

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date 01/31/2013
Bill No: HB258--305

Sponsor: Rep. Terry H. McMillan **Reviewing** Attorney General's Office
Short LIABILITY FOR DOG BITES **Person Writing** Trevor A. Rigler, AAG
Title: & CHARGES FOR OWNERS **Phone:** 5052229013 **Email** trigler@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 258, if enacted into law, would make several changes to the Dangerous Dog Act (§§77-1A-1 – 6). One change which touches on areas throughout the existing law involves streamlining the language to improve its flow. Other changes include:

1. Clarification that civil liability for a dog bite could exist independent of whether the owner had *scienter* of the dog’s dangerousness
2. No new right to pursue a tort claim against a governmental entity regarding a dog bite
3. Proof of provocation of a biting dog by a bitten person can be used as a defense to liability, subject to a “reasonable person” standard
4. The phrases “minor injury” and “severe injury” are defined
5. Language implying a requirement that a dog’s dangerousness be known in some way to its owner as a threshold to criminal prosecution is removed from several areas
6. Creates a misdemeanor penalty for situations in which an unprovoked dog causes a minor injury to a person
7. Creates a third degree felony penalty for situations in which an unprovoked dog causes a severe injury to a person
8. Leaves intact penalties associated with situations in which an unprovoked dog causes a serious injury or death to a person
9. Removes the requirement that the injury which must be foreseeable to a dog owner as a threshold for criminal charges be “serious”.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

The bill could result in additional criminal matters filed in courts of jurisdiction, additional criminal investigations and/or investigative tasks.

SIGNIFICANT LEGAL ISSUES

While leaving much of the existing law intact, the bill creates a spectrum of possible punishments for owners of dogs which commit unprovoked attacks on humans. The degree of penalty is proportionate to the degree of injury. A minor injury to a human could result in a misdemeanor penalty. A serious injury to a human could result in a fourth degree felony penalty. A severe injury to a human could result in a third degree felony penalty. A death to a human could result in a special third degree felony penalty. While changes to the law would no longer

require that the dog be considered “dangerous or potentially dangerous” as a threshold to criminal prosecution, the owner of the attacking dog must still have *scienter* in one of two ways: i. knowledge that the dog has the propensity to cause any injury or ii. a previous court finding ruling the dog dangerous or potentially so.

These changes create the potential for serious criminal punishments to be applied to circumstances where a dog inflicts injury. However, traditional safeguards of *scienter* and affirmative defenses are left intact so as to avoid the possibility that a person could be prosecuted criminally without an appropriate degree of intent or without the ability to provide justification for the conduct being imputed to them from their dog.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None.

TECHNICAL ISSUES OR DRAFTING ERROR

None.

OTHER SUBSTANTIVE LEGAL ISSUES

None

ALTERNATIVES TO ENACTING THIS BILL

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

None