



# The Florida Senate

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Committee on Community Affairs

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## REVIEW OF THE VIABILITY OF CITY OR COUNTY PRE-EMPTION OF BANNING CERTAIN DOG BREEDS BY ORDINANCE

### Issue Description

According to the National Canine Research Council, from 1965-2008, there have been 34 fatal dog attacks (13 adults, 21 children) in Florida involving 11 breeds of dogs. Over 80 percent of the children killed by dogs in Florida were attacked when left unsupervised with unfamiliar dogs or when they wandered into areas where unfamiliar dogs were located. Of the 34 fatal attacks, 32 were caused by unneutered dogs.<sup>1</sup>

Florida's dangerous dog law seeks to reduce the threat dangerous dogs pose to the public by requiring owners of dangerous dogs to abide by statutorily defined precautionary measures. Florida's law also preempts local governments from enacting local ordinances which place restrictions or additional requirements on ownership of particular breeds. The purpose of this project is to review the "Damage by Dogs" provisions of chapter 767, F.S., with a specific focus on the state preemption barring cities and counties from enacting breed specific ordinances.

### Background

Chapter 767, F.S., outlines the state's "Damage by Dogs" provisions. In 1990, the State of Florida enacted a dangerous dog law. The Legislature found that "dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure of the owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements on the owners of dangerous dogs."<sup>2</sup>

A "dangerous dog" is defined as a dog that:

- Has aggressively bitten, attacked, endangered, or has inflicted severe injury on a human being on public or private property;
- Has more than once severely injured or killed a domestic animal while off the owner's property;
- Has been used primarily or in part for the purpose of dog fighting or is a dog trained for dog fighting;
- or
- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.<sup>3</sup>

Enforcement of the dangerous dog law relies on a formal complaint to and investigation by an animal control authority. Pending the outcome of the investigation, the dog must be confined by its owner or impounded with an animal control authority and may not be relocated or have its ownership transferred. A dog cannot be declared dangerous if the threat, injury or damage was sustained by a person who was unlawfully on the property, harassing the dog or its owner, or if the dog was protecting a human from an unjustified attack.<sup>4</sup>

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<sup>1</sup> Fatal Dog Attacks: 1995-Present, National Canine Research Council

<sup>2</sup> s. 767.10, F.S.

<sup>3</sup> s. 767.11(1), F.S.

<sup>4</sup> s. 767.12(1)(a), F.S.

After the investigation, the animal control authority makes an initial determination as to whether there is sufficient cause to classify the dog as dangerous. The owner must have an opportunity for a hearing prior to a final determination. The local governing body establishes the hearing procedures. If the dog is classified as a dangerous dog, the animal control authority must provide written notice to the owner, and the owner may appeal the classification to the county court.<sup>5</sup>

Within 14 days after the classification as a dangerous dog by the animal control authority or the classification is upheld by the county court on appeal, the owner must register the dog with the animal control authority and renew the certificate annually. Vaccination, enclosure, warning sign, and identification requirements must then be followed. The owner must immediately notify the animal control authority if the dog is loose, bites or attacks a person or another animal, or if there is any other change in status. A dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Any violation of these requirements is a noncriminal infraction punishable by a fine, not to exceed \$500. Exemptions are provided for: hunting dogs, when engaged in any legal hunt or training procedure; dogs engaged in training or exhibiting in legal sports, such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials; and dogs used for law enforcement work.<sup>6</sup>

In addition to civil penalties, the owner of a dangerous dog can be charged with the following criminal violations:

- 1<sup>st</sup> degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), if the dog has previously been declared “dangerous” and it attacks or bites a person or domestic animal without provocation.
- 2nd degree misdemeanor (punishable under s. 775.082 or s. 775.083, F.S.), if the dog has not previously been declared “dangerous” but causes severe injury to or death of any human and the owner had prior knowledge of, but recklessly disregarded, the dog’s dangerous propensities.
- 3rd degree felony (punishable under s. 775.082, s. 775.083, or s. 775.084, F.S.), if the dog has previously been declared “dangerous” and it attacks and causes severe injury to or death of any human.<sup>7</sup>

Under these criminal scenarios, the dog must be confiscated, placed in quarantine, if necessary, or impounded for 10 business days after the owner is given written notification of the animal control authority’s intent to destroy. During such time, the owner may request a hearing, and the dog may not be destroyed while an appeal is pending. However, the owner must pay for all boarding costs and other fees to maintain the dog during any appeal process. If a dog attacks or bites a person who is engaged in or attempting to engage in a criminal activity at the time of the attack, the owner is not guilty of any crime under this section.<sup>8</sup>

Local governments are authorized to place further restrictions and additional requirements on owners of dangerous dogs. However, no local regulation may be breed-specific, or lessen the provisions of chapter 767 unless the regulation was adopted prior to October 1, 1990.<sup>9</sup> Florida is one of twelve states that prohibit local governments from enacting breed specific ordinances.<sup>10</sup> Only a handful of communities were grandfathered in under this provision including Miami-Dade County.

In 2001, SB 2058, sponsored by Senator Sebesta, attempted to eliminate these county and municipal breed specific regulations existent prior to 1990. This bill died in messages. In 2008, Representative Thurston filed HB 101 which would have given cities and counties the right to ban breeds responsible for a large number of attacks, just as Pit Bulls have been banned in Miami Dade County for the past 20 years. The bill was never scheduled for hearing and it died in the House Committee on Agribusiness.

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<sup>5</sup> s. 767.12(1)(c)(d), F.S.

<sup>6</sup> s. 767.12(2-7), F.S.

<sup>7</sup> s. 767.13, F.S.

<sup>8</sup> s. 767.13(5), F.S.

<sup>9</sup> s. 767.14, F.S.

<sup>10</sup> Pit Bull Awareness: Breed Specific Legislation; Nov. 28, 2007

## Findings and/or Conclusions

### Methodology

#### Surveys

The professional staff of the Senate Community Affairs Committee, with the assistance of staff from the Legislative Committee on Intergovernmental Relations (LCIR), surveyed all of Florida's 67 counties and 410 municipalities for information on the number of dog bites by breed as well as the total number of dogs in each breed for the FY 2007-08.

Survey questions included:

1. Number of reported dog bites by breed.
2. Number of reported dog bites by breed on children under the age of 18.
3. Total number of dogs by breed registered in your county.
4. Number of dog bites by breed resulting in fatalities.

#### Survey Responses

Of the ten responses received from Florida's counties and municipalities, equaling a two percent response rate, only one had a registration requirement which provides information on the total numbers of dogs *by breed*. Pinellas County has a total of 122,225 dogs within the county, and in 2007, there was a total of 1,233 dog bites. For a county in which less than 3 percent of the dog population is made up of Pit Bulls, they accounted for over 19 percent of the bites (235). The next highest number of bites was attributed to Labrador Retrievers which represent 9 percent of the dog population and accounted for 11.5 percent of the bites (142).

In 2007, Orange County reported of the 1,208 dog bites, 262 bites were attributed to pit-bull type dogs. For Leon County, of the 322 dog bites, 97 were attributed to bull-type dogs. Of the 43 dog bites within Taylor County, 23 were attributed to Pit Bull/ Bull dog type breeds. Cross City noted that of their 48 dog bites, most were attributed to Pit Bull/ Bull dog cross breeds. Similarly, Jackson County noted that while the breed of the dog is not logged in biting incidents, most are attributed to mixed breeds, Pit Bulls, and Labrador Retrievers. Hardee County also noted that of the 18 dog bites, 10 were on children under the age of 18. For the City of Clermont, of the 158 dog bites from 1995 to 2008, the breeds with the most numbers of bites were Chow Chows with 18, Labrador Retrievers with 16, German Shepherds with 12, and Pit Bulls with 10.

With a lack of information in both the total number of dogs *by breed* and the total number of dog bites *by breed*, little evidence either supporting or opposing breed specific legislation can be inferred. For the one county that did have breed specific data on dog bites and dog populations, there seems to be a large number of dog bites by such breeds as Pit Bulls, Chow Chows, and Labrador Retrievers, and a greater number of overall dog bites inflicted on children less than 18 years of age.

#### Meetings

The professional staff of the Senate Community Affairs Committee also met with representatives from the Florida League of Cities, Florida Association of Counties, American Kennel Club, the Florida Animal Control Association, and Leon County Animal Control. Representatives from the Florida League of Cities and the Florida Association of Counties favored further home rule authority in this area; however, neither organization has taken an official position. The American Kennel Club, the Florida Animal Control Association, and the Leon County Animal Control, said that there are no bad dogs, only bad owners. These organizations advocated for stricter enforcement and harsher penalties for already existent "dangerous dog" provisions, as opposed to removing the preemption and allowing for breed specific legislation at the local level.

### Findings

#### Breed Specific Legislation

Breed specific legislation does not base the determination of dangerousness upon any prior conduct; rather all dogs of a target breed are subject to regulation. Some people have termed this "breed specific" versus "deed specific." Breed specific legislation is any law or ordinance or policy which pertains only to a specific breed or breeds and can include restrictions on ownership, which is seen in both Denver, Colorado and Miami-Dade County, Florida where Pit Bulls have been banned. Additionally, in cities such as Toledo, Ohio, specific breeds have not been banned but rather restricted by certain leash and muzzle regulations. Advocates of breed specific legislation argue

that certain breeds of dogs are inherently more dangerous than other breeds. The two major beliefs in support of such claims are that certain breeds are more likely to attack than other breeds, and that some breeds are more likely to inflict greater damage than other breeds when attacks do occur. Proponents often cite studies to prove such claims. A 2008 study done by the University of Pennsylvania, suggests that smaller dogs are more “genetically predisposed towards aggressive behavior.” The study concluded that bites from larger dogs were likely to be more damaging and more often reported, giving the impression that larger dogs are more aggressive. Additionally, certain large breeds are known for the severity of their attacks. In 2000, the Centers for Disease Control (CDC) reported that 25 breeds of dogs were involved in 238 fatal dog bites in the U.S. from 1979-1998. When the dog breed was known, more than 50 percent of the deaths were caused by Pit Bull type dogs and Rottweilers. It is important to note that the CDC study did not use total population of the breed as a factor.<sup>11</sup> For example, if in the animal population, Pit Bulls were responsible for 20 bites and Dachshunds were responsible for 10 bites, the data would suggest that Pit Bulls are the most threat to the public. But if there are only 50 Dachshunds in the population and 400 Pit Bulls, the data then suggests Dachshunds are the greatest threat to the public.

Additionally, in a study reported by California State University at Chino, Professor Robert Plum, noted that when a Pit Bull does bite a person, one dog in 16 will inflict serious injury. This number is drastically lower for other breeds such as Dobermans, inflicting serious injury in only one in every 296 bites, or for German Shepherds, inflicting serious injury in only one in every 156 bites.<sup>12</sup>

Opponents of breed specific legislation argue that breed specific policies have been made on irrational or impulsive decisions and question the legitimacy of studies. One major area of concern is the ability to properly identify specific breeds. For example, Pit Bulls are not a recognized breed but rather a compilation of several types of breeds. While Pit Bulls are composed primarily of American Pit Bull Terriers, American Staffordshire Terriers, and Staffordshire Bull Terriers; such breeds as Bulldogs, Boxers, and Bullmastiffs have also been mistaken for Pit Bulls. With such difficulties in identification, opponents of breed specific legislation claim studies of dog bites “by breed” to be invalid. Those in opposition to breed specific legislation call for stricter enforcement and harsher consequences to already existent dangerous dog laws rather than targeting a few specific breeds.

Opponents of breed specific legislation point to two studies, one in Scotland and another in Spain that compared bite rates before and after legislation banning certain breeds. In the Scottish study, the number of bites from restricted breeds was specifically monitored and compared with the remaining dog population to evaluate the change, if any, in number of dog bites resulting from the legislation created. The legislation included provisions to ban specific breeds and regulate any other dog that poses a threat to the community. The banned breeds included Pit Bull Terriers, Japanese Tosas, and any dog bred for fighting. Likewise, the Spanish study monitored the number of bites by the regulated breeds compared with the remaining dog population to evaluate the change, if any, in number of dog bites resulting from the legislation. This legislation banned the ownership of specific breeds without a valid license and appropriate registration. The banned breeds included Doberman Pinchers, Pit Bull Terriers, Staffordshire Bull Terriers, Rottweilers, Dogo Argentinos, Fila Brasileiros, Tosa Inus, Akita Inus, and any other dog surpassing certain size limitations. The studies concluded that legislation restricting the ownership of certain breeds did not reduce the number of dog bites, including the number of dog bites from the restricted dog breeds. In fact, in the Spanish study, the number of bites by the restricted breeds actually increased. Most of the dog bites before and after the legislation occurred from German Shepherds and mixed breed dogs.<sup>13</sup>

Breed specific legislation is often challenged in court on a constitutional basis because it singles out one breed, and the owners of the breed argue that such laws violate the equal protection and due process clauses of the Fourteenth and Fifth Amendments of the United States Constitution. To date, only a few states have allowed breed specific

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<sup>11</sup> Sacks, Jeffrey J. MD, MPH; Leslie Sinclair, DVM; Julie Gilchrist, MD. *Special Report: Breeds of dogs involved in fatal human attacks in the United States between 1979 and 1998.*

<sup>12</sup> Dog Bite Statistics: Compiled by dog bite legal expert, Richard H. Polsky, Ph.D., CAAB

<sup>13</sup> Klaassen, B., Buckley, J.R. & Esmail, A. 1996. *Does the Dangerous Dogs Act protect against animal attacks: a prospective study of mammalian bites in the Accident and Emergency department.* *Injury*, 27(2), 89-91. Rosado, B., Garcia-Belenguier, S., Leon, M. & Palacio, J. 2007. *Spanish dangerous animals act: Effect on the epidemiology of dog bites.* *Journal of Veterinary Behavior*, 2(5), 166-174.

legislation at a statewide level. In Ohio Revised Code 955.11, one of the definitions of a “dangerous dog” is a dog that “belongs to the breed commonly known as a pit bull dog.”<sup>14</sup> In Ohio Revised Code 955.22, any dog designated as a dangerous dog must be securely confined while on the owner's property, and while off the owner's property, the dog must be muzzled and either confined in a cage or securely leashed.<sup>15</sup> Additionally the City of Toledo enacted breed specific legislation which prohibits the ownership of more than one vicious dog or Pit Bull.<sup>16</sup> In the 2006 case of *City of Toledo v. Paul Tellings*, the Court of Appeals of Ohio, Sixth Appellate District found existing breed specific legislation of both the state and municipality to be unconstitutional. The Ohio Revised Codes 955.11 and 955.22 as well as the Toledo Municipal Code 505.14 were deemed to be unconstitutional on the grounds that they “denied pit bull owners equal protection of the law, and were unconstitutionally vague because they lacked a precise definition of what dogs qualify as pit bulls.”<sup>17</sup> The City of Toledo appealed this decision and on August 1, 2007, the Ohio Supreme Court overturned the Appellate Court’s decision. The Ohio Supreme Court held that “the State of Ohio and the City of Toledo have legitimate interests in protecting citizens from the dangers associated with pit bulls” and the laws were rationally related to that interest and were, in fact, constitutional.<sup>18</sup> This decision was left intact after the U.S. Supreme Court refused to hear the appeal from the Ohio Supreme Court’s decision.<sup>19</sup>

Breed specific legislation has been recently enacted in California. California SB 861 authorizes local governments to enact breed specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements.<sup>20</sup> This law requires local governments to provide quarterly statistical reports relating to dog bites to the State Public Health Veterinarian in efforts to justify breed specific legislation. The City of San Francisco utilized this provision and adopted an ordinance requiring owners of pit bull-type dogs to spay or neuter their animals unless a breeding permit has been obtained.<sup>21</sup>

The City of Denver, Colorado ordinance that bans Pit Bulls from city limits was allowed to stand by the Denver District Court despite the passage of HB04-1279 by the Colorado State Legislature, which prohibits local governments from instituting specific breed bans.<sup>22</sup> This decision was based on the 1991 Colorado Supreme Court decision of the *Colorado Dog Fanciers v. Denver*. This decision upheld Denver’s Pit Bull ordinance on the basis that Pit Bulls were more likely to cause severe injury than other breeds in the event of an attack.<sup>23</sup> After the passage of HB04-1279 in 2004, Denver filed suit against the state claiming the state had no justification to remove the ban. With no new evidence negating the already established constitutionality of the Pit Bull ban, Denver Revised Municipal Code Section 8-55 has been deemed constitutional and is therefore still valid.<sup>24</sup> The Denver District Court has “now twice confirmed that there is objective evidence that supports a rational conclusion that Pit Bulls are more dangerous than other breeds of dogs because they are more likely to inflict serious injuries and cause death, and therefore there is a logical reason for the city to prohibit them within its urban jurisdiction.”<sup>25</sup>

Due to the high cost of liability claims some insurance companies have blacklisted certain breeds and are refusing to provide homeowners insurance to those who own these dog breeds. According to the Insurance Information Institute, liability claims have increased from \$250 million in 1996 to \$321 million in 2003. The institute also notes that in 2005, dog bites accounted for about fifteen percent of all claims on homeowners’ insurance. For 2005, according to the Insurance Information Institute, the average claim for a dog bite was \$21,200.<sup>26</sup> The Florida Office of Insurance Regulation notes that many companies will not provide homeowners insurance to certain dog owners; however, this type of information is not readily available.

<sup>14</sup> Ohio Revised Code 955.11(4)(a)(iii)

<sup>15</sup> Ohio Revised Code 955.22(D)(1) & 955.22(D)(2)(b&c)

<sup>16</sup> Toledo Municipal Code 505.14

<sup>17</sup> *Toledo v. Tellings*, Not reported in N.E. 2d, WL 513946 (Ohio App. L District)

<sup>18</sup> *Toledo v. Tellings*, 114 Ohio St. 3d 278, 871 N.E. 2d 1152 (Reconsideration denied)

<sup>19</sup> *Toledo v. Tellings*, 871 N.E.2d 1152 (Ohio 2007), cert denied, 128 S.Ct. 1302 (2008)

<sup>20</sup> California SB 861, Chapter 668, California Statutes

<sup>21</sup> San Francisco Municipal Ordinance 43.1

<sup>22</sup> *County of Denver v. State of Colorado* No. 04CV3756 (Denver Dist. Ct. Dec. 9, 2004)

<sup>23</sup> *Colorado Dog Fanciers v. Denver* 820 P.2d 644 (Colo. 1991)

<sup>24</sup> *County of Denver v. State of Colorado* No. 04CV3756 (Denver Dist. Ct. Dec. 9, 2004)

<sup>25</sup> 820 P.2d 644 (Colo. 1991) & No. 04CV3756 (Denver Dist. Ct. Dec. 9, 2004)

<sup>26</sup> Insurance Information Institute’s Annual 2003 and 2005 Reports

### ***Local Government Home Rule Authority***

The Florida Constitution grants local governments a broad spectrum of home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>27</sup> Those counties operating under a county charter have all the powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>28</sup> There are 19 charter counties in Florida and over 75 percent of the state's residents live in a charter county. Section 125.01, F.S., enumerates the powers and duties of county government, unless preempted on a particular subject by general or special law. Those powers include the provisions of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal and water and alternative water supplies. Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise power for municipal purposes except as otherwise provided by law.<sup>29</sup>

Since the Legislature expressly limited local government's power in s. 767.14, F.S., the policy question is whether the Legislature should amend or remove this preemption and allow local governments to enact breed specific ordinances.

### **Recommendation**

Florida has a dangerous dog law that reduces the threats dangerous dogs pose to the public by requiring owners of dogs so labeled to abide by statutorily defined precautionary measures. However, s. 767.14, F.S., effectively denies local residents and local decision makers their right to consider and enact additional "breed specific" standards to protect local welfare and safety. While it is acknowledged that little evidence exists to support claims that one breed is more predisposed to aggressive behavior than others, studies do provide evidence that certain breeds are more likely to cause severe injury than others. The courts have consistently upheld these breed specific laws due to the rational relationship state and local governments have in preserving public safety and welfare. The issue of dangerous dogs varies greatly in different areas of this state – rural, semi-rural, and suburban. Within these local governments, human and dog populations vary greatly and can create possible unique areas of concern.

Professional staff of the Senate Community Affairs Committee recommends that the Legislature narrow the preemption language in s.767.14, F.S., so that it only prevents local governments from banning ownership of specific breeds. Local governments will then be authorized under their home rule authority to enact breed specific regulations such as registering, muzzling, or neutering. It is important to note that amending this preemption does not require local governments to adopt breed specific regulations; it merely gives local governments discretion to do so if they deem it necessary for the protection of their community.

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<sup>27</sup> Art. VIII, 1(f), Fla. Const.

<sup>28</sup> Art. VIII, 1(g), Fla. Const.

<sup>29</sup> Art. VII, 2(b), Fla. Const.