

1 HB439  
2 126306-1  
3 By Representatives Patterson, Johnson (W), Sanderford,  
4 Williams (P), McCutcheon and Hall (Constitutional Amendment)  
5 RFD: Madison County Legislation  
6 First Read: 05-APR-11

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8 SYNOPSIS: This bill would propose a local  
9 constitutional amendment to the Constitution of  
10 Alabama of 1901, applicable to those areas of  
11 Madison County outside the corporate limits of any  
12 municipality; would establish a procedure by which  
13 a dog can be declared dangerous and be humanely  
14 destroyed; would provide that a dog found to be  
15 dangerous, but which has not caused serious  
16 physical injury to a person, could be returned to  
17 the owner if certain registration requirements are  
18 met and the dog is securely enclosed; would provide  
19 immunity for county officers and employees; and  
20 would provide for penalties.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To propose an amendment to the Constitution of  
27 Alabama of 1901, relating to Madison County and relating to

1 dogs within those areas of Madison County outside the  
2 corporate limits of any municipality; to establish a procedure  
3 by which a dog can be declared dangerous and be humanely  
4 destroyed or a dog found to be dangerous, but which has not  
5 caused serious physical injury to a person, can be returned to  
6 the owner if certain registration requirements are met and the  
7 dog is securely enclosed; to provide for penalties; and to  
8 provide immunity for county officers and employees.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. The following amendment to the  
11 Constitution of Alabama of 1901, is proposed and shall become  
12 valid as a part of the Constitution when all requirements of  
13 this act are fulfilled:

14 PROPOSED AMENDMENT

15 Section 1. The people of the State of Alabama find  
16 and declare that: Certain dogs are an increasingly serious and  
17 widespread threat to the safety and welfare of citizens of  
18 this state by virtue of their unprovoked attacks on, and  
19 associated injury to, individuals; these attacks are in part  
20 attributable to the failure of owners to confine and properly  
21 train and control these dogs; existing laws inadequately  
22 address this problem; and it is therefore appropriate and  
23 necessary to impose requirements on the owners of dangerous  
24 dogs.

25 Section 2. The provisions of this constitutional  
26 amendment are applicable to those areas of Madison County  
27 outside the corporate limits of any municipality.

1                   Section 3. The following words shall have the  
2 following meanings:

3                   (1) ANIMAL CONTROL OFFICER. Any person employed by  
4 Madison County who performs animal control functions.

5                   (2) ATTACK. Aggressive physical contact initiated by  
6 a dog.

7                   (3) BITTEN. Seized with the teeth so that the skin  
8 of the person seized has been gripped or has been wounded or  
9 pierced.

10                  (4) DANGEROUS DOG. A dog, regardless of its breed,  
11 that has bitten, attacked, or caused physical injury to a  
12 human being, without provocation, or has repeatedly bitten or  
13 caused physical injury to humans, except a dog used by law  
14 enforcement officials for legitimate law enforcement purposes,  
15 a certified guide dog for the blind, a hearing dog for the  
16 deaf, or a service dog for the disabled.

17                  (5) DOG. All members of the canine family including  
18 dog hybrids.

19                  (6) IMPOUNDED. Taken into the custody of law  
20 enforcement, the county pound, or an animal control authority  
21 or provider of animal control services to Madison County.

22                  (7) OWNER. A person, firm, corporation, or  
23 organization having a right of property in a dog, or who keeps  
24 or harbors a dog, or who has a dog in his or her care or acts  
25 as the custodian of a dog, or who permits a dog to remain on  
26 or about any premises occupied by him or her.

1                   (8) PHYSICAL INJURY. An injury as defined in Section  
2 13A-1-2(12), Code of Alabama 1975.

3                   (9) PROPER ENCLOSURE OF A DANGEROUS DOG. An  
4 enclosure for the confinement of a dog that has been declared  
5 dangerous which is suitable to prevent the entry of the  
6 general public and:

7                   a. Is capable of being locked with a key or  
8 combination lock when the dog is within the structure.

9                   b. Has secure sides and a secure top attached at all  
10 sides. All four sides of the fence or pen must be sunk at  
11 least two feet into the ground or the fence or pen must be  
12 built over a concrete pad to prevent the animal from digging  
13 out.

14                   c. Provides adequate ventilation and protection from  
15 the elements.

16                   d. Exhibits a sign conspicuously posted upon the pen  
17 or the structure containing the following: "Dangerous Dog - No  
18 Trespassing."

19                   e. The enclosure shall be constructed to allow the  
20 dog to stand normally and without restriction and shall be not  
21 less than four times the length of the dog and two times the  
22 width of the dog.

23                   (10) SERIOUS PHYSICAL INJURY. An injury as defined  
24 in Section 13A-1-2(14), Code of Alabama 1975.

25                   Section 4. (a) An animal control officer or law  
26 enforcement officer shall investigate any incident involving  
27 any dog reported to be dangerous.

1 (b) If a dog that is unowned and has been reported  
2 to be dangerous bites a person, the dog may be quarantined and  
3 destroyed pursuant to Section 3-7A-9(b), Code of Alabama 1975.  
4 For the purposes of this subsection, "bites" means the same as  
5 "has been exposed" as defined in Section 3-7A-1(5), Code of  
6 Alabama 1975.

7 (c) If there is probable cause to believe that an  
8 owned dog is dangerous and has caused serious physical injury  
9 to a human being, a law enforcement officer or animal control  
10 officer shall impound the dog pending disposition of a  
11 petition to declare a dog to be dangerous. Madison County may  
12 impound the dog at the county pound as described in Section  
13 3-7A-7, Code of Alabama 1975, or may enter into an agreement  
14 with an animal shelter or licensed veterinarian to secure and  
15 impound dangerous dogs pursuant to this section. The owner of  
16 the dog shall be liable to Madison County for the costs and  
17 expenses incurred in impounding, feeding, and providing  
18 veterinary care or treatment for the dog.

19 (d) The district attorney, county attorney, or the  
20 designee of either, shall be authorized to file a petition in  
21 the district court to declare the dog that caused physical  
22 injury to a human being in Madison County to be dangerous. The  
23 owner of the dog shall be served with a copy of the petition.

24 (e) A dog that is the subject of a dangerous dog  
25 investigation may not be relocated and ownership shall not be  
26 transferred pending the outcome of the investigation and

1 hearing to determine whether to declare the dog to be  
2 dangerous.

3 (f) The court hearing shall be held as soon as  
4 practicable. At the hearing, the district attorney, county  
5 attorney, or the designee of either, shall present evidence  
6 that the dog is dangerous and whether the dog caused serious  
7 physical injury to a human being.

8 (1) If the court determines that the dog is  
9 dangerous and has caused serious physical injury or death to a  
10 human being, the court shall order the dog to be humanely  
11 euthanized by a licensed veterinarian or an authorized animal  
12 control official.

13 (2) If the court determines that the dog is  
14 dangerous, but has not caused serious physical injury or death  
15 to a human being or other animal, the court shall issue orders  
16 authorized by this section.

17 (g) The pleading and practice in all cases to  
18 petition the court to declare a dog to be dangerous under this  
19 section shall be in accordance with the Alabama Rules of Civil  
20 Procedure unless otherwise specified by this amendment. The  
21 court may tax all costs of the proceedings including  
22 attorney's fees and expert witness fees to the owner of the  
23 dog.

24 Section 5. (a) A dog may not be declared dangerous  
25 in any of the following circumstances:

26 (1) When an injury or damage was sustained by a  
27 person who at the time of the injury or damage was committing

1 a willful trespass or other tort upon premises occupied by the  
2 owner or custodian of the dog with the intent to commit a  
3 crime or was committing a crime; was teasing, tormenting,  
4 abusing, or assaulting the dog; or who can be shown to have  
5 repeatedly, in the past, provoked, tormented, abused, or  
6 assaulted the dog.

7 (2) When the dog was protecting or defending a  
8 person within the immediate vicinity of the dog from an  
9 unjustified attack or assault.

10 (3) When the dog was responding to pain or injury or  
11 protecting itself, its kennel, or its offspring.

12 (4) When a person or domestic animal was disturbing  
13 the natural functions of the dog such as sleeping or eating.

14 (b) Neither growling nor barking, or both, shall  
15 alone constitute grounds upon which to find a dog to be  
16 dangerous.

17 Section 6. (a) If a court determines that a dog is  
18 dangerous, but does not order that the dog be destroyed  
19 because evidence was insufficient to determine that the dog  
20 caused serious physical injury, in addition to any other  
21 requirements imposed by the court, within 30 days of the  
22 issuance of the order declaring the dog to be dangerous, the  
23 owner of the dog shall register the dog with the Madison  
24 County Animal Control Department. All certificates of  
25 registration required to be obtained under this section shall  
26 only be issued to persons 18 years of age or older who present  
27 evidence of the following:



1 (1) A current certificate of rabies vaccination.

2 (2) A current photograph of the dog.

3 (3) That the dog will be confined to a proper  
4 enclosure when the dog is outdoors and unattended.

5 (4) That the dog has been neutered or spayed, unless  
6 medically not needed.

7 (5) That the dog has been permanently identified by  
8 tattooing or injecting an identification microchip using  
9 standard veterinary procedures and practices, and the name,  
10 address, and phone number of the veterinarian performing the  
11 identification procedure.

12 (6) A policy of insurance, such as homeowner's, or a  
13 surety bond in the amount of not less than one hundred  
14 thousand dollars (\$100,000) covering the medical or veterinary  
15 costs, or both, resulting from any future dangerous actions of  
16 the dog.

17 (7) If the owner of the dangerous dog is not the  
18 owner of the property where the dog is kept, the owner of the  
19 dog must obtain from the property owner written permission for  
20 the dangerous dog to be kept there.

21 (8) A notarized affidavit from the owner of the  
22 dangerous dog stating that the dog will be under the control  
23 of a person 18 years or older when the dog is not in a proper  
24 enclosure or inside a building and that the dog will not be  
25 allowed outside the property of its owner except in  
26 emergencies or for normal or necessary medical or  
27 health-related treatment.

1 (b) If the owner fails to provide a proper enclosure  
2 for the dangerous dog or fails to provide a certification of  
3 dangerous dog registration to the court within 30 days of the  
4 issuance of the court's declaration that the dog is dangerous,  
5 the dog shall be humanely euthanized.

6 (c) The owner of the dangerous dog shall pay an  
7 annual fee to register the dog pursuant to the provisions of  
8 this amendment. The amount of the dangerous dog registration  
9 fee shall be established by the Madison County Commission. The  
10 payment of the dangerous dog registration fee shall be in  
11 addition to any regular dog licensing fee required by Madison  
12 County.

13 (d) An animal control officer or law enforcement  
14 officer may make whatever inquiry is deemed necessary to  
15 ensure compliance with this amendment and any court order  
16 issued pursuant to this amendment.

17 (e) Prior to a dangerous dog being sold or given  
18 away, the owner shall advise the new prospective owner in  
19 writing that the dog has been declared to be dangerous by a  
20 court and shall provide the Madison County Animal Control  
21 Department the name, address, and telephone number of the new  
22 owner. The new owner shall comply with all of the requirements  
23 of this amendment.

24 Section 7. The owner of a dog which has been  
25 declared to be dangerous by a court may petition the district  
26 court to remove the dangerous dog designation 18 months after  
27 the judicial declaration was issued. A copy of the petition

1 shall be served upon the district attorney or county attorney.  
2 The court may remove the dangerous dog designation and  
3 eliminate any requirements of this amendment if the owner of  
4 the dog has not violated this amendment and any orders of the  
5 court, and if the court is satisfied from the evidence that  
6 the dog is no longer dangerous.

7 Section 8. (a) If a dog that has previously been  
8 declared by a court to be dangerous, when unprovoked, shall  
9 cause serious physical injury or kill a human being the owner  
10 of the dog shall be guilty of a Class C felony.

11 (b) If a dog that has not been declared by a court  
12 to be dangerous, attacks and causes serious physical injury or  
13 death to any human being, and the owner of the dog had prior  
14 knowledge of the dangerous propensities of the dog, yet  
15 demonstrated a reckless disregard of the propensities under  
16 the circumstances, the owner of the dog shall be guilty of a  
17 Class A misdemeanor.

18 (c) In addition to any fines imposed by the court, a  
19 person guilty of violating subsections (a) and (b) of this  
20 section shall pay all expenses, including, but not limited to,  
21 shelter, food, veterinary expenses for boarding and veterinary  
22 expenses necessitated by impoundment of the dog, medical  
23 expenses incurred by a victim from an attack by a dangerous  
24 dog, and other expenses required for the destruction of the  
25 animal.

1 (d) An owner of a dog declared to be dangerous by a  
2 court who does not contain the dog in a proper enclosure shall  
3 be guilty of a Class C misdemeanor.

4 (e) An owner of a dog declared to be dangerous by a  
5 court who has been adjudicated guilty of subsection (d) and  
6 subsequently fails to contain a dangerous dog in a proper  
7 enclosure shall be guilty of a Class B misdemeanor.

8 Section 9. Nothing in this amendment shall be  
9 construed to repeal other criminal laws. Whenever conduct  
10 prescribed by any provision of this amendment is also  
11 prescribed by any other provision of law, the provision which  
12 carries the more serious penalty shall be applied.

13 Section 10. (a) Nothing in this amendment shall be  
14 construed to restrict or negate the requirements of the rabies  
15 control law contained in Sections 3-7A-1 to 3-7A-16,  
16 inclusive, Code of Alabama 1975.

17 (b) Nothing in this amendment is designed to  
18 abrogate any civil remedies available under statutory or  
19 common law.

20 Section 11. Any person who knowingly makes a false  
21 report to a law enforcement officer or an animal control  
22 officer that a dog is dangerous is guilty of a Class C  
23 misdemeanor.

24 Section 12. Madison County, its district attorney  
25 and its county attorney and any of its, or their employees or  
26 agents, and the individual issuing the dangerous dog  
27 certificate or registration shall be immune from any and all

1 liability for any actions taken or for any failure to act  
2 pursuant to this amendment.

3 Section 13. The Madison County Commission shall  
4 establish the date on which these provisions shall become  
5 effective.

6 Section 2. An election upon the proposed amendment  
7 shall be held in accordance with Amendment 555 to the  
8 Constitution of Alabama of 1901, now appearing as Section  
9 284.01 of the Official Recompilation of the Constitution of  
10 Alabama of 1901, as amended, and the election laws of this  
11 state.

12 Section 3. The appropriate election official shall  
13 assign a ballot number for the proposed constitutional  
14 amendment on the election ballot and shall set forth the  
15 following description of the substance or subject matter of  
16 the proposed constitutional amendment:

17 "Relating to Madison County, proposing an amendment  
18 to the Constitution of Alabama of 1901, for those areas of  
19 Madison County outside the corporate limits of any  
20 municipality, to establish a procedure by which a dog can be  
21 declared dangerous and humanely destroyed or returned to the  
22 owner if certain requirements are met and the dog is securely  
23 enclosed, to provide immunity for county officers and  
24 employees, and to provide for penalties.

25 "Proposed by Act \_\_\_\_\_."

26 This description shall be followed by the following  
27 language:

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"Yes ( ) No ( )."