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□ 139th General Assembly

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CHAPTER 471

FORMERLY

SENATE BILL NO. 133

AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO DANGEROUS AND POTENTIALLY DANGEROUS DOGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 17, Title 7, Delaware Code, by adding thereto a new subchapter to read as follows:

"Subchapter III. Dangerous and Potentially Dangerous Dogs §1730. Definitions.

For the purposes of this subchapter, unless the context requires a different meaning:

- (1) 'Animal control agency' shall mean the entity acting alone or in concert with other governmental units and authorized by them to enforce the dog control laws and regulations of the state, county or municipality.
- (2) 'Attack' shall mean the deliberate action of a dog, whether or not in response to a command by its owner, to bite, to seize with its teeth or to pursue any human being or domestic animal with the obvious intent to kill, wound, injure or otherwise harm the human being or domestic animal.
- (3) 'Dangerous dog' shall mean any dog declared to be dangerous by the Panel pursuant to §1735 of this title.
- (4) 'Dog' shall mean any dog or dog hybrid.
- (5) 'Domestic animal' shall mean any dog, poultry or livestock.
- (6) 'Owner' shall mean any person who owns, keeps, harbors or is the custodian of a dog.
- (7) 'Panel' shall mean the Dog Control Panel.
- (8) 'Physical injury' shall mean impairment of physical condition or substantial pain.

(9) 'Potentially dangerous dog' shall mean any dog declared to be potentially dangerous by the Panel pursuant to §1736 of this title.

(0) 'Serious physical injury' shall mean physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

§1731. Dog Control Panel; establishment; organization.

(a) There is hereby created a Dog Control Panel. The Panel shall consist of 5 members, all of whom shall be residents of the State. The members of the Panel shall be appointed by the Secretary of the Department, and the terms of the members shall be staggered. The first 2 appointees shall serve for a term of 1 year, and the next 3 appointees shall serve for a term of 2 years. Thereafter, all new appointees shall serve for a term of 2 years and shall be eligible for reappointment. The composition of the Panel shall be as follows:

(1) A licensed veterinarian who possesses no less than 5 years of experience in the treatment of canines;

(2) Two licensed breed or all-breed club members who each possess no less than 5 years membership in one or more American Kennel Clubs;

(3) An animal behaviorist specializing in the treatment of canine behavior disorders, a member of the American Pet Dog 'trainers Association or a professional dog obedience trainer, each of whom possess no less than 5 years experience in the handling of canines; and

(4) A representative from the Delaware Society for the Prevention of Cruelty to Animals, the Kent County Society for the Prevention of Cruelty to Animals or the Delaware Humane Association

(b) For purposes of conducting, business, 3 members of the Panel, appointed pursuant to three out of the four paragraphs in subsection (a) of this section, shall constitute a quorum. A majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Panel. Members of the Panel shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incurred incident to their duties as members of the Panel.

(c) A chairman of the Panel shall be chosen by the members of the Panel from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection

(d) Each Panel member may submit the names of up to 2 alternates to the Secretary for approval, provided the alternates meet or exceed the criteria for appointment met by the Panel member who they will represent. Upon the Secretary's approval, an alternate may act in a Panel member's place and stead, with authority to attend all meetings of the Panel and with power to vote in the absence of the member.

(e) The Secretary shall appoint a new member to fill any vacancy that has been created by a Panel member who has either resigned or died. Said member shall serve for the remainder of the term of the member who has either resigned or died.

(f) Members of the Panel and alternates shall not be subject to, and shall be immune from: claims, suits, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendations made while discharging any duty or authority under this subchapter, so

long as such person acted in good faith and without malice in carrying out their responsibilities, authority, duties, powers and privileges of the offices conferred by this law upon them or by any other provisions of the Delaware law, federal law or regulations, or duly adopted rules and regulations of the Department. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided herein.

(g) Any member of the Panel or alternate with a direct or indirect interest in a matter before the Panel shall disqualify himself or herself from any consideration of that matter. In situations in which a Panel member or alternate does not vote by reason of a direct or indirect interest in a matter before the Panel, the presence of the Panel member or alternate shall not be counted for purposes of establishing a quorum. The fact that a Panel member or alternate has not voted by reason of a direct or indirect interest in a matter before the Panel shall in no way affect the validity of an act or actions taken regarding the matter before the Panel.

(h) Failure to attend or to be represented at 2 consecutive regular meetings of the Panel, in the absence of mitigating circumstances, shall be construed as a request by that member to resign from the Panel and a replacement may thereafter be appointed in his/her stead.

§ 1732. Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; request for hearing.

(a) A Dog Warden shall seize and impound a dog suspected of being dangerous or potentially dangerous when the warden has reasonable cause to believe that the dog:

(1) Chase d or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on two separate occasions within a 12-month period;

(2) Killed or inflicted physical injury or serious physical injury upon a human being; or

(1) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The animal control agency shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the animal control agency may dispose of the dog in accordance with Chapter 80 of Title 3.

(c) The owner of any seized and impounded dog shall be notified by the animal control agency by certified mail, return receipt requested, of the owner's right to a hearing before the Panel to determine whether the dog is dangerous or potentially dangerous. This notice shall require that the owner return within 7 days of receiving such notice, by certified mail or personal delivery, a signed statement indicating whether the owner wishes the hearing to be conducted or, if not, that the owner waives his/her right to such hearing and agrees to abide by the findings and conclusions of the animal control agency or agrees to relinquish ownership of such dog, in which case the animal control agency shall dispose of the impounded dog in accordance with Chapter 80 of Title 3. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter, or does not reply to the certified letter with a

signed statement within 7 days of receipt, the animal control agency shall dispose of the dog in accordance with Chapter 80 of Title 3.

(d) Within 21 days of an animal control agency's receipt of a request for a hearing pursuant to subsection (c) of this section, a hearing shall be held by the Panel. If a hearing is not held within that time frame, the dog shall be released to its owner and the charges made pursuant to subsection (a) of this section shall be dismissed.

(e) Nothing in this subchapter shall be construed to interfere with the provisions for protecting human health from rabies in Chapter 82 of Title 3.

§1733. Exceptions.

(a) Notwithstanding §1732 of this title, no dog shall be considered dangerous or potentially dangerous if an injury was sustained by:

(1) A human being who, at the time the injury was sustained, was committing criminal trespass or other tort upon premises occupied by the owner of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime;

(2) A domestic animal which, at the time the injury was sustained, was teasing, tormenting, abusing or assaulting the dog; or

(3) A domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, and the injury was to a species or type of domestic animal appropriate to the work of the dog.

(b) Notwithstanding §1732 of this title, no dog shall be considered dangerous or potentially dangerous if the dog was protecting or defending a person within the immediate vicinity of the dog from an attack or assault.

(c) Notwithstanding §1732 of this title, no military, correctional or police-owned dogs shall be considered dangerous or potentially dangerous if the attack or injury to a person or domestic animal occurs while the dog is performing duties as expected.

§ 1734. Hearing procedures; appeal.

(a) Upon the receipt of a request for a hearing by the Panel, the animal control agency shall fix the time and place for the hearing and notify the owner of the impounded dog by certified mail, return receipt requested, of such time and place. During the hearing, the owner of the impounded dog shall have the opportunity to present evidence to demonstrate that the dog is not dangerous or potentially dangerous.

(b) All hearings shall be informal and open to the public, and need not conform to standard rules of evidence. Hearsay evidence shall be allowed but may not be relied upon as the sole evidence in the Panel's determination. The panel shall determine whether the dog in question should be declared dangerous or potentially dangerous, and shall announce its determination at the conclusion of the hearing. The Panel's determination shall be followed by a written determination, a copy of which shall be mailed immediately to the owner of the dog. As part of the determination the Panel may direct the animal control agency to dispose of the dog by euthanasia in accordance with §8001 of Title 3. If a determination is made that the dog is dangerous, and euthanasia is not ordered, the owner shall comply with the requirements set forth in §1735(b) of this title for keeping or maintaining such dog prior to the dog being reclaimed, except that the animal control agency may grant the owner up to 30 days subsequent to the date of determination to comply with §1735(b)(1), (b)(2) and (b)(3) of this title. If a determination is made that the dog is potentially dangerous, the owner shall comply with the requirements set forth in §1736(b) of this title for keeping or maintaining such dog after being reclaimed.

(c) Where the owner of an impounded dog is in disagreement with the action of the Panel, the owner may appeal the Panel's determination to the Court of Common Pleas within 10 days of the receipt of the written determination. Upon such appeal, the court shall hear the evidence de novo, and the filing of an appeal shall act as a stay of the Panel's decision, pending final disposition of the appeal. If the court rules the impounded dog to be dangerous or potentially dangerous, the court shall impose the requirements for keeping or maintaining such dog set forth in §§1735 or 1736 of this title, respectively, within time frames consistent with subsection (b) of this section.

§ 1735. Finding to declare a dog dangerous; duties of owner.

(a) The Panel may declare a dog to be dangerous if it finds by a preponderance of the evidence that the dog:

(1) Killed or inflicted physical injury or serious physical injury upon a human being;

(2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(b) If the Panel declares a dog to be dangerous, and no appeal is made of this ruling pursuant to § 1734(c) of this title, it shall be unlawful for any person to keep or maintain such dog unless:

(1) The dog is spayed or neutered;

(2) The dog owner procures and maintains liability insurance in the amount of at least \$100,000, covering any damage or injury which may be caused by such dog;

(3) The dog is confined by its owner within an enclosure that satisfies the enclosure requirements adopted by the Department of Agriculture pursuant to Chapter 72 of Title 3, and whenever off the premises of its owner, the dog is securely muzzled and restrained by a substantial chain or leash, not exceeding six feet, and under the control of a responsible adult, or caged;

(4) The dog owner displays, in a conspicuous manner, a sign on his/her premises warning that a dangerous dog is on the premises. The sign shall be visible and legible from the public highway or 100 feet, whichever is less;

(5) Prior to selling or giving away the dog, the dog owner informs prospective owners that the dog is a dangerous dog; and (6) The dog owner notifies the animal control agency within 24 hours if the dog is loose, unconfined, has attacked a human being or domestic animal or has died or has been sold or given away. If the dog has been sold or given away, the owner shall provide the animal control agency with the name, address and telephone number of the new owner.

§ 1736. Finding to declare a dog potentially dangerous; duties of owner.

(a) The Panel may declare a dog to be potentially dangerous if it finds by a preponderance of the evidence that the dog:

(1) Attacked or inflicted physical injury upon a human being;

(2) Inflicted or serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or

(0) Chased or pursued a person, including but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on two separate occasions within a 12-month period.

(b) If the Panel declares a dog to be potentially dangerous, and no appeal is made of this ruling pursuant to §1734(c) of this title, it shall be unlawful for any person to keep or maintain the dog unless:

(1) While on the dog owner's property, the dog is kept indoors or within a securely fenced yard from which it cannot escape; and

(2) When off the owner's premises, the dog is restrained by a substantial chain or leash, not exceeding six feet, and is under the control of a responsible adult.

(c) If there are no additional instances of the behavior described in subsection (a) of this section within a 24-month period from the date the dog is declared potentially dangerous, the dog shall no longer be deemed a potentially dangerous dog.

§ 1737. Liability of owner for costs of impoundment.

If a dog is declared dangerous or potentially dangerous, and no appeal has been made or all appeals have been exhausted, the owner of the dog shall, prior to reclaiming the dog, reimburse the animal control agency its regular standard fees charged for the care of dogs while in the animal control agency's custody plus any reasonable veterinary fees incurred for the dog during the period of impoundment. Failure of the dog's owner to pay such fees within 5 days after a final determination of whether the dog is dangerous or potentially dangerous shall result in the ownership of the dog reverting to the animal control agency. The animal control agency shall then dispose of the dog in accordance with Chapter 80 of Title 3. If a dog is determined to be neither dangerous nor potentially dangerous, the owner shall not be liable for the costs of impoundment.

§1738. Rules and regulations.

The Secretary may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purposes of this subchapter.

§ 1739. Violations by owners of dangerous or potentially dangerous dogs; penalties.

(a) For a violation of §§1735(b)(4), 1736(b)(1) or (b)(2) of this title, the owner of the dangerous dog or potentially dangerous dog shall be fined not less than \$50 nor more than \$100. For a subsequent offense, the person shall be fined not less than \$100 nor more than \$200.

(b) For a violation of §1735(b)(1), (b)(5) or (b)(6) of this title, the owner of the dangerous dog shall be fined not less than \$100 nor more than \$250. For a subsequent offense, the person shall be fined not less than \$250 nor more than \$500.

(c) For a violation of §1735(b)(2) or (b)(3) of this title, the owner of the dangerous dog shall be fined not less than \$250 nor more than \$1,000. For a subsequent offense, the person shall be fined not less than \$500 nor more than \$2,000.

(d) Any dog declared dangerous pursuant to §1735(a) of this title, which, after having been declared dangerous, kills, attacks, or inflicts physical injury or serious physical injury, without provocation upon a human being or domestic animal, shall be seized and impounded by the animal control agency and disposed of by euthanasia in accordance with Chapter 80 of Title 3, except that no dog may be destroyed during the pendency of an appeal.

(e) Any fine imposed for a violation of this subchapter shall not be suspended to any amount less than the minimum prescribed fine."

Section 2. This Act shall become effective 6 months after the date of enactment.

Approved July 17, 1998



