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HOUSE BILL 667

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY  
John A. Heaton

AN ACT

RELATING TO ANIMALS; BROADENING THE DEFINITION OF "DANGEROUS  
DOG"; ADDING NEW REGISTRATION REQUIREMENTS; CHANGING THE  
REQUIREMENTS FOR PROSECUTION UNDER THE DANGEROUS DOG ACT.

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

Section 1. Section 77-1A-2 NMSA 1978 (being Laws 2005,  
Chapter 61, Section 2) is amended to read:

"77-1A-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  
enforcement shall carry out the duties of the animal control  
authority under the Dangerous Dog Act;

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- 1                   B. "dangerous dog" means a dog that  
2                    (1) caused the death of or a serious injury to  
3 a person or domestic animal;  
4                    (2) is registered as a potentially dangerous  
5 dog but is not kept under control by the owner or is not kept  
6 in a proper enclosure; or  
7                    (3) is identifiable as or known as a pit bull  
8 or Rottweiler;

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

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

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

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

19                   (3) acting in a highly [~~aggressively~~]  
20 aggressive manner within a fenced yard or enclosure and  
21 appearing able to jump out of the yard or enclosure;

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

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1 confined area but does not include an electronic collar, an  
2 invisible fence or confinement by chaining, restraining or  
3 otherwise affixing the animal to a stationary object; and

4 F. "serious injury" means a physical injury that  
5 results in a concussion, protracted loss or impairment of  
6 function of any bodily member or organ, broken bones, multiple  
7 bites or disfiguring lacerations requiring sutures or  
8 reconstructive surgery."

9 Section 2. Section 77-1A-4 NMSA 1978 (being Laws 2005,  
10 Chapter 61, Section 4) is amended to read:

11 "77-1A-4. SEIZURE OF DOG--PETITION TO COURT.--

12 A. If an animal control authority has probable  
13 cause to believe that a dog is a dangerous dog and [~~poses an~~  
14 ~~imminent threat to public safety~~] is not registered pursuant to  
15 Section 77-1A-5 NMSA 1978, the animal control authority may  
16 apply to a court of competent jurisdiction in the county where  
17 the animal is located for a warrant to seize the animal.

18 B. If an animal control authority has probable  
19 cause to believe that a dog is a potentially dangerous dog and  
20 poses a threat to public safety, the animal control authority  
21 may apply to a court of competent jurisdiction in the county  
22 where the animal is located for a warrant to seize the animal.

23 C. After seizure, the animal control authority  
24 shall impound the dog pending disposition of the case or until  
25 the owner has fulfilled the requirements for a certificate of

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1 registration pursuant to the provisions of Section [~~5 of the~~  
2 ~~Dangerous Dog Act~~] 77-1A-5 NMSA 1978.

3 D. After seizure of the dog:

4 (1) the owner may admit that the dog is  
5 dangerous or potentially dangerous and comply with the  
6 requirements for a certificate of registration pursuant to  
7 Section [~~5 of the Dangerous Dog Act~~] 77-1A-5 NMSA 1978; or

8 (2) the animal control authority may, within  
9 fourteen days after seizure of the dog, bring a petition in  
10 court seeking a determination of whether the dog is dangerous  
11 or potentially dangerous. If the court finds, by clear and  
12 convincing evidence, that the dog is dangerous and [~~poses an~~  
13 ~~imminent threat to public safety~~] is not registered pursuant to  
14 Section 77-1A-5 NMSA 1978 or that the dog is potentially  
15 dangerous and poses a threat to public safety, the court shall  
16 order the owner to comply with the registration and handling  
17 requirements for the dog and obtain a certificate of  
18 registration within thirty days or have the dog humanely  
19 destroyed. If the court does not make the required findings  
20 pursuant to this paragraph, the court shall immediately order  
21 the release of the dog to its owner.

22 E. If the owner does not admit that the dog is  
23 dangerous or potentially dangerous and the animal control  
24 authority does not bring a petition in court within fourteen  
25 days of seizure of the dog, the court shall immediately order

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1 the release of the dog to its owner.

2 F. If the owner admits that the dog is dangerous  
3 and transfers ownership of the dog to the animal control  
4 authority, the animal control authority may humanely destroy  
5 the dog.

6 G. A determination that a dog is not dangerous or  
7 potentially dangerous shall not prevent an animal control  
8 authority from making a subsequent application for seizure  
9 based on the dog's subsequent behavior."

10 Section 3. Section 77-1A-5 NMSA 1978 (being Laws 2005,  
11 Chapter 61, Section 5) is amended to read:

12 "77-1A-5. REGISTRATION AND HANDLING REQUIREMENTS FOR  
13 DANGEROUS AND POTENTIALLY DANGEROUS DOGS.--

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

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

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

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

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

24 (5) the owner has paid an annual fee, if  
25 applicable, established by the animal control authority to

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1 register a potentially dangerous dog;

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

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

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

9 B. If a dog previously determined to be potentially  
10 dangerous has not exhibited any of the behaviors specified in  
11 Subsection D of Section [~~2 of the Dangerous Dog Act~~] 77-1A-2  
12 NMSA 1978 for thirty-six consecutive months, the owner may  
13 request the animal control authority in the jurisdiction to  
14 lift the requirements for registration pursuant to this  
15 section. If the animal control authority has no reasonable  
16 basis to believe that the dog has exhibited the behaviors  
17 specified, it shall relieve the owner of the requirements of  
18 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 of a person eighteen years of  
11 age or older at all times;

12 (5) the dangerous dog will not be transported  
13 in a vehicle that might allow the dog to escape or gain access  
14 to any person or animal outside the vehicle; [~~and~~]

15 (6) a clearly visible warning sign with a  
16 conspicuous warning symbol indicating that there is a dangerous  
17 dog on the premises is posted where the dog is kept and is  
18 visible from a public roadway or from fifty feet, whichever is  
19 less;

20 (7) the owner will submit to the photographing  
21 or permanent marking of the dangerous dog for purposes of  
22 identification;

23 (8) the owner will submit to random  
24 inspections of the animal and its enclosure by the animal  
25 control authority without warrant and will produce, upon demand

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1 of the animal control authority, proof of compliance with the  
2 registration requirements of this subsection;

3 (9) the owner has obtained and will maintain  
4 liability insurance in the amount of two hundred fifty thousand  
5 dollars (\$250,000) and will furnish a certificate or proof of  
6 insurance upon demand of the animal control authority; and

7 (10) the owner will notify the animal control  
8 authority at least thirty calendar days before the cancellation  
9 or nonrenewal of the liability insurance policy.

10 D. An animal control authority may order the  
11 immediate impoundment or humane destruction of a dog registered  
12 as a dangerous dog or previously determined to be a dangerous  
13 dog if the owner fails to abide by the conditions for  
14 registration, confinement or handling set forth in this  
15 section."

16 Section 4. Section 77-1A-6 NMSA 1978 (being Laws 2005,  
17 Chapter 61, Section 6) is amended to read:

18 "77-1A-6. PROHIBITED ACTS--PENALTIES.--

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

21 (1) keep the dog without a valid certificate  
22 of registration;

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

25 (3) fail to notify the animal control

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1 authority immediately upon:

2 (a) the escape of the dog; or

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

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

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

11 (6) fail to surrender the dog to an animal  
12 control authority for safe confinement pending a determination  
13 of the case when there is reason to believe that the dog poses  
14 [~~an imminent~~] a threat to public safety; or

15 (7) fail to comply with special handling or  
16 care requirements for the dog that a court has ordered.

17 B. Whoever violates a provision of Subsection A of  
18 this section is guilty of a misdemeanor and shall be sentenced  
19 in accordance with the provisions of Section 31-19-1 NMSA 1978  
20 and, for a second or subsequent offense, is guilty of a fourth  
21 degree felony and shall be sentenced in accordance with the  
22 provisions of Section 31-18-15 NMSA 1978.

23 C. An owner of a dangerous or potentially dangerous  
24 dog that causes serious injury or death to a domestic animal,  
25 without provocation, is guilty of a fourth degree felony and

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1 shall be sentenced in accordance with the provisions of Section  
2 31-18-15 NMSA 1978.

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

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

13 F. Prosecution pursuant to this section requires  
14 a showing that:

15 (1) an owner knew of the propensity of a dog  
16 to inflict serious injury; [øø]

17 (2) the dog had previously been found by a  
18 court to be a dangerous or potentially dangerous dog; or

19 (3) an owner of a dog indentifiable as or  
20 known as a pit bull or Rottweiler failed to register the dog  
21 pursuant to Section 77-1A-5 NMSA 1978."