forth by this section are cumulative and not exclusive of any other rights or remedies that may be available to the injured parties, including without limitation actions based on general negligence and negligence per se.

§ 2. This act shall take effect immediately.