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HOUSE BILL 400

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO ANIMALS; ENACTING THE DANGEROUS DOG ACT;
AUTHORIZING SEIZURE AND DESTRUCTION OF DANGEROUS DOGS;
DECLARING EXCEPTIONS; IMPOSING REGISTRATION AND HANDLING
REQUIREMENTS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Dangerous Dog Act".

Section 2. DEFINITIONS.--As used in the Dangerous Dog
Act:

A. "animal control authority" means an entity
authorized to enforce the animal control laws of a city, county
or state, whether acting alone or in concert with other
governmental authorities. In those areas not served by an
animal control authority, the sheriff or municipal law

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1 enforcement shall carry out the duties of the animal control
2 authority under the Dangerous Dog Act;

3 B. "dangerous dog" means a dog that caused a
4 serious injury to a person or domestic animal;

5 C. "owner" means a person who possesses, harbors,
6 keeps or has control or custody of a dog or, if that person is
7 under the age of eighteen, that person's parent or guardian;

8 D. "potentially dangerous dog" means a dog that may
9 reasonably be assumed to pose a threat to public safety as
10 demonstrated by the following behaviors:

11 (1) causing an injury to a person or domestic
12 animal that is less severe than a serious injury;

13 (2) chasing or menacing a person or domestic
14 animal in an aggressive manner and without provocation; or

15 (3) acting in a highly aggressively manner
16 within a fenced yard or enclosure and appearing able to jump
17 out of the yard or enclosure;

18 E. "proper enclosure" means secure confinement
19 indoors or outdoors, such as in a fenced yard, locked pen or
20 other structure, that is designed to prevent the animal from
21 escaping the confined area and young children from entering the
22 confined area; and

23 F. "serious injury" means a physical injury that
24 results in broken bones, multiple bites or disfiguring
25 lacerations requiring sutures or reconstructive surgery.

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1 Section 3. EXCEPTIONS.--A dog shall not be declared a
2 dangerous or potentially dangerous dog if:

3 A. the dog was used by a law enforcement official
4 for legitimate law enforcement purposes;

5 B. the threat, injury or damage was sustained by a
6 person who was:

7 (1) trespassing upon premises occupied by the
8 owner or the dog;

9 (2) provoking, tormenting, abusing or
10 assaulting the dog or had repeatedly, in the past, provoked,
11 tormented, abused or assaulted the dog; or

12 (3) committing or attempting to commit a
13 crime; or

14 C. the dog was:

15 (1) responding to pain or injury;

16 (2) protecting itself or its offspring; or

17 (3) protecting or defending a human being or
18 domestic animal from attack or assault.

19 Section 4. SEIZURE OF DOG--PETITION TO DISTRICT COURT.--

20 A. If an animal control authority has probable
21 cause to believe that a dog is a dangerous dog and poses an
22 imminent threat to public safety, the animal control authority
23 may apply to the district court, magistrate court or
24 metropolitan court in the county where the animal is located
25 for a warrant to seize the animal.

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1 B. If an animal control authority has probable
2 cause to believe that a dog is a potentially dangerous dog and
3 poses a threat to public safety, the animal control authority
4 may apply to the district court, magistrate court or
5 metropolitan court in the county where the animal is located
6 for a warrant to seize the animal.

7 C. After seizure, the animal control authority
8 shall impound the dog pending disposition of the case or until
9 the owner has fulfilled the requirements for a certificate of
10 registration pursuant to the provisions of Section 5 of the
11 Dangerous Dog Act.

12 D. After seizure, the owner may:

13 (1) admit that the dog is dangerous or
14 potentially dangerous and comply with the requirements for a
15 certificate of registration pursuant to Section 5 of the
16 Dangerous Dog Act; or

17 (2) within fourteen days after seizure of the
18 dog, bring a petition in district court seeking a determination
19 of whether the dog is dangerous or potentially dangerous. If
20 the court finds, by clear and convincing evidence, that the dog
21 is dangerous and poses an imminent threat to public safety or
22 potentially dangerous and poses a threat to public safety, the
23 court shall order the owner to comply with the registration and
24 handling requirements for the dog and obtain a certificate of
25 registration within thirty days or have the dog humanely

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1 destroyed. If the court does not make the required findings
2 pursuant to this paragraph, the court shall immediately order
3 the release of the dog to its owner.

4 E. If the owner does not admit that the dog is
5 dangerous or potentially dangerous and does not bring a
6 petition in district court within fourteen days of seizure of
7 the dog, the animal control authority may humanely destroy the
8 dog.

9 F. A determination that a dog is not dangerous or
10 potentially dangerous shall not prevent an animal control
11 authority from making a subsequent application for seizure
12 based on the dog's subsequent behavior.

13 Section 5. REGISTRATION AND HANDLING REQUIREMENTS FOR
14 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.--

15 A. An animal control authority shall issue a
16 certificate of registration to the owner of a potentially
17 dangerous dog if the owner establishes that:

18 (1) the owner is able to keep the dog under
19 control at all times;

20 (2) a license, if applicable, has been issued
21 pursuant to the requirements of the jurisdiction;

22 (3) the dog has a current rabies vaccination;

23 (4) the owner has a proper enclosure for the
24 dog;

25 (5) the owner has paid an annual fee, if

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1 applicable, established by the animal control authority to
2 register a potentially dangerous dog;

3 (6) the dog has been spayed or neutered;

4 (7) the dog has been implanted with a
5 microchip containing owner identification information that is
6 also provided to the animal control authority; and

7 (8) the owner has entered the dog in a
8 socialization and behavior program approved or offered by the
9 animal control authority.

10 B. If a dog previously determined to be potentially
11 dangerous has not exhibited any of the behaviors specified in
12 Subsection D of Section 2 of the Dangerous Dog Act for thirty-
13 six consecutive months, the owner may request the animal
14 control authority in the jurisdiction to lift the requirements
15 for registration pursuant to this section. If the animal
16 control authority has no reasonable basis to believe that the
17 dog has exhibited the behaviors specified, it shall relieve the
18 owner of the requirements of this section.

19 C. An animal control authority shall issue a
20 certificate of registration to the owner of a dangerous dog if
21 the owner, in addition to the requirements of Subsection A of
22 this section, establishes that:

23 (1) the owner has paid an annual fee, if
24 applicable, established by the animal control authority to
25 register a dangerous dog;

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1 (2) the owner has written permission of the
2 property owner or homeowner's association where the dangerous
3 dog will be kept, if applicable;

4 (3) the dangerous dog will be maintained
5 exclusively on the owner's property except for medical
6 treatment or examination;

7 (4) when the dangerous dog is removed from the
8 owner's property, the dog shall be caged or muzzled and
9 restrained with a lead no longer than four feet, and the dog
10 shall be under complete control at all times; and

11 (5) a clearly visible warning sign with a
12 conspicuous warning symbol indicating that there is a dangerous
13 dog on the premises is posted where the dog is kept and is
14 visible from a public roadway or from fifty feet, whichever is
15 less.

16 D. An animal control authority may order the
17 immediate impoundment or humane destruction of a dog previously
18 determined to be a dangerous dog if the owner fails to abide by
19 the conditions for registration, confinement or handling set
20 forth in this section.

21 Section 6. PROHIBITED ACTS--PENALTIES.--

22 A. It is unlawful for an owner of a dangerous or
23 potentially dangerous dog to:

24 (1) keep the dog without a valid certificate
25 of registration;

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1 (2) violate the registration and handling
2 requirements for the dog;

3 (3) fail to notify the animal control
4 authority immediately upon:

5 (a) the escape of the dog; or

6 (b) an attack by the dog upon a human
7 being or a domestic animal;

8 (4) fail to notify the animal control
9 authority of the dog's death within five business days;

10 (5) fail to notify the animal control
11 authority within twenty-four hours if the dog has been sold or
12 given away and provide the name, address and telephone number
13 of the new owner of the dog;

14 (6) fail to surrender the dog to an animal
15 control authority for safe confinement pending a determination
16 of the case when there is reason to believe that the dog poses
17 an imminent threat to public safety; or

18 (7) fail to comply with special handling or
19 care requirements for the dog that a district court has
20 ordered.

21 B. Whoever violates a provision of Subsection A of
22 this section is guilty of a misdemeanor and shall be sentenced
23 in accordance with the provisions of Section 31-19-1 NMSA 1978
24 and, for a second or subsequent offense, is guilty of a fourth
25 degree felony and shall be sentenced in accordance with the

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1 provisions of Section 31-18-15 NMSA 1978.

2 C. An owner of a dangerous or potentially dangerous
3 dog that causes serious injury or death to a domestic animal,
4 without provocation, is guilty of a fourth degree felony and
5 shall be sentenced in accordance with the provisions of Section
6 31-18-15 NMSA 1978.

7 D. An owner of a dangerous or potentially dangerous
8 dog that causes serious injury to a human being, without
9 provocation, is guilty of a third degree felony and shall be
10 sentenced in accordance with the provisions of Section 31-18-15
11 NMSA 1978.

12 E. An owner of a dangerous or potentially dangerous
13 dog that causes the death of a human being, without
14 provocation, is guilty of a third degree felony resulting in
15 the death of a human being and shall be sentenced in accordance
16 with the provisions of Section 31-18-15 NMSA 1978.