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Bill Analysis

Legislative Service Commission

H.B. 366

127th General Assembly
(As Introduced)

Reps. Webster, Schindel

BILL SUMMARY

- Removes the specific inclusion of pit bull dogs from the definition of "vicious dog" in state law.
- Authorizes the adoption of local ordinances or resolutions that define "dangerous dog" and "vicious dog" more broadly than state law defines those terms.

CONTENT AND OPERATION

State dangerous and vicious dogs requirements

Current law

Current law establishes certain requirements and prohibitions governing the ownership of dangerous or vicious dogs. First, current law requires the seller or other transferor of a dog that he knows to be a dangerous or vicious dog (see "**Definitions**," below) to give, within ten days after the transfer of ownership or possession of the dog, to the buyer or other transferee, the board of health of the health district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides a completed copy of a written form on which the seller furnishes the name and address of the buyer or other transferee of the dog together with the age, sex, color, breed, and current registration number of the dog. The dog warden of the county in which the seller resides must furnish the form to the seller at no cost. The seller also must provide answers to questions regarding whether the dog ever has chased or attempted to attack or bite a person, bitten a person, or seriously injured or killed a person. If the answer to any of those questions is affirmative, the seller must describe any incidents in which the behavior occurred. (Sec. 955.11(D).) A person who fails to provide the form with the required information is guilty of a minor misdemeanor

on a first offense and a fourth degree misdemeanor on each subsequent offense (sec. 955.99(A)(2), not in the bill).

Second, existing law prohibits an owner, keeper, or harbinger of a dangerous or vicious dog from failing to do either of the following, except when the dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, or harbinger or a handler:

(1) While the dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;

(2) While the dog is off the premises of the owner, keeper, or harbinger, keep it 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:

(a) Keep the dog in a locked pen that has a top, locked fenced yard or other locked enclosure that has a top;

(b) 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;

(c) Muzzle the dog (sec. 955.22(D), not in the bill).

Under current law, an owner, keeper, or harbinger of a dangerous dog who fails to comply with the confinement and restraint requirements is guilty of a fourth degree misdemeanor on a first offense and a third degree misdemeanor on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance (see below). The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. (Sec. 955.99(F), not in the bill.)

Existing law specifies that an owner, keeper, or harbinger of a vicious dog who fails to comply with the confinement and restraint requirements is guilty of one of the following:

(1) A fourth degree felony 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.

(2) A first degree misdemeanor on a first offense and a fourth degree felony 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.

(3) A first degree misdemeanor if the dog causes injury other than killing or serious injury to any person. (Sec. 955.99(G), not in the bill.)

Third, existing law requires an owner, keeper, or harbinger of a vicious dog, but not a dangerous 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 (sec. 955.22(E), not in the bill). A person who fails to obtain the required liability insurance is guilty of a first degree misdemeanor (sec. 955.99(H), not in the bill).

Finally, current law prohibits a person from debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog, from possessing a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced, and from falsely attesting on a waiver form provided by a veterinarian that the person's dog is not a vicious dog or otherwise providing false information on that written waiver form (see below) (sec. 955.22(F), not in the bill). A person who violates those provisions is guilty of a fourth degree felony. 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. (Sec. 955.99(J), not in the bill.)

Existing law specifies that before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that contains specified information and attests that the dog is not a vicious dog. The information must include the owner's signature attesting that the dog is not a vicious dog. (Sec. 955.22(G), not in the bill.) It is an affirmative defense to a charge of a violation of the prohibition against debarking a vicious dog if the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver that contains the required information and that attests that the dog is not a vicious dog (sec. 955.22(H), not in the bill).

Definitions. 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 harbinger and not under the reasonable control of its owner, keeper, or harbinger 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 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).)

Existing law defines "vicious dog" as a dog that, without provocation and subject to the exceptions described below, 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. The ownership, keeping, or harboring of a pit bull dog is prima-facie evidence of the ownership, keeping, or harboring of a vicious dog. "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 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. (Sec. 955.11(A)(4).)

The bill

The bill removes the provisions regarding pit bulls from the definition of "vicious dog." However, it appears that under the bill, although pit bull dogs are not specified in the definition of "vicious dog," a pit bull dog could be considered a dangerous or vicious dog if the dog met any of the remaining conditions that define either a dangerous or vicious dog. In that case, the owner of the pit bull dog would have to comply with the requirements governing ownership of a dangerous or vicious dog. (Sec. 955.11(A)(4)(a)(iii).)

¹ Under existing 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 (sec. 955.11(A)(5)). "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)).

Local ordinances or resolutions to control dogs

In addition to state statutory law that governs dangerous or vicious dogs, current law authorizes local ordinances and resolutions governing dogs to be adopted and enforced as long as the ordinances and resolutions do not conflict with state law. Specifically, state law authorizes a board of county commissioners to adopt and enforce regulations to control dogs within the unincorporated areas of the county that are not otherwise in conflict with any other provision of state law. (Sec. 955.221(B)(1).) A municipal corporation likewise may adopt and enforce ordinances to control dogs within the municipal corporation that are not otherwise in conflict with state law (sec. 955.221(B)(3)).

Under existing law, a board of township trustees may adopt and enforce resolutions to control dogs within the township that are not otherwise in conflict with any other provision of state law if the township is located in a county where the board of county commissioners has not adopted resolutions to control dogs within the unincorporated areas of the county. If the board of county commissioners adopts resolutions to control dogs in the county after a board of township trustees has adopted resolutions to control dogs within the township, the resolutions adopted by the county prevail over the resolutions adopted by the township. (Sec. 955.221(B)(2).)

Current law prohibits any person from violating any local ordinance or resolution to control dogs (sec. 955.221(C)). Whoever violates the prohibition is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense. Fines levied and collected for violating a local ordinance or resolution must be distributed to the treasury of the county, township, or municipal corporation whose resolution or ordinance was violated. (Sec. 955.99(I), not in the bill.)

Under existing law, resolutions or ordinances to control dogs include, but are not limited to, resolutions or ordinances concerned with the ownership, keeping, or harboring of dogs, the restraint of dogs, dogs as public nuisances, and dogs as a threat to public health, safety, and welfare. Such ordinances and resolutions cannot prohibit the use of any dog that lawfully is engaged in hunting or training for the purpose of hunting while accompanied by a licensed hunter. However, at all other times and in all other respects, those dogs are subject to the ordinances or resolutions.

The bill retains all of the above existing law and adds that such local ordinances and resolutions may define "dangerous dog" or "vicious dog" more broadly than those terms are defined in existing law as amended by the bill. Such expanded definitions must not be considered to be in conflict with state law. (Sec. 955.221(A).)

HISTORY

ACTION

DATE

Introduced

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