



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>2</sup>

Enforcement of the dangerous dog law relies on a formal complaint to trigger an 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>3</sup>

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>4</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>5</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.

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<sup>2</sup> s. 767.11(1), F.S.

<sup>3</sup> s. 767.12(1)(a), F.S.

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

<sup>5</sup> s. 767.12(2-7), F.S.

- 2<sup>nd</sup> 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.
- 3<sup>rd</sup> 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>6</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>7</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>8</sup> Florida is one of twelve states that prohibit local governments from enacting breed specific ordinances.<sup>9</sup> Only a handful of communities were grandfathered in under this provision including Miami-Dade County.

In *State v. Peters*, the 3<sup>rd</sup> District Court of Appeals upheld the City of North Miami’s ordinance that required owners of pit bull-type dogs to post a surety bond (or provide other proof of financial responsibility) and confine the dogs indoors or in a locked pen.<sup>10</sup> The City of North Miami defined “Pit Bull Dog” with reference to the descriptions given by the American Kennel Club (AKC) and the United Kennel Club (UKC). The court held that the (1) ordinance did not deny equal protection to dog owners; (2) ordinance did not deny due process; (3) ordinance was not unconstitutionally vague in its definition of pit bull; and (4) determination of whether dog was pit bull within meaning of ordinance was matter of evidence not constitutional law.<sup>11</sup> A similar Dade County ordinance also survived a challenge on vagueness grounds in a federal district court.<sup>12</sup>

The Senate Committee on Community Affairs Interim Report 2009-102<sup>13</sup> reviewed the law on breed specific ordinances and surveyed local governments. The report concluded that while little evidence exists to support claims that one breed is more predisposed to aggressive behavior than

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<sup>6</sup> Section 767.13, F.S.

<sup>7</sup> Section 767.13(5), F.S.

<sup>8</sup> Section 767.14, F.S.

<sup>9</sup> Pit Bull Awareness: Breed Specific Legislation; Nov. 28, 2007.

<sup>10</sup> 534 So.2d 760 (Fla. 3d DCA 1988).

<sup>11</sup> *Id.*

<sup>12</sup> *American Dog Owners Association, Inc. v. Dade County*, 728 F. Supp. 1533 (S.D. Fla. 1989).

<sup>13</sup> Florida Senate Committee on Community Affairs, [Review of the Viability of City or County Pre-emption of Banning Certain Dog Breeds by Ordinance](http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-102ca.pdf), Interim Report 2009-102, available at [http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-102ca.pdf](http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-102ca.pdf).

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.

Committee staff recommended 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 would 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 the 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.

### III. Effect of Proposed Changes:

**Section 1** amends s. 767.14, F.S., to remove the state's preemption prohibiting local governments from enacting breed specific regulations. The bill would allow local governments to regulate specific dog breeds.

**Section 2** provides an effective date of July 1, 2010.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Although breed specific legislation, regulations, and ordinances have been subject to challenge, often unsuccessfully,<sup>14</sup> on a number of constitutional grounds, this bill does not enact breed specific legislation and would not be subject to challenge on those grounds.

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<sup>14</sup> See generally, Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers", 80 A.L.R.4th 70 (2009) (summarizing the case law on breed specific ordinances).

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

**Barcode 183800 by Community Affairs on March 4, 2010:**

Preempts bans based on breed, but not other breed specific regulation.