

1 HB27  
2 78016-1  
3 By Representative Ward  
4 RFD: Judiciary  
5 First Read: 10-JAN-06  
6 PFD: 11/21/2005

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

11 This bill would establish the procedure by  
12 which a dog can be declared dangerous.

13 This bill would allow the owner of a dog  
14 accused of being dangerous the opportunity to  
15 request a hearing on whether the dog should be  
16 declared dangerous.

17 This bill would provide that a dog found to  
18 be dangerous and a significant threat to public  
19 health and safety would be humanely destroyed.

20 This bill would provide that a dog found to  
21 be dangerous and not a significant threat to public  
22 health and safety could be returned to the owner if  
23 certain registration requirements are met and the  
24 dog is securely enclosed.

25 Amendment 621 of the Constitution of Alabama  
26 of 1901 prohibits a general law whose purpose or  
27 effect would be to require a new or increased

1 expenditure of local funds from becoming effective  
2 with regard to a local governmental entity without  
3 enactment by a two-thirds vote unless: It comes  
4 within one of a number of specified exceptions; it  
5 is approved by the affected entity; or the  
6 Legislature appropriates funds or provides a local  
7 source of revenue to the entity for the purpose.

8 The purpose or effect of this bill would  
9 require a new or increased expenditure of local  
10 funds within the meaning of Amendment 621. However,  
11 the bill does not require approval of a local  
12 governmental entity or enactment by a two-thirds  
13 vote to become effective because it comes within  
14 one of the specified exceptions contained in  
15 Amendment 621.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 Relating to dogs; to establish a procedure by which  
22 a dog can be declared dangerous; to allow the owner of a dog  
23 which is accused of being dangerous the opportunity to request  
24 a hearing on whether the dog should be declared dangerous; to  
25 provide that a dog found to be dangerous and a significant  
26 threat to public health and safety would be humanely  
27 destroyed; and to provide that a dog found to be dangerous and

1 not a significant threat to public health and safety could be  
2 returned to the owner if certain registration requirements are  
3 met and the dog is securely enclosed; to provide for  
4 penalties; and in connection therewith would have as its  
5 purpose or effect the requirement of a new or increased  
6 expenditure of local funds within the meaning of Amendment 621  
7 of the Constitution of Alabama of 1901.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. The Legislature of Alabama finds that  
10 certain dogs are an increasingly serious and widespread threat  
11 to the safety and welfare of citizens of this state by virtue  
12 of their unprovoked attacks on, and associated injury to,  
13 individuals and other animals; that these attacks are in part  
14 attributable to the failure of owners to confine and properly  
15 train and control these dogs; that existing laws inadequately  
16 address this problem; and that it is therefore appropriate and  
17 necessary to impose a uniform set of state requirements on the  
18 owners of dangerous dogs.

19 Section 2. The following words shall have the  
20 following meanings:

21 (1) ANIMAL CONTROL OFFICER. Any person employed or  
22 appointed by a county or municipality who is authorized to  
23 investigate, on public or private property, civil infractions  
24 relating to animal control, animal attacks, or animal cruelty.

25 (2) ATTACK. Aggressive physical contact initiated by  
26 a dog.

1           (3) BITTEN. Seized with the teeth by the dangerous  
2 dog, so that the skin of the person or animal seized has been  
3 nipped or gripped, or has been wounded or pierced, as  
4 determined by a physician or a veterinarian.

5           (4) DANGEROUS DOG. A dog, regardless of its breed,  
6 that has bitten, attacked, or injured a person or domestic  
7 animal without provocation, or has repeatedly bitten humans or  
8 non-herded animals except a dog used by law enforcement  
9 officials for legitimate law enforcement purposes, a certified  
10 guide dog for the blind, a hearing dog for the deaf, or a  
11 service dog for the disabled.

12           (5) DOG. All members of the canine family including  
13 dog hybrids.

14           (6) IMPOUNDED. Taken into the custody of the public  
15 pound or animal control department or provider of animal  
16 control services of the municipality or county where the  
17 potentially dangerous or vicious dog is found.

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

23           (8) PROPER ENCLOSURE OF A DANGEROUS DOG. a. An  
24 enclosure for the confinement of a dog that has been declared  
25 dangerous that is suitable to prevent the entry of the general  
26 public and the dog from escaping from the structure and that:

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

3           2. Has secure sides and a secure top to prevent the  
4 dog from escaping over, under, or through the structure.

5           3. Provides adequate ventilation and protection from  
6 the elements.

7           4. Exhibits a sign conspicuously posted upon the pen  
8 or the structure containing the following: "Animal  
9 Enclosure-No Trespassing."

10           b. The enclosure shall be constructed to allow the  
11 dog to stand normally and without restriction and is no less  
12 than four times the length of the dog and two times the width  
13 of the dog.

14           c. The enclosure shall contain a structure within  
15 the enclosure large enough for the dog to walk in, turn  
16 around, lie down comfortably, and protect the dog from the  
17 elements.

18           d. The space requirements listed herein may be  
19 superseded by any state law defining minimum kennel standards  
20 if the standards afford more room for the animal.

21           (9) SEVERE INJURY. A physical injury that results in  
22 muscle tears, broken bones, lacerations, or a permanently  
23 disfiguring laceration requiring multiple sutures or  
24 corrective or cosmetic surgery.

25           Section 3. (a) A person may make a complaint under  
26 oath or affirmation of an alleged dangerous dog to a law  
27 enforcement officer, animal control officer, or the

1 appropriate municipal or county authority charged with animal  
2 control. The officers shall immediately inform the complainant  
3 of his or her right to commence a proceeding to determine  
4 whether a dog should be declared dangerous. If the officer has  
5 reason to believe the dog should be declared a dangerous dog,  
6 he or she may commence the proceeding.

7 (b) A dog that is the subject of a dangerous dog  
8 complaint or investigation may not be relocated or ownership  
9 transferred pending the outcome of the investigation or a  
10 hearing related to the determination of whether to classify  
11 the dog as a dangerous dog.

12 (c) (1) If a law enforcement officer or animal  
13 control officer, after investigation, has determined that  
14 there exists probable cause to believe that a dog is a  
15 potentially dangerous dog, then the law enforcement officer or  
16 animal control officer, or his or her designee, shall petition  
17 the district or municipal court in the territory in which the  
18 dog is owned or kept for a hearing to determine whether the  
19 dog in question should be declared dangerous. The law  
20 enforcement officer or animal control officer shall notify the  
21 owner or keeper of the dog that a hearing will be held by the  
22 court, at which time the owner may present evidence as to why  
23 the dog should not be declared dangerous. Whenever possible,  
24 any complaint received from a member of the public which  
25 serves as the evidentiary basis for the law enforcement  
26 officer or animal control officer to find probable cause shall

1 be sworn to and verified by the complainant and shall be  
2 attached to the petition.

3 (2) The owner or keeper of the dog shall be served  
4 with notice of the hearing and a copy of the petition, either  
5 personally or by first class mail with return receipt  
6 requested.

7 (3) Following notice to the owner and prior to the  
8 hearing, if there is probable cause to believe that a dog is a  
9 dangerous dog and may pose an immediate threat of serious harm  
10 to human beings or other domestic animals, the law enforcement  
11 officer or animal control officer may obtain a search warrant  
12 and impound the dog pending disposition of the case. The owner  
13 or keeper of the dog shall be liable to the county or  
14 municipality for the costs and expenses of keeping the dog.

15 (4) The hearing shall be held no less than five nor  
16 more than 30 working days after service of notice upon the  
17 owner or keeper of the dog. The hearing shall be informal and  
18 open to the public. A jury shall not be available. The owner  
19 shall have the opportunity to present evidence as to why the  
20 dog should not be declared a dangerous dog or not determined  
21 to be a significant threat to the public health and safety.  
22 All issues for or against the owner or keeper of the dog may  
23 be decided by the court if the owner or keeper fails to appear  
24 at the hearing. The court, upon a preponderance of the  
25 evidence, may find that the dog is a dangerous dog and make  
26 orders authorized by this act.

1                   (5) Within five days after the hearing, the owner  
2 shall be notified in writing of the determination by the  
3 court.

4                   (d) If a determination is made that the dog is  
5 dangerous, the owner or keeper of the dog shall comply with  
6 this act. The court may establish a time schedule to ensure  
7 compliance with this act, but in no case more than 30 days  
8 subsequent to the date of the court's determination.

9                   (e) (1) The owner within five days of the receipt of  
10 the notice of determination may contest the determination by  
11 appealing to the circuit court in the county where the dog is  
12 kept. The owner shall serve notice of the appeal upon the  
13 other party personally or by first class mail, postage  
14 prepaid.

15                   (2) The court hearing the appeal shall conduct a  
16 hearing de novo, without a jury, and make its own  
17 determination as to the potential danger and viciousness of  
18 the dog in question. The issue shall be decided upon the  
19 preponderance of the evidence.

20                   (3) The determination of the court hearing the  
21 appeal shall be final and conclusive upon all parties.  
22 However, an animal control officer may later petition the  
23 court to declare a dog to be vicious or to determine that the  
24 dog constitutes a threat to the public health and safety for  
25 any subsequent actions of the dog.

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

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

9           (2) When the dog was protecting or defending a  
10 person within the immediate vicinity of the dog from an  
11 unjustified attack or assault.

12           (3) When an injury or damage was sustained by a  
13 domestic animal that at the time of the injury or damage was  
14 teasing, tormenting, abusing, or assaulting the dog or in the  
15 past had teased, tormented, abused, or assaulted the dog.

16           (4) When an injury or damage to a domestic animal  
17 was sustained while the dog was working as a hunting dog,  
18 herding dog, or predator control dog on the property of or  
19 under the control of its owner or keeper, and the damage or  
20 injury was to a species or type of domestic animal appropriate  
21 to the work of the dog.

22           (5) When the dog was responding to pain or injury or  
23 protecting itself, its kennel, or its offspring.

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

1           (b) Neither growling nor barking, or both, shall  
2 alone constitute grounds upon which to find a dog to be  
3 dangerous.

4           (c) The exceptions contained in this subsection may  
5 not negate the requirements of the rabies control law  
6 contained in Sections 3-7A-1 to 3-7A-15, inclusive, Code of  
7 Alabama 1975.

8           Section 5. (a) If a determination is made that a dog  
9 is dangerous, the owner or keeper of the dog shall comply with  
10 any special security or care requirements established by the  
11 court except that a dog determined by the court to constitute  
12 a significant threat to the public health and safety shall be  
13 humanely destroyed.

14           (b) Within 30 days after a dog has been determined  
15 to be dangerous, the owner or keeper of the dog shall obtain a  
16 certificate of registration for the dog from the animal  
17 control officer serving the area in which the owner resides,  
18 and the certificate shall be renewed annually. The certificate  
19 of registration may be issued to persons who are over 18 years  
20 of age and who present to the animal control officer  
21 sufficient evidence of all of the following:

22           (1) A current certificate of rabies vaccination for  
23 canine species for which there is a United States Department  
24 of Agriculture (USDA) approved vaccine.

25           (2) Where a dog is determined pursuant to clear and  
26 convincing evidence at a duly constituted hearing to be  
27 dangerous, the owner of the dog shall be required to register

1 the dog with the appropriate health department or animal  
2 control facility, and to provide prompt notification to the  
3 appropriate health department or animal control facility of  
4 any changes in the ownership of the dog, the name, address,  
5 and telephone number of the new owners, a change in the health  
6 status of the dog, further instances of attack, claims made,  
7 or lawsuits brought because of further instances of attack, or  
8 the death of the dog. In addition, the following may be  
9 required:

10 a. The dog shall be under the control of a person 18  
11 years or older when the dog is not in a proper enclosure or  
12 inside a building.

13 b. The dog may not be allowed outside the property  
14 of its owner except in emergencies or for normal or necessary  
15 medical or health related treatment.

16 c. When outdoors, the dog shall be attended and kept  
17 within an area from which it cannot escape, shall be muzzled  
18 and kept on a leash no longer than six feet, and shall be  
19 under the control of a person 18 years of age or older. The  
20 muzzle may not cause injury to the dog or interfere with his  
21 or her vision or respiration, but shall prevent it from biting  
22 any person or another animal.

23 d. Confinement to a proper enclosure when the dog is  
24 outdoors and unattended.

25 e. Neutering or spaying of the dog at the owner's  
26 expense, unless medically contradicted.

1           f. Permanent identification of the dog by tattooing  
2 or by injecting an identification microchip using standard  
3 veterinary procedures and practices. Photographs of the dog,  
4 identification number, and the identification of the person  
5 performing the identification procedure shall be registered  
6 with the appropriate health department or animal control  
7 facility.

8           g. The procurement of a surety bond in the amount of  
9 no more than one hundred thousand dollars (\$100,000) covering  
10 the medical or veterinary costs, or both, resulting from any  
11 future actions of the dog with the determination of the amount  
12 of the bond to be made where appropriate with the law of the  
13 jurisdiction where the dog is kept.

14           h. If the owner of the dangerous dog is not the  
15 owner of the property where the dog is kept, the owner of the  
16 dog must obtain from the property owner written permission for  
17 the dangerous dog to be kept on his or her property.

18           i. Payment of an annual fee in an amount to be  
19 determined by the city or county, in addition to any regular  
20 dog licensing fee, to register the dog as a dangerous dog.

21           (b) If a further incident of attack occurs under  
22 circumstances described above after a dog has been determined  
23 to be dangerous, additional conditions may be imposed or  
24 re-imposed, including the humane destruction of the dog, if  
25 the further incident involves severe injury to a person.

26           (c) A law enforcement officer or animal control  
27 authority may make whatever inquiry is deemed necessary to

1 ensure compliance with this act, or seize and impound any  
2 vicious dog whose owner or keeper fails to comply with this  
3 act.

4 Section 6. A dog classified as dangerous that has  
5 not exhibited behavior specified in this act within 18 months  
6 of the exhibition of the behavior causing the dog to be  
7 classified as dangerous shall be eligible for a review of the  
8 determination with the potential for lifting the requirements  
9 of this act; however, the dog may again be declared a  
10 dangerous dog if it repeats or exhibits the behavior.

11 Section 7. The owner of a dog determined to be a  
12 dangerous dog may be prohibited by a municipality, city or  
13 county from owning, possessing, controlling, or having custody  
14 of a dog for a period of not more than three years, if it is  
15 found, after proceedings conducted under this act, that  
16 ownership or possession of a dog by the owner would create a  
17 significant threat to the public health.

18 Section 8. (a) An owner of a dangerous dog who  
19 violates this act shall be fined not more than three hundred  
20 dollars (\$300) for the first offense and not more than six  
21 hundred dollars (\$600) for each subsequent offense.

22 (b) If a dog that has previously been declared  
23 dangerous, when unprovoked, shall attack, assault, wound, or  
24 cause severe physical injury, or kill a human being, the owner  
25 or keeper of the dog shall be guilty of a Class C felony  
26 punishable by a fine of not more than five thousand dollars  
27 (\$5,000) or imprisonment of more than two years, or both. The

1 animal control authority may confiscate and, after the  
2 expiration of 10 working days after the owner has been  
3 notified, destroy the dangerous or vicious dog. The 10-day  
4 time period shall allow the owner to request a due process  
5 hearing. The owner shall be responsible for payment of all  
6 boarding costs and other fees as may be required to humanely  
7 and safely keep the animal during any appeal procedure.

8 (c) If a dog that has not been declared dangerous  
9 attacks and causes severe injury to or death of any human, and  
10 the owner of the dog had prior knowledge of the dangerous  
11 propensities of the dog yet demonstrated a reckless disregard  
12 of the propensities under the circumstances, the owner of the  
13 dog may be charged criminally by the investigating law  
14 enforcement agency. In addition, the dog shall be immediately  
15 confiscated by an animal control authority, held for 10  
16 business days after the owner is given written notification,  
17 and thereafter destroyed in an expeditious and humane manner.  
18 This 10-day time period shall allow the owner to request a due  
19 process hearing. The owner shall be responsible for payment of  
20 all boarding costs and other fees as may be required to  
21 humanely and safely keep the animal during any appeal  
22 procedure.

23 (d) This section shall not be construed to repeal  
24 other criminal laws. Whenever conduct prescribed by any  
25 provision of this act is also prescribed by any other  
26 provision of law, the provision which carries the more serious  
27 penalty shall be applied.

1           Section 9. A law enforcement officer may enforce  
2 this act by immediately removing the dog to an appropriate  
3 facility, without requirement for a warrant or pending due  
4 process, or both, if in responding to an incident covered by  
5 this act, he or she determines that the dog poses a threat to  
6 the public safety, regardless of the actions, omissions, or  
7 intent of the owner.

8           Section 10. A person falsifying charges due to a  
9 malicious intent toward the owner of the dog or the dog itself  
10 is guilty of a misdemeanor and upon conviction may be assessed  
11 a fine of up to five hundred dollars (\$500).

12           Section 11. Although this bill would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds, the bill is excluded from further  
15 requirements and application under Amendment 621 because the  
16 bill defines a new crime or amends the definition of an  
17 existing crime.

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