

House Bill 2852

Sponsored by Representative BERGER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires keeper of pit bull to maintain liability insurance. Makes violation punishable by maximum fine of \$180. Directs court to order keeper found in violation to prove compliance within period established by court. Makes failure to prove compliance with order punishable by maximum fine of \$720 per day.

Creates crime of maintaining potentially dangerous dog. Makes first offense punishable by maximum of 30 days' imprisonment, \$1,250 fine, or both. Makes second or subsequent offense punishable by maximum of six months' imprisonment, \$2,500 fine, or both.

Changes elements for crime of maintaining dangerous dog. Makes most violations punishable by maximum of one year's imprisonment, \$6,250 fine, or both. Makes punishable by maximum of five years' imprisonment, \$125,000 fine, or both, if dog kills person or for second or subsequent offense resulting in serious physical injury.

Eliminates potentially dangerous dog behavior from public nuisance statute. Adds menacing behavior to public nuisance statute.

A BILL FOR AN ACT

1
2 Relating to dogs; creating new provisions; and amending ORS 609.035, 609.090, 609.093, 609.095,
3 609.098, 609.115 and 609.990.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Keeper" has the meaning given that term in ORS 609.035.**

7 (b) **"Pit bull" means a dog that:**

8 (A) **Is registered or otherwise listed as an American pit bull terrier, Staffordshire bull**
9 **terrier or American Staffordshire terrier with a dog breed club or league, dog fanciers as-**
10 **sociation, breed registry or similar organization; or**

11 (B) **Has appearance and physical characteristics that substantially conform to the breed**
12 **standards of the United Kennel Club for an American pit bull terrier or of the American**
13 **Kennel Club for a Staffordshire bull terrier or American Staffordshire terrier, as those**
14 **standards existed on January 1, 2009.**

15 (2) **The keeper of a pit bull shall maintain in effect insurance in the amount of \$1 million**
16 **that provides coverage for any economic or noneconomic damages resulting from physical**
17 **injury or damage to personal or real property caused by the pit bull.**

18 (3) **If a court finds a person guilty of violating subsection (2) of this section, the court**
19 **shall order the person to provide the local dog control district, or, if no local district exists,**
20 **provide the court, with proof of compliance with subsection (2) of this section within a period**
21 **established by the court, not to exceed 30 days. If the person complies with the court order**
22 **by ceasing to be the keeper of a pit bull, proof of compliance shall include details regarding**
23 **the disposition made of the dog, including the name and address of any new keeper.**

24 (4)(a) **Violation of subsection (2) of this section is a Class C violation.**

25 (b) **Failure to provide proof of compliance with a court order issued under subsection (3)**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 of this section is a Class A violation. Each day that the person fails to provide proof of
 2 compliance with an order issued under subsection (3) of this section after expiration of the
 3 period established by the court is a separate violation.

4 **SECTION 2. (1) As used in this section:**

5 (a) "Keeper" has the meaning given that term in ORS 609.035.

6 (b) "Physical injury" has the meaning given that term in ORS 161.015.

7 (c) "Potentially dangerous dog" means a dog that:

8 (A) Without provocation and while not on premises from which the keeper may lawfully
 9 exclude others, menaces a person;

10 (B) Without provocation, inflicts physical injury on a person that is less severe than a
 11 serious physical injury; or

12 (C) Without provocation and while not on premises from which the keeper may lawfully
 13 exclude others, inflicts physical injury or serious physical injury on a domestic animal as
 14 defined in ORS 167.310.

15 (d) "Potentially dangerous dog" does not mean a law enforcement animal as defined in
 16 ORS 167.310.

17 (e) "Serious physical injury" has the meaning given that term in ORS 161.015.

18 (2) A person commits the crime of maintaining a potentially dangerous dog if the person
 19 is the keeper of a dog and the person:

20 (a) With criminal negligence, fails to prevent the dog from engaging in an act described
 21 in subsection (1)(c)(A) of this section.

22 (b) Fails to prevent the dog from committing an act described in subsections (1)(c)(B) or
 23 (C) of this section.

24 (3) Maintaining a potentially dangerous dog is punishable as provided in section 3 of this
 25 2009 Act.

26 **SECTION 3. (1) Maintaining a potentially dangerous dog in violation of section 2 of this
 27 2009 Act:**

28 (a) Is a Class C misdemeanor for a first offense.

29 (b) Is a Class B misdemeanor for a second or subsequent offense, whether or not in-
 30 volving the same dog.

31 (2) If a keeper violates section 2 of this 2009 Act, the court may order the potentially
 32 dangerous dog killed in a humane manner. In determining whether to have the dog killed,
 33 the court shall give consideration to, and issue written findings regarding, the following:

34 (a) The circumstances and severity of the behavior;

35 (b) The ability and inclination of the keeper to comply with reasonable restrictions on the
 36 keeping of the dog; and

37 (c) Any other factors that the court may deem relevant.

38 (3)(a) If a keeper violates section 2 of this 2009 Act and the court does not order the
 39 potentially dangerous dog killed, the court shall impose reasonable restrictions on the keep-
 40 ing of the potentially dangerous dog to ensure the safety or health of the public. The keeper
 41 must pay the cost of complying with reasonable restrictions. The reasonable restrictions
 42 shall include, at a minimum, that:

43 (A) The dog be confined in a secure enclosure having features designed to prevent the
 44 escape of the dog.

45 (B) The dog be on a leash and under the control of an adult person whenever outside the

1 secure enclosure.

2 (C) The keeper post conspicuous warning signs on the secure enclosure stating that the
3 building or enclosure contains a potentially dangerous dog.

4 (D) The dog be implanted with an identifying microchip.

5 (E) The keeper report to the local dog control district, or, if no local dog control district
6 exists, to the court, any change of location of the dog, change of keeper, escape or death of
7 the dog.

8 (b) Reasonable restrictions imposed under this subsection may also include, but need not
9 be limited to, requirements that:

10 (A) The dog be sterilized.

11 (B) The dog be muzzled whenever outside the secure enclosure where normally confined.

12 (C) The keeper give written notice to a veterinarian, dog groomer, humane society
13 worker, dog trainer, dog handler or other person that the dog is a potentially dangerous dog
14 before presenting the dog to the person for the receipt of care or services.

15 (4) Maintaining a dangerous dog in violation of ORS 609.098:

16 (a) Except as provided in paragraph (b) of this subsection, is a Class A misdemeanor.

17 (b) Is a Class C felony:

18 (A) If a dog kills a person; or

19 (B) For a second or subsequent offense that results from a dog inflicting serious physical
20 injury on a person.

21 (5) If a keeper violates ORS 609.098, the court shall order the dangerous dog killed in a
22 humane manner.

23 (6) In addition to any fine or sentence imposed under this section, a court may order a
24 person who violates ORS 609.098 or section 2 of this 2009 Act to pay restitution for any
25 physical injury, death or property damage caused by the dog as a result of the keeper's vio-
26 lation of ORS 609.098 or section 2 of this 2009 Act. The court may also order the person to
27 pay the cost of keeping the dog in impoundment.

28 (7) Notwithstanding ORS 19.270 and 19.330, subject to periodic advance payment of the
29 cost of keeping the dog in impoundment, the killing of a dog pursuant to an order under this
30 section may not be carried out during the period that the order is subject to the appeal
31 process. Unless otherwise ordered by the Court of Appeals, the dog may be killed during the
32 appeal period if the keeper fails to maintain advance payment of the cost of keeping the dog
33 in impoundment.

34 (8) If a court orders a dog killed under this section and the keeper does not make the
35 dog available for that purpose, the court may issue a search warrant for a property upon
36 probable cause to believe that the dog is located at that property.

37 **SECTION 4.** ORS 609.035 is amended to read:

38 609.035. As used in ORS 609.035 to 609.110 and 609.990:

39 (1) "Dog control board" means a group of persons whose duties include, but need not be limited
40 to, fulfilling the duties of a dog control district board of supervisors as described in ORS 609.030.

41 (2) "Dog control officer" means a person whose duties include, but need not be limited to, en-
42 forcing the dog control laws for a dog control district.

43 (3) "Keeper" means a person who owns, possesses, controls or otherwise has charge of a dog,
44 other than:

45 (a) A licensed business primarily intended to obtain a profit from the kenneling of dogs;

- 1 (b) A humane society or other nonprofit animal shelter;
- 2 (c) A facility impounding dogs on behalf of a city or county; or
- 3 (d) A veterinary facility.

4 (4) “Menaces” means lunging, growling, snarling or other behavior by a dog that would cause
5 a reasonable person to fear for the person’s safety.

6 [(5) “Potentially dangerous dog” means a dog that:]

7 [(a) Without provocation and while not on premises from which the keeper may lawfully exclude
8 others, menaces a person;]

9 [(b) Without provocation, inflicts physical injury on a person that is less severe than a serious
10 physical injury; or]

11 [(c) Without provocation and while not on premises from which the keeper may lawfully exclude
12 others, inflicts physical injury on or kills a domestic animal as defined in ORS 167.310.]

13 [(6)] (5) “Running at large” means that a dog is off or outside of the premises from which the
14 keeper of the dog may lawfully exclude others, or is not in the company of and under the control
15 of its keeper, except if the dog is:

- 16 (a) Being used to legally hunt, chase or tree wildlife while under the supervision of the keeper;
- 17 (b) Being used to control or protect livestock or for other activities related to agriculture; or
- 18 (c) Within any part of a vehicle.

19 [(7) “Serious physical injury” has the meaning given that term in ORS 161.015.]

20 **SECTION 5.** ORS 609.090 is amended to read:

21 609.090. (1) A law enforcement officer or dog control officer may cite a keeper, impound a dog,
22 or both if:

- 23 (a) The dog is found running at large in violation of ORS 609.060;
- 24 (b) The dog is a public nuisance as described by ORS 609.095; or
- 25 (c) The officer has probable cause to believe that the dog is a **potentially dangerous dog as**
26 **defined in section 2 of this 2009 Act or a** dangerous dog as defined in ORS 609.098.

27 (2) All dogs impounded under this section and ORS 609.030 shall be held in an adequate and
28 sanitary pound to be provided by the county governing body from the general fund or out of funds
29 obtained from dog licenses and from the redemption of dogs so impounded. However, in lieu of the
30 establishment of a dog pound, the county governing body may contract for the care of the dogs.
31 Unless claimed by its keeper, a dog shall be impounded for at least three days if the dog is without
32 a license or identification tag and for at least five days if it has a license or identification tag. A
33 reasonable effort shall be made to notify the keeper of a dog before the dog is removed from
34 impoundment.

35 (3) Unless the dog control board or county governing body provides otherwise, if the keeper
36 appears and redeems the dog, the keeper shall pay a sum of not less than \$10 for the first
37 impoundment and not less than \$20 for each subsequent impoundment and also pay the expense of
38 keeping the dog during the time it was impounded. If the dog is unlicensed the keeper shall also
39 purchase a license and pay the applicable penalty for failure to have a license. If the keeper is not
40 the owner of the dog, the keeper may request that a license purchased by the keeper under this
41 subsection be issued in the name of the dog owner.

42 (4) In addition to any payment required pursuant to subsection (3) of this section, a dog control
43 board or county governing body may require as a condition for redeeming the dog that the keeper
44 agree to reasonable restrictions on the keeping of the dog. The keeper must pay the cost of com-
45 plying with the reasonable restrictions. As used in this subsection, “reasonable restrictions” may

1 include, but is not limited to, sterilization.

2 (5) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable
 3 restrictions imposed under subsection (4) of this section or if a keeper fails to provide acceptable
 4 proof of compliance to the dog control board or county governing body on or before the 10th day
 5 after issuance of the order imposing the restrictions. If the board or governing body finds the proof
 6 submitted by the keeper unacceptable, the board or governing body shall send notice of that finding
 7 to the keeper no later than five days after the proof is received.

8 (6) If no keeper appears to redeem a dog within the allotted time, the dog may be killed in a
 9 humane manner. The dog control board or county governing body may release the dog to a respon-
 10 sible person upon receiving assurance that the person will properly care for the dog and upon pay-
 11 ment of a sum established by the county governing body plus cost of keep during its impounding,
 12 and purchase of a license if required. The person shall thereafter be the keeper of the dog for pur-
 13 poses of ORS 609.035 to 609.110.

14 (7) If the keeper of a dog is not charged with violating ORS 609.095 (2) or (3) or ORS 609.098
 15 **or section 2 of this 2009 Act**, and the dog control board or county governing body finds that the
 16 dog has menaced or chased a person when on premises other than the premises from which the
 17 keeper may lawfully exclude others or has bitten a person, the dog control board or county gov-
 18 erning body may order that the dog be killed in a humane manner. Before ordering that the dog be
 19 killed, the board or governing body shall consider the factors described in ORS 609.093 and issue
 20 written findings on those factors. Notwithstanding ORS 34.030, if the disposition order issued by the
 21 board or governing body provides that the dog is to be killed, a petition by the keeper for a writ
 22 of review must be filed no later than the 10th day after the dog control board or county governing
 23 body sends notice of the order to the keeper. Notwithstanding ORS 19.270, 19.330 and 34.070, the
 24 order for the killing of the dog may not be carried out during the period that the order is subject
 25 to review or appeal. If the dog is not killed, the board or governing body may impose reasonable
 26 restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reason-
 27 able restrictions.

28 (8) If the keeper of a dog is charged with violating ORS 609.095 (2) or (3) [*or 609.098*], upon
 29 conviction of the keeper the court may determine the disposition of the dog as provided under ORS
 30 609.990. **If the keeper of a dog is charged with violating ORS 609.098 or section 2 of this 2009**
 31 **Act, upon conviction of the keeper the court shall determine the disposition of the dog as**
 32 **provided under section 3 of this 2009 Act.**

33 (9) Notwithstanding subsections (2), (3), (6), (7) and (8) of this section, any dog impounded for
 34 biting a person shall be held for at least 10 days before redemption or destruction to determine if
 35 the dog is rabid.

36 (10) Notwithstanding subsections (2) and (3) of this section, if the keeper is charged with vio-
 37 lating ORS 609.098 **or section 2 of this 2009 Act**, the dog shall be kept in impoundment pending
 38 resolution of the charges. A court may order the keeper to post a deposit with the dog control board
 39 or county governing body to cover the cost of keeping the dog in impoundment. If the keeper is
 40 convicted of violating ORS 609.098 **or section 2 of this 2009 Act**, the court may order the deposit
 41 forfeited to the board or governing body.

42 (11) A dog control board or county governing body may impose lesser fees or penalties under
 43 subsections (3) and (6) of this section for certain senior citizens under certain circumstances.

44 **SECTION 6.** ORS 609.093 is amended to read:

45 609.093. In determining whether a dog should be killed as provided under ORS 609.090 (7) [*or*

1 609.990 (6)], a dog control board[,] **or** county governing body [*or court*] shall consider the following
 2 factors:

- 3 (1) If the dog has bitten a person, the circumstances and severity of the bite;
- 4 (2) Whether the keeper has a history of maintaining dogs that are a public nuisance;
- 5 (3) The impact of keeper actions on the behavior of the dog;
- 6 (4) The ability and inclination of the keeper to prevent the dog from chasing or menacing an-
 7 other person on premises other than the premises from which the keeper may lawfully exclude oth-
 8 ers or from biting another person;
- 9 (5) Whether the dog can be relocated to a secure facility;
- 10 (6) The effect that a transfer of the keeping of the dog to another person would have on ensuring
 11 the health and safety of the public;
- 12 (7) Behavior by the dog before or since the biting, chasing or menacing; and
- 13 (8) Any other factors that the board[,] **or** governing body [*or court*] may deem relevant.

14 **SECTION 7.** ORS 609.095 is amended to read:

15 609.095. (1) A dog is a public nuisance if it:

- 16 (a) Chases persons or vehicles on premises other than premises from which the keeper of the
 17 dog may lawfully exclude others;
- 18 (b) Damages or destroys property of persons other than the keeper of the dog;
- 19 (c) Scatters garbage on premises other than premises from which the keeper of the dog may
 20 lawfully exclude others;
- 21 (d) Trespasses on private property of persons other than the keeper of the dog;
- 22 (e) Disturbs any person by frequent or prolonged noises;
- 23 (f) Is a female in heat and running at large; or
- 24 (g) [*Is a potentially dangerous dog, but is not a dangerous dog as defined in ORS 609.098.*]

25 **Menaces a person on premises other than premises from which the keeper may lawfully ex-**
 26 **clude others.**

27 (2) The keeper of a dog in a county, precinct or city that is subject to ORS 609.030 and 609.035
 28 to 609.110 maintains a public nuisance if the dog commits an act described under subsection (1) of
 29 this section. Maintaining a dog that is a public nuisance is a violation.

30 (3) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable
 31 restrictions imposed under ORS 609.990 **or section 3 of this 2009 Act** or if a keeper fails to provide
 32 acceptable proof of compliance to the court on or before the 10th day after issuance of the order
 33 imposing the restrictions. If the court finds the proof submitted by the keeper unacceptable, the
 34 court shall send notice of that finding to the keeper no later than five days after the proof is re-
 35 ceived.

36 (4) Any person who has cause to believe a keeper is maintaining a dog that is a public nuisance
 37 may complain, either orally or in writing, to the county, precinct or city. The receipt of any com-
 38 plaint is sufficient cause for the county, precinct or city to investigate the matter and determine
 39 whether the keeper of the dog is in violation of subsection (2) or (3) of this section.

40 **SECTION 8.** ORS 609.098 is amended to read:

41 609.098. (1) As used in this section[:]

42 (a) "Dangerous dog" means a dog that:

43 [(a)] (A) Without provocation and in an aggressive manner inflicts serious physical injury, as
 44 defined in ORS 161.015, on a person or kills a person;

45 [(b)] (B) Acts as a potentially dangerous dog, as defined in [*ORS 609.035*] **section 2 of this 2009**

1 **Act**, after having previously:

2 (i) Committed an act as a potentially dangerous dog that resulted in the keeper being found to
 3 have violated ORS 609.095 (2007 Edition) or section 2 of this 2009 Act or an ordinance of a dog
 4 control district; or

5 *[(c) Is used as a weapon in the commission of a crime.]*

6 (ii) Been found under ORS 609.095 or an ordinance of a dog control district to be a public
 7 nuisance for chasing or menacing persons on premises other than premises from which the
 8 keeper of the dog may lawfully exclude others; or

9 (C) Kills a domestic animal as defined in ORS 167.310.

10 (b) “Dangerous dog” does not mean a law enforcement animal as defined in ORS 167.310.

11 (2) A person commits the crime of maintaining a dangerous dog if the person is the keeper of
 12 a dog and the person[.]:

13 (a) With criminal negligence, fails to prevent the dog from engaging in an act described in
 14 subsection (1)(a) of this section[.]; or

15 (b) Uses the dog as a weapon in the commission of a crime.

16 (3) Maintaining a dangerous dog is punishable as described in [ORS 609.990] section 3 of this
 17 2009 Act.

18 **SECTION 9.** ORS 609.115 is amended to read:

19 609.115. (1) As used in this section[.]:

20 (a) “Keeper” has the meaning given that term in ORS 609.035; and

21 (b) “Potentially dangerous dog” *[have the meanings given those terms in ORS 609.035]* has the
 22 meaning given that term in section 2 of this 2009 Act.

23 (2) Except as provided in subsection (3) of this section, if a court has determined under [ORS
 24 609.990] section 3 of this 2009 Act that a dog is a potentially dangerous dog, and subsequent to
 25 that determination the dog causes physical injury to a person or damage to real or personal prop-
 26 erty, the keeper of the dog is strictly liable to the injured person or property owner for any eco-
 27 nomic damages resulting from the injury or property damage.

28 (3) Subsection (2) of this section does not apply if a physical injury is to a person provoking the
 29 dog or assaulting the dog’s keeper or to a person who trespasses upon premises from which the
 30 keeper may lawfully exclude others.

31 **SECTION 10.** ORS 609.990 is amended to read:

32 609.990. (1) Violation of ORS 609.060 (2), 609.100 or 609.169 is a Class B violation.

33 (2) Maintaining a public nuisance in violation of ORS 609.095 (2) or (3) is punishable by a fine
 34 of not more than \$250.

35 *[(3)(a) Except as provided in paragraph (b) of this subsection, violation of ORS 609.098 is a Class
 36 A misdemeanor.]*

37 *[(b) If a dog kills a person, violation of ORS 609.098 is a Class C felony.]*

38 *[(c) If a keeper violates ORS 609.098, the court shall order the dangerous dog killed in a humane
 39 manner.]*

40 *[(4)]* (3) Violation of ORS 609.405 constitutes a Class C misdemeanor.

41 *[(5)]* (4) In addition to any fine or sentence imposed under this section, a court may order a
 42 person who violates ORS 609.060 (2), 609.095, [609.098,] 609.100, 609.169 or 609.405 to pay restitution
 43 for any physical injury, death or property damage caused by the dog as a result of the keeper’s vi-
 44 olation of ORS 609.060 (2), 609.095, [609.098,] 609.100, 609.169 or 609.405. The court may also order
 45 the person to pay the cost of keeping the dog in impoundment.

1 [(6)] (5) In addition to any fine imposed or restitution ordered of a keeper for a violation of ORS
 2 609.060 (2), 609.095, 609.100, 609.169 or 609.405, the court may impose reasonable restrictions on the
 3 keeping of the dog to ensure the safety or health of the public. The keeper must pay the cost of
 4 complying with reasonable restrictions. As used in this subsection, “reasonable restrictions” may
 5 include, but is not limited to, sterilization. *[If the dog is a potentially dangerous dog, the court may
 6 order the dog killed in a humane manner. In determining whether to have the dog killed, the court
 7 shall give consideration to the factors described in ORS 609.093 and issue written findings on those
 8 factors.]*

9 [(7) *Notwithstanding ORS 19.270 and 19.330, subject to periodic advance payment of the cost of
 10 keeping the dog in impoundment, the killing of a dog pursuant to an order under subsection (3) or (6)
 11 of this section may not be carried out during the period that the order is subject to the appeal process.
 12 Unless otherwise ordered by the Court of Appeals, the dog may be killed during the appeal period if
 13 the keeper fails to maintain advance payment of the cost of keeping the dog impounded.]*

14 [(8) *If a court orders a dog killed under subsection (6) of this section and the keeper does not make
 15 the dog available for that purpose, the court may issue a search warrant for a property upon probable
 16 cause to believe that the dog is located at that property.]*

17 **SECTION 11. Sections 2 and 3 of this 2009 Act and the amendments to ORS 609.035,
 18 609.090, 609.093, 609.095, 609.098, 609.115 and 609.990 by sections 4 to 10 of this 2009 Act apply
 19 to offenses committed on or after the effective date of this 2009 Act.**

20