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Bill Analysis

Legislative Service Commission

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Reps. Walcher, Webster

BILL SUMMARY

- Modifies the definitions of "dangerous dog" and "vicious dog," including the elimination of pit bull dogs from the definition of "vicious dog."
- Establishes procedures governing a dog warden's determination that a dog is dangerous or vicious that include the opportunity for a hearing and an appeal concerning the determination.
- Requires a board of county commissioners either to appoint at least one hearing officer to conduct hearings concerning the designation of a dog as a dangerous or vicious dog or to choose not to make any such appointments, in which case the appropriate municipal court or county court is required to conduct the hearings.
- Specifies that during the pendency of such a hearing or of an appeal, a hearing officer or court, as applicable, may order upon request that the dog designated as dangerous or vicious be held in the possession of its owner, keeper, or harbinger and be confined in accordance with certain requirements.
- Revises confinement and restraint requirements that apply to dogs, including such requirements that apply to dangerous or vicious dogs.
- Modifies language establishing the penalties for violating requirements governing the confinement and restraint of vicious dogs, and adds that the penalties may include the court-ordered spaying or neutering of the dog.

- Prohibits any person from having more than one vicious dog or allowing the presence of more than one vicious dog on the premises where the person resides, and establishes a penalty for violating the prohibition.
- Prohibits any person who has been convicted of a felony violation of the law governing dogs, offenses relating to domestic animals, or drug offenses from having a vicious dog or residing on premises where a vicious dog is owned, kept, or harbored, and establishes a penalty for violating the prohibition.
- Specifies that failure to provide proof, upon request of a person authorized to enforce the Dogs Law, of liability insurance that is required under current law for vicious dogs is prima-facie evidence of the lack of such insurance.
- In the case of a dog that is seized by a person authorized to enforce the Dogs Law in response to an alleged violation of that Law, allows the person to require the dog to be registered and vaccinated at the expense of the dog's owner, keeper, or harbinger and, if the dog is a vicious dog, to require proof of the required liability insurance before releasing the dog.
- Increases the penalty for obstructing or interfering with anyone lawfully engaged in capturing an unregistered dog or making an examination of a dog wearing a tag from a minor misdemeanor to a misdemeanor of the fourth degree.
- Increases the fee that must be paid for the recording of a transfer of ownership certificate concerning a dog from 25¢ to \$1.

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CONTENT AND OPERATION

Background

Current law defines "dangerous dog" and "vicious dog" and requires owners, keepers, and harborers of dangerous or vicious dogs to satisfy certain requirements regarding transfer, confinement, and restraint of the dogs and liability insurance that do not apply to dogs that are not dangerous or vicious (secs. 955.11 and 955.22). In addition, current law establishes prohibitions concerning the debarking or surgical silencing of vicious dogs (sec. 955.22).

Definition of "dangerous dog"

Current law defines "dangerous dog" as a dog that, without provocation, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harborer and not under the reasonable control of its owner, keeper, or harborer or some other responsible person, or not physically restrained or confined in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top.¹ "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any

¹ "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person (sec. 955.11(A)(2)).

person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.² (Sec. 955.11(A)(1).)

The bill modifies the definition of "dangerous dog" by instead specifying that it includes a dog that, without provocation, has chased or approached any person in a menacing fashion, has attempted to bite or otherwise endanger any person, or has caused injury other than serious physical harm to any person while that dog is off the premises of its owner, keeper, or harbinger and not under the physical control of its owner, keeper, or harbinger, or some other responsible person (sec. 955.11(A)(1)(a)). The bill defines "serious physical harm" as physical harm that involves any of the following: (1) a substantial risk of death, (2) permanent incapacity, whether partial or total, or temporary, substantial incapacity, (3) permanent disfigurement or temporary, serious disfigurement, (4) acute pain of a duration that results in substantial suffering, or (5) any degree of prolonged or intractable pain (sec. 955.11(A)(6)).

Under current law, "without provocation" means that a dog was not teased, tormented, or abused by a person, or that the dog was not coming to the aid or defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity. The bill modifies the definition of "without provocation" to apply to a dog that was not teased, tormented, physically abused, or attempted to be physically abused by a person or another animal. The bill retains, unchanged, the portion of the definition specifying that the dog was not coming to the aid or defense of certain persons. (Sec. 955.11(A)(5).)

The bill retains the exception from the definition of "dangerous dog" for certain police dogs, but removes from the exception language concerning an apparent attitude of attack.³ The bill also adds language to the exception clarifying that the target of the dog's chase or approach is a person. Thus, the bill provides that "dangerous dog" does not include a police dog that has chased or approached any person in a menacing fashion or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties. (Sec. 955.11(A)(1)(b).)

² "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties (sec. 955.11(A)(3)).

³ For purposes of consistency, the bill also eliminates a reference made to "an apparent attitude of attack" in current law governing acts for which a dog may be killed (sec. 955.28).

Definition of "vicious dog"

Current law defines "vicious dog" as a dog that, without provocation and subject to the exceptions described below (see "Exceptions to definition of "vicious dog""), meets any of the following criteria: (1) has killed or caused serious injury to any person, (2) has caused injury, other than killing or serious injury, to any person, or has killed another dog, or (3) belongs to a breed that is commonly known as a pit bull dog.⁴ The ownership, keeping, or harboring of a pit bull dog is prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.⁵

The bill revises the definition of "vicious dog" instead to include a dog that, subject to the exceptions described below, meets any of the following: (1) has killed or caused serious physical harm to any person without provocation, (2) has killed another dog without provocation, or (3) has been possessed, trained, or used for purposes of dogfighting. The bill eliminates all references to pit bull dogs from the definition. (Sec. 955.11(A)(4)(a).)

Exceptions to definition of "vicious dog"

Current law specifies that "vicious dog" does not include either of the following: (1) a police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties, or (2) a dog that has killed or caused serious

⁴ *Current law does not describe or define what constitutes a pit bull dog, but the Supreme Court of Ohio has held that dogs commonly known as pit bulls possess unique and readily identifiable physical and behavioral traits that are capable of recognition both by dog owners and by law enforcement personnel. The Court did not specifically designate certain breeds as being pit bull dogs, but stated that the dogs are muscular, bull-type dogs, almost all short-haired, with good width and length of jaw and a punishing bite. Behavioral traits include grasping strength, climbing and hanging ability, high pain tolerance, a highly unpredictable nature, undying tenacity and courage, and the propensity to catch and maul an attacked victim unrelentingly until death occurs. The Court specified that the question of whether a particular dog constitutes a pit bull is a matter of evidence, to be determined at trial. State v. Anderson (1991), 57 Ohio St.3d 168.*

⁵ *An Ohio Attorney General Opinion states that "Prima facie evidence . . . is evidence which establishes a fact in issue, unless overcome by other evidence to the contrary Consequently, the ownership, keeping, or harboring of a pit bull dog is evidence sufficient to establish that an individual is the owner, keeper, or harbinger of a vicious dog, unless overcome by other evidence to the contrary." O.A.G. 89-091.*

injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog. The bill replaces references in those exceptions to "serious injury" with references to "serious physical harm." (Sec. 955.11(A)(4)(b).)

Procedures governing designation of dog as dangerous or vicious (see COMMENT)

Appointment of hearing officer

Except as otherwise provided by the bill (see "**Alternative to appointment of hearing officer**," below), the bill requires the board of county commissioners of each county to appoint at least one hearing officer to conduct hearings concerning the designation of a dog as a dangerous or vicious dog. In order to be eligible for appointment as a hearing officer, a person must be an employee of the county or must be experienced and knowledgeable concerning canine behavior, or both. The board cannot appoint a person as a hearing officer if the person is authorized to enforce the Dogs Law, is employed by a person authorized to enforce that Law, or is employed by a court. The bill specifies that a board of county commissioners has complete discretion concerning matters of compensation of any such hearing officer that it appoints. (Sec. 955.222(A)(1).)

The bill requires a person who is appointed as a hearing officer to complete a course in canine behavior that is at least six hours in length and is approved by the State Veterinary Medical Licensing Board in accordance with standards developed by the Board under the bill (secs. 955.222(A)(1) and 4741.03(C)(10)). The training requirement is considered to be satisfied if the course is completed during the time period that begins two years prior to the appointment and ends six months after the appointment. The training requirement does not apply to an appointee who has graduated from a veterinary college approved by the State Veterinary Medical Licensing Board or accredited by the American Veterinary Medical Association or who has been issued a certificate by the education commission for foreign veterinary graduates of the American Veterinary Medical Association. (Sec. 955.222(A)(1).)

Alternative to appointment of hearing officer

Under the bill, a board of county commissioners may choose not to appoint any hearing officers to conduct hearings concerning the designation of a dog as a dangerous or vicious dog. In that case, the municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger of a dog must conduct any hearing concerning the designation of the dog as a dangerous or vicious dog. (Sec. 955.222(A)(2).) The bill specifies that the

municipal court or county court has original jurisdiction to do so (secs. 1901.18(A)(13) and 1907.031(A)(7)).

Notice of dangerous or vicious dog designation

The bill requires a person who is authorized to enforce the Dogs Law and who has reasonable cause to believe that a dog in the person's jurisdiction is a dangerous or vicious dog to notify the owner, keeper, or harbinger of that dog, by certified mail or in person, of both of the following: (1) that the person has designated the dog a dangerous or vicious dog, as applicable, and (2) that the owner, keeper, or harbinger of the dog may request a hearing regarding the designation in accordance with procedures established by the bill. The notice must include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harbinger resides. (Sec. 955.222(B).)

Hearing

The bill specifies that if the owner, keeper, or harbinger of the dog refutes its designation as a dangerous or vicious dog, as applicable, the owner, keeper, or harbinger, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing must be in writing and must be filed with a hearing officer who has been appointed in accordance with the bill for the county in which the dog's owner, keeper, or harbinger resides. If no such hearing officer has been appointed, the request must be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harbinger.

If the request is filed with a hearing officer, the hearing officer, not later than five days after the filing of the request, must set the date and time for a hearing on the request and must notify the owner, keeper, or harbinger of the dog and the person who designated the dog as dangerous or vicious, by certified mail or in person. The date of the hearing cannot be more than 30 days after the request is filed with the hearing officer.

At a hearing conducted by a hearing officer, the owner, keeper, or harbinger of the dog and the person who designated the dog as dangerous or vicious may bring witnesses and submit information to support or refute the dog's designation. After the hearing, the hearing officer must make a final determination on whether the dog is a dangerous or vicious dog, as applicable. The hearing officer must notify, by certified mail, the owner, keeper, or harbinger of the dog and the person who designated the dog as dangerous or vicious of the hearing officer's determination. (Sec. 955.222(C).)

Opportunity for appeal

The bill specifies that not later than 30 days after the hearing officer makes a final determination, the owner, keeper, or harbinger of the dog or the person who designated the dog as dangerous or vicious may appeal the hearing officer's determination to the municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger (secs. 955.222(C), 1901.18(A), and 1907.031(A)). In the case of a hearing conducted by a municipal court or county court, the owner, keeper, or harbinger of the dog or the person who designated the dog as dangerous or vicious may appeal the court's final determination as in any other case filed in that court (sec. 955.222(C)).

Disposition of dog during pendency of determination or appeal

Under the bill, a hearing officer or a court, as applicable, upon motion of an owner, keeper, or harbinger or an attorney representing the owner, keeper, or harbinger, may order that the dog designated as a dangerous or vicious dog be held in the possession of the owner, keeper, or harbinger until the hearing officer or court makes a final determination under the bill or during the pendency of an appeal, as applicable. Until the hearing officer or court makes a final determination and during the pendency of any appeal, the dog must be confined or restrained in accordance with the requirements governing dangerous dogs regardless of whether the dog has been designated as a vicious dog rather than a dangerous dog. The owner, keeper, or harbinger of the dog is not required to comply with any other requirements established in state law that concern a dangerous or vicious dog, as applicable, until the hearing officer or court makes a final determination and during the pendency of any appeal. (Sec. 955.222(D).)

Confinement and restraint requirements

Any dog

Current law establishes confinement and restraint requirements with which an owner, keeper, or harbinger of any dog must comply, except when the dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog. Under current law, the owner, keeper, or harbinger must do one of the following: (1) keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape, or (2) keep the dog under the reasonable control of some person. The bill modifies this requirement by requiring the owner, keeper, or harbinger to do one of the following: (1) keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by an adequate leash, tether, or fence, under adequate supervision, or

within a secure enclosure to prevent escape, or (2) keep the dog under the physical control of some person. (Sec. 955.22(C).)

Dangerous or vicious dog

Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by its owner, keeper, harbinger, or handler, current law prohibits an owner, keeper, or harbinger of a dangerous or vicious dog from failing to confine or restrain the dog in accordance with specified requirements. While the dog is on the premises of the owner, keeper, or harbinger, the dog must be securely confined at all times within a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog, in the alternative, may be tied with a leash or tether so that the dog is adequately restrained. The bill replaces the provision concerning a locked fenced yard with a provision specifying that the yard must be enclosed by a locked fence not less than six feet in height. (Sec. 955.22(D)(1).) In addition, the bill defines "locked" as being secured with a device that requires a key or combination to open (sec. 955.22(A)(2)).

While a dangerous or vicious dog that is not engaged in hunting activities is off the premises of its owner, keeper, or harbinger, current law requires the owner, keeper, or harbinger to keep the dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following: (1) keep the dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, (2) have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to the dog so as to prevent it from causing injury to any person, or (3) muzzle the dog (sec. 955.22(D)(2)).

The bill instead requires the owner, keeper, or harbinger of the dangerous or vicious dog to do at least one of the following while the dog is off the premises of the owner, keeper, or harbinger: (1) keep the dog in a locked pen that has a top, a yard that is enclosed by a locked fence not less than six feet in height, or some other locked enclosure that has a top, or (2) adequately muzzle the dog and keep the dog on a chain-link leash that is not more than six feet in length and that is controlled by a person who is of suitable age and discretion. The bill specifies that in no case can the person controlling the leash be younger than 14 years of age. (Sec. 955.22(D)(2).)

Penalty for violation involving vicious dog

The bill modifies the existing penalties for failure to comply with the confinement and restraint requirements governing vicious dogs. Those penalties

vary depending on whether a dog has injured or killed a person. First, current law specifies that a person who violates these requirements is guilty of a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. The bill adds that the court may require the vicious dog to be surgically spayed or neutered by a licensed veterinarian at the expense of the owner, keeper, or harborer. (Sec. 955.99(G)(2).)

Additionally, current law specifies that a person who violates the confinement and restraint requirements governing vicious dogs is guilty of a misdemeanor of the first degree if the dog causes injury, other than killing or serious injury, to any person. The bill replaces the language concerning serious injury with language concerning serious physical harm, as "serious physical harm" is defined in the bill (see above). (Sec. 955.99(G)(3).)

Finally, under current law, a person who violates the confinement and restraint requirements governing vicious dogs is guilty of a felony of the fourth degree on a first or subsequent offense if the dog kills or seriously injures a person. Additionally, the court must order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. The bill replaces the reference to a dog that seriously injures a person with a reference to a dog that causes serious physical harm to a person. (Sec. 955.99(G)(1).)

Prohibition against having more than one vicious dog

The bill prohibits any person from owning, keeping, or harboring more than one vicious dog or allowing the presence of more than one vicious dog on the premises where the person resides (sec. 955.22(I)). Under the bill, anyone who violates the prohibition is guilty of a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. Additionally, the court may order either of the following with respect to a vicious dog that was involved in the violation: (1) humane destruction of the dog by a licensed veterinarian, the county dog warden, or the county humane society, or (2) surgical spaying or neutering of the dog by a licensed veterinarian at the expense of the dog's owner, keeper, or harborer. (Sec. 955.99(K).)

Prohibition involving certain felons and vicious dogs

The bill prohibits any person who has been convicted of a felony violation of the law governing dogs, offenses relating to domestic animals, or drug offenses from owning, keeping, or harboring a vicious dog or residing on premises where a vicious dog is owned, kept, or harbored (sec. 955.22(J)). The penalty for violating

the prohibition is the same as the penalty for violating the prohibition against keeping more than one vicious dog (sec. 955.99(K)) (see above).

Liability insurance requirements

Current law requires an owner, keeper, or harbinger of a vicious dog to obtain liability insurance with an insurer authorized to write liability insurance in Ohio providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than \$100,000 because of damage or bodily injury to or death of a person caused by the vicious dog. The bill adds that failure to provide proof of the required liability insurance at the request of a person who is authorized to enforce the Dogs Law is prima-facie evidence of the lack of the insurance. (Sec. 955.22(E).)

Possible conditions for release of seized dog

The bill allows a person who is authorized to enforce the Dogs Law and who has seized a dog in response to an alleged violation of that Law, before releasing the dog, to require the dog's owner, keeper, or harbinger to have the dog registered and vaccinated as required by law and, if the dog is a vicious dog, to require proof that the owner, keeper, or harbinger possesses the required liability insurance (see above). The person who seized the dog may hold the owner, keeper, or harbinger liable for any costs associated with registering and vaccinating the dog that the person incurred as well as for costs associated with the housing, feeding, and care of the dog after the seizure. The person who seized the dog is not required to release the dog until the owner, keeper, or harbinger pays all applicable costs. (Sec. 955.22(K).)

Penalty for hindering capture of unregistered dog

Current law prohibits any person from obstructing or interfering with anyone lawfully engaged in capturing an unregistered dog or making an examination of a dog wearing a tag (sec. 955.24, not in the bill). Under current law, the penalty for violating this prohibition is a minor misdemeanor (sec. 955.99(B)). The bill increases the penalty to a misdemeanor of the fourth degree (sec. 955.99(D)).

Procedures upon transfer of ownership of dog

Fee increase

Under current law, upon the transfer of ownership of any dog, the seller of the dog must give the buyer a transfer of ownership certificate that must be signed by the seller. The certificate must contain the registration number of the dog, the name of the seller, and a brief description of the dog. Blank forms of the

certificate may be obtained from the county auditor. A transfer of ownership must be recorded by the auditor upon presentation of a transfer of ownership certificate that is signed by the former owner of a dog and that is accompanied by a fee of 25¢. The bill increases this fee to \$1. (Sec. 955.11(B).)

Technical changes

The bill makes several technical changes for purposes of gender neutrality and consistency (sec. 955.11(D)).

COMMENT

The provisions of the bill that establish an appeals process (see "Procedures governing designation of dog as dangerous or vicious," above) are a response to a recent opinion issued by the Supreme Court of Ohio holding that current law governing dangerous or vicious dogs is unconstitutional on procedural due process grounds because it fails to provide a dog owner with the right to be heard in a meaningful time and in a meaningful manner on the issue of whether the owner's dogs were vicious or dangerous. *State v. Cowan* (2004), 103 Ohio St.3d 144.

HISTORY

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