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Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 78
Judiciary

(Delegate Simmons, *et al.*)

Judicial Proceedings

Civil Actions - Personal Injury or Death Caused by Dog - Rebuttable Presumption

This emergency bill establishes that in an action for damages against an owner of a dog for personal injury or death caused by the dog, evidence that the dog caused the personal injury or death creates a rebuttable presumption that the owner knew or should have known that the dog had vicious or dangerous properties.

The common law of liability as it existed on April 1, 2012, applies to an action for personal injury or death caused by a dog against a person other than the dog's owner, regardless of the dog's breed or heritage.

The bill's provisions do not affect any other common law or statutory cause of action, defense, or immunity. The bill applies prospectively, and does not have any effect on or application to any cause of action arising before its effective date.

Fiscal Summary

State Effect: Potential minimal reduction in future special fund expenditures to the extent that the Department of Natural Resources falls under the purview of the *Solesky* decision. Leashed dogs are generally permitted in State parks. Tort claims against a State agency are typically paid out of the State Insurance Trust Fund. Any increase in administrative duties for the Maryland Insurance Administration can be handled with existing resources.

Local Effect: Potential minimal impact on local government housing authorities from decreased liability for future dog bite claims occurring on public housing property. Potential meaningful impact on local government animal shelters and animal control units if the bill reduces the number of pit bulls and mixed-breed pit bulls abandoned and/or euthanized in the future as a result of fewer renters surrendering their pets or

continued willingness by the public to adopt these dogs. Potential minimal impact if the bill reduces future claims/litigation for injuries sustained at local government parks or dog runs.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill specifically includes landlords, condominium councils of unit owners, cooperative housing corporations, and homeowners associations as individuals/entities to whom the April 1, 2012 common law liability standard applies.

The bill also expresses the intent of the General Assembly that the bill's provisions abrogate the holding of the Court of Appeals in *Tracey v. Solesky*, 427 Md. 627 (2012).

Current Law: Prior to April 26, 2012, in order for a person to hold a dog owner liable for damages as a result of being attacked by the owner's dog (regardless of breed), the person had to show that the dog had a vicious propensity that was known to the owner. Although this is commonly referred to as the "one-bite rule," a plaintiff seeking to recover damages for injuries caused by a dog bite is not required to prove that the dog actually bit someone prior to the attack. The owner's knowledge of the dog's vicious propensity "need only be such as to put him on his guard, and to require him as an ordinary prudent person to anticipate the act or conduct of the dog resulting in the injury for which the owner is sought to be held liable." *Shields v. Wagman*, 350 Md. 666, 686 (1986), quoting *Bachman v. Clark*, 128 Md. 245, 248 (1916).

Modification of Common Law Rule: On April 26, 2012, the Court of Appeals modified this common law rule with respect to attacks by pit bulls and mixed-breed pit bulls and established a strict liability standard with respect to the owning, keeping, or controlling of such dogs. (*Tracey v. Solesky*, 427 Md. 627 (2012)). (For more information on the *Solesky* decision, please see the "Background" section of this fiscal and policy note.)

Rebuttable Presumptions: Rebuttable presumptions generally exist in two varieties – ones that allocate the burden of persuasion and/or the initial production of evidence and ones that assist a party in a civil case or a criminal defendant by shifting the burden of the production of evidence to an opposing party.

Under the second type of rebuttable presumption, the existence of a basic fact (*e.g.*, the defendant's dog caused the personal injury or death) creates the presumption of the existence of a presumed fact (*e.g.*, the defendant/dog owner knew or should have known that the dog had vicious or dangerous propensities), the nonexistence of which

must be proven by evidence presented by the party burdened by the presumption (the defendant/dog owner).

Under Maryland Rule 5-301, a presumption in a civil action imposes on the party against whom the presumption is directed the burden of producing evidence to rebut the presumption. If that party (the dog owner under this bill) produces evidence tending to disprove the presumed fact, the presumption retains the effect of creating a question to be decided by the trier of fact unless the court concludes that the evidence presented is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.

Background: In *Tracey v. Solesky*, the Court of Appeals held that, on proof that a dog involved in an attack is a pit bull or a mixed-breed pit bull and that the owner, or other person having the right to control the dog's presence on the premises, knows, or has reason to know, that the dog is a pit bull or a mixed-breed pit bull, that person is strictly liable for the resulting damages caused to a plaintiff who is attacked by the dog.

Justifying the change from the common law rule to a strict liability standard in pit bull cases, the majority opinion noted the number of cases involving serious maulings by pit bulls that had reached the appellate courts and cited precedents holding that the common law is subject to change not only by the General Assembly but also by the court in light of "modern circumstances or increased knowledge." To that end, the court reviewed related cases from other jurisdictions and a number of recent studies that associated attacks by "pit bull-type" dogs with significantly higher mortality rates, higher hospital charges, and a higher risk of death compared to attacks by other breeds. These sources, as well as "numerous instances of serious and often fatal attacks by pit bulls throughout the country, and especially in Maryland," persuaded the court that the common law needed to be changed to a strict liability standard in relation to pit bulls and mixed-breed pit bulls. Remanding the case, the court ordered the trial court to apply the new rule.

The dissenting opinion accused the majority of unjustifiably violating the doctrine of *stare decisis*, which requires judges to follow precedent in all but the most unusual situations. The dissent called the new rule "unworkable" and questioned how it could be applied without a definition of what constitutes a "mixed-breed" pit bull. These issues, the dissenters argued, are best resolved by the Maryland General Assembly.

Attorneys for the defendant landlord in the case filed a motion for reconsideration with the Court of Appeals on May 25, 2012. The motion asked the court to immediately rule on the motion to reconsider its original decision in the *Solesky* case or, alternatively, consider holding its decision on the motion pending the conclusion of the General Assembly's second special session of 2012.

Creation of Legislative Task Force on Court Decision: The *Solesky* ruling drew sharp criticism from dog owners, animal advocacy groups, landlords, and insurers. Common complaints about the decision included (1) the court's departure from *stare decisis*; (2) the application of a different standard of liability to pit bulls and mixed-breed pit bulls based on questionable statistics and scientific studies; (3) the lack of guidance in the opinion as to what constitutes a pit bull or a mixed-breed pit bull; and (4) the consequences of immediately holding landlords to a higher level of liability for dogs that are permitted under leases currently in effect without consideration to the lengthy legal process needed to remove a dog from a rental property.

Concerns were raised that the court decision would lead to pit bull owners being threatened with eviction from rental housing and having to choose between their homes and their pets, animal shelters being overrun with abandoned pit bulls, and pit bulls being euthanized.

In response, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls. The task force met on two occasions in June 2012. During its initial meeting, the task force heard testimony from a series of panels regarding the impact of the court's ruling. Common themes in the testimony included (1) imposing greater liability on all dog owners and emphasis on more responsible dog ownership (including spaying and neutering) in lieu of breed-specific standards; (2) the lack of guidance in the opinion as to what constitutes a pit bull or a mixed-breed pit bull; and (3) the ruling's effect on the rental market, including higher rents and insurance premiums for landlords and potential bans on all dogs in rental properties.

Second Special Session of 2012: Though the task force did not propose a bill of its own, several legislators introduced bills during the second special session of 2012 to address the *Solesky* decision. The bills varied in their approaches; some would have restored the common law rule prior to the *Solesky* decision, while others would have imposed strict liability on all dog owners under specified circumstances. However, the General Assembly failed to reach a consensus during the brief special session.

Recent Developments: On August 21, 2012, the Court of Appeals reconsidered its original decision and limited the application of its original ruling in the *Solesky* case to purebred pit bulls. As a result, owners of purebred pit bulls and landlords of tenants who own purebred pit bulls are strictly liable for the actions of those dogs, while the traditional common law rule applies to owners of mixed-breed pit bulls and other breeds of dogs and their landlords.

The court's revision of its original ruling did little to calm public anxiety over the ruling. Animal advocates and landlords commented that because the original and revised decisions do not define what constitutes a "pit bull," the court gave little direction to dog

owners, landlords, and others affected by the ruling, and enforcement of the ruling will be difficult and arbitrary. Some animal experts noted that there is no such thing as a purebred pit bull, since that term refers to a category of dogs, some of which are mixed breeds, rather than a specific pure breed recognized by the American Kennel Club. Other experts and advocates explained the difficulty in identifying a dog's breed by sight and feared that the ruling's lack of direction will lead to erroneous enforcement.

Several news reports emerged of landlords banning pit bulls from rental properties and animal shelters preparing for an influx of pit bulls as a result of the court's decision. For example, in August 2012, the management at Armistead Gardens, a housing cooperative in Baltimore City, informed its 1,500 residents that purebred pit bulls and mixed-breed pit bulls are banned from the neighborhood effective immediately and tenants who fail to get rid of their pit bulls face eviction. In September 2012, a resident of Armistead Gardens filed a lawsuit in federal court against the State and the management company and requested a temporary stay on the eviction of residents and a temporary restraining order against the *Solesky* decision. The resident claims in his lawsuit that the decision by the Court of Appeals unconstitutionally overrode and violated his property rights in his pit bull and deprived him of his right to procedural due process by failing to provide a standard to evaluate what constitutes a pit bull. On October 14, 2012, the resident added the Governor, the Attorney General, and the Chief Judge of the Court of Appeals as defendants in the lawsuit, claiming that they failed to fulfill their duty to ensure that laws are faithfully executed and to uphold the Maryland Constitution and U.S. Constitution. The federal court is considering whether or not to issue an injunction on the neighborhood's ban pending adjudication of the case.

The Task Force to Study the Court Decision Regarding Pit Bulls met again in October in an attempt to develop a consensus on legislation for the 2013 session.

Civil Liability for Dog Bites or Injury in Other States: Thirty-three states have modified the common law by enacting a statute that imposes strict liability to *any* dog bite, including a first bite, under specified circumstances. While the applications of these statutes and exceptions to strict liability vary from state to state, none of the statutes encompasses a landlord and none is breed-specific. In two additional states, New York and North Carolina, strict liability applies only to a "dangerous dog," which is a term that carries a statutory definition and typically involves a dog that has been the aggressor in a prior attack.

Approximately 21 of the strict liability states apply a strict liability standard to any injury caused by a dog. The other strict liability states limit the application of their statutes to a dog bite.

In several states, the application of the strict liability standard is restricted. For example, in Indiana, strict liability is applied only when the injured person is a police officer, firefighter, postal worker, or other person at a location because of a legal duty.

Three states limit the type of damages that may be recovered. In Pennsylvania, recovery is limited to the costs of medical treatment. In Alabama, recovery is limited to actual expenses. Colorado limits the scope of recovery to economic damages. Colorado also limits recovery to cases of serious bodily injury or death.

Common exceptions to strict liability statutes include trespassing and provocation of the dog. At least eight states (Arizona, California, Colorado, Indiana, Nebraska, New Hampshire, Tennessee, and Utah) exempt police or military dogs from strict liability. **Appendix – Civil Liability for Injury or Death Caused by Dog** contains detailed information on how states approach civil liability for injury or death caused by a dog.

Local Fiscal Effect: To the extent that a local government is considered a landlord or individual/entity with the authority to control the presence of a pit bull or a mixed-breed pit bull on public housing premises, local governments may experience a minimal decrease in expenditures from dog bite claims that may have occurred under the ruling's strict liability standard. However, this fiscal and policy note assumes that local housing authorities would have eventually enacted policies to prohibit the presence of affected dogs (other than service animals) in response to the court's ruling.

The Housing Authority of Baltimore City (HABC) is the landlord for approximately 11,000 dwelling units of public housing. Pit bulls, mixed-breed pit bulls, and other specified breeds of dogs are not permitted on public housing premises under HABC's pet policy, which is incorporated into the lease. HABC's property managers are responsible for lease enforcement due to pet policy violations. Since the ruling imposes a greater liability on HABC as a landlord, the ruling may result in a change in HABC's insurance coverage and may require HABC to hire additional property managers/monitoring personnel in the future to ensure that pit bulls and mixed-breed pit bulls are not being harbored in HABC's residential properties. The extent of this need cannot be reliably estimated at this time, but any future expenditures for increased insurance premiums and additional monitors will be avoided as a result of the bill's reinstatement of common law liability for dog bite claims against landlords.

The bill has no fiscal impact on Prince George's County. In 1996, Prince George's County enacted a ban on pit bulls. A person who owns a pit bull terrier registered with the county's Animal Management Division before February 3, 1997, may continue to harbor the animal so long as he/she maintains a current registration with the county. The ban affects the following breeds: Staffordshire Bull Terrier, American Staffordshire Terrier, American Pit Bull Terrier, or a dog that exhibits the characteristics of any one of

these breeds more than any other breed of dog or has been registered at any time as a pit bull terrier. Violators are subject to a maximum fine of \$1,000 or up to six months imprisonment.

Small Business Effect: The bill has a meaningful impact on landlords who would otherwise experience decreased rental revenues due to instituting dog bans in response to the ruling. The bill also has a meaningful impact on landlords who accept dog-owning tenants and would otherwise experience increased insurance premiums, decreased liability coverage, and/or increased claims for damages from dog bite injuries as a result of the court's ruling, offset in part by increased revenues from higher rental rates for dog-owning tenants. Animal-related small businesses (veterinarians, kennels, etc.) may also experience a meaningful reduction in future expenditures for insurance coverage and liability claims as a result of the bill. The bill may also have a meaningful impact on small business animal shelters due to fewer abandoned or euthanized pit bulls and mixed-breed pit bulls as a result of fewer renters surrendering their pets or continued willingness by the public to adopt these dogs.

Additional Information

Prior Introductions: None.

Cross File: SB 160 (Senator Frosh, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Attorney General, Department of Housing and Community Development, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Baltimore City, Prince George's County, Animal Legal and Historical Center, *Washington Post*, *Maryland Practice – Volume 5 (Maryland Evidence State and Federal) (Second Edition)* (2001), Department of Legislative Services

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**Appendix – Civil Liability for Injury or Death Caused by Dog
(February 2013)**

Common law negligence for any injury or death caused by a dog owned, kept or harbored by a person	Alaska, Arkansas, Idaho, Kansas, Maryland, Mississippi, Nevada, New Mexico, New York*, North Carolina*, North Dakota, Oregon, South Dakota, Texas, Vermont, Virginia, and Wyoming
Strict liability against owner for any dog bite	Alabama, California, Delaware, Florida, Illinois, Iowa, Louisiana, Montana**, Nebraska, New Jersey, Oklahoma***, Tennessee, Washington, and Wisconsin
Strict liability for any dog bite against any person who owns or keeps a dog	Arizona, Colorado, Connecticut, Georgia, Hawaii, Indiana****, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Utah, and West Virginia
Strict liability against landlord	None
Exception to strict liability when the injured person provoked, tormented, or abused the dog	Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Washington
Exception to strict liability if injured person was trespassing or committing another tort and/or criminal offense	Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, and Washington
Exception to strict liability if injured person was not acting peaceably	Illinois, Indiana, and Minnesota
Strict liability only if dog was at large or outside owner/keeper's enclosure	Georgia, Maine, Rhode Island, Tennessee, and West Virginia

*New York and North Carolina maintain the common law except under very limited circumstances in which the dog has been declared a dangerous dog based on a prior attack.

**Montana's strict liability standard only applies to public places in incorporated municipalities or a private place where a person has a right to be, including the owner's property.

***Oklahoma's strict liability standard does not apply in "rural areas."

****Indiana's strict liability standard only applies when the injured person is a police officer, firefighter, postal worker, or other person at the location because of a legal duty.

Source: Animal Legal and Historical Center; Department of Legislative Services