

ENROLLED HOUSE
BILL NO. 2813

By: Denney, Worthen, Smithson,
Jackson, Sullivan, Nance,
McMullen and Auffet of the
House

and

Shurden of the Senate

An Act relating to animals; making certain acts unlawful; providing penalties; providing liability for damages; providing affirmative defense to certain prosecutions; amending 4 O.S. 2001, Sections 42.2, 44, 46 and 47, which relate to dangerous dogs; providing statutory references; clarifying property restrictions; expanding scope of certain definitions; providing statutory references; clarifying scope of certain penalty; providing penalties for certain prohibited act; providing an affirmative defense under certain circumstances; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42.4 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for the owner of any dog that previously has:

1. When unprovoked inflicted bites on any person or severely injured any person either on public or private property; or

2. When unprovoked created an imminent threat of injury or death to any person,

to permit such dog to run at large or aggressively bite or attack any person while such person is lawfully upon public or private property. Upon conviction, the violator shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. In addition, the owner shall be liable for damages as provided in Section 42.1 of Title 4 of the Oklahoma Statutes.

B. The owner of any dangerous dog as defined by Section 44 of Title 4 of the Oklahoma Statutes, or any dog that is described in subsection A of this section, that attacks any person causing the death of such person shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than five (5) years, or by the imposition

of a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment.

C. It is unlawful for any person to release any dog upon a law enforcement officer while the officer is in the performance of official duties. Upon conviction, the violator shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than five (5) years, or imprisonment in the county jail for not more than one (1) year, or by imposition of a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

D. It shall be an affirmative defense to a prosecution pursuant to subsection A or B of this section that the injury or death was sustained by a person who, at the time, was committing a willful criminal act upon the premises of the owner of the dog or was assaulting the owner of the dog.

SECTION 2. AMENDATORY 4 O.S. 2001, Section 42.2, is amended to read as follows:

Section 42.2 For the purpose of Sections 42.1 through 42.3 of this title and Section 1 of this act a person shall be considered to be lawfully upon the private property of the owner of a dog when he or she is on ~~such~~ the property in the performance of any duty imposed upon ~~him~~ the person by the laws of this state, or its political subdivision, or by the laws of the United States, or the postal regulations of the United States, or when reading meters, or making repairs to any public utility or service located on ~~said~~ the premises, or when working on ~~said~~ the property at the request of the owner or any tenant having a lease upon any portion of ~~said~~ the property, or when on ~~such~~ the property upon the invitation, either expressed or implied, of the owner or lessee of such property, or when on the property for any other lawful purpose. The term "public place" shall, for the purpose of Sections 42.1 through 42.3 of this title and Section 1 of this act, mean and include any and all public streets, sidewalks, alleyways, easements, buildings, parks, playgrounds and recreational facilities, and any and all places of business, amusement or entertainment which are privately owned, wherein merchandise, property, services, entertainment or facilities are offered for sale, hire, lease, or use.

SECTION 3. AMENDATORY 4 O.S. 2001, Section 44, is amended to read as follows:

Section 44. As used in Section 44 et seq. of this title:

1. "Potentially dangerous dog" means any dog that:
 - a. when unprovoked inflicts bites on a human either on public or private property, or
 - b. when unprovoked ~~kills or severely injures a domestic animal~~ attacks a dog which results in the death of said dog either on public or private property;
2. "Dangerous dog" means any dog that:
 - a. has inflicted severe injury on a human being without provocation on public or private property,

- b. has been previously found to be potentially dangerous, the owner having received notice of such by the animal control authority in writing and the dog thereafter aggressively bites, attacks, or endangers the safety of humans, or
- c. has been previously found to be potentially dangerous, the owner having received notice of such by the animal control authority in writing and the dog thereafter kills or severely injures a domestic animal attacks a dog which results in the death of said dog either on public of private property;

3. "Severe injury" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery;

4. "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure with at least one hundred fifty (150) square feet of space for each dog kept therein which is over six (6) months of age, and which is suitable to prevent the entry of children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog;

5. "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county and state and the shelter and welfare of animals;

6. "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal; and

7. "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal.

SECTION 4. AMENDATORY 4 O.S. 2001, Section 46, is amended to read as follows:

Section 46. A. It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure as defined by Section 44 of this title, unless the dog is muzzled and restrained by a substantial chain or leash and remains under the physical ~~restraining~~ restraint of a responsible person over sixteen (16) years of age. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

B. Potentially dangerous or dangerous dogs may be regulated through local, municipal and county authorities, provided the

regulations are not breed specific. Nothing in this act shall prohibit such local governments from enforcing penalties for violation of such local laws.

C. Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

SECTION 5. AMENDATORY 4 O.S. 2001, Section 47, is amended to read as follows:

Section 47. A. Any dangerous dog shall be immediately confiscated by an animal control authority if:

1. The dog is not validly registered under Section ~~2~~ 45 of this ~~act~~ title;

2. The owner does not secure the liability insurance coverage or surety bond required under Section ~~2~~ 45 of this ~~act~~ title;

3. The dog is not maintained in the proper enclosure as defined by Section 44 of this title; and

4. The dog is outside of the dwelling of the owner, or outside the proper enclosure and not under physical restraint of the responsible person as required by Section 46 of this title. ~~In addition, the~~

B. The owner of a dangerous dog shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year or by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment for any violation of the laws relating to dangerous dogs resulting in the confiscation of such dog pursuant to any provision of subsection A of this section. Any such

C. The owner of a dangerous dog shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment for any personal injury caused by such dangerous dog. The fine, at the discretion of the court, may be offset by payments made by the dog owner to any victim of an injury or attack by the dog. However, insurance payments may not be considered as an offset. In addition, the court may require the owner to perform forty (40) hours of community service. The court may suspend any portion of the community service requirement set forth in this section. It shall be an affirmative defense to a prosecution pursuant to this subsection that the injury was sustained by a person who, at the time, was committing a willful criminal act upon the premises occupied by the owner of the dog or was assaulting the owner of the dog.

D. It is the purpose of Sections 44 through 47 of this act title to provide additional and cumulative remedies to control dangerous and potentially dangerous dogs in this state. Nothing in

this act shall be construed to abridge or alter rights of action or remedies of victims under the common law or statutory law, criminal or civil.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 23rd day of May, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2006.

Presiding Officer of the Senate