

B-Engrossed Senate Bill 844

Ordered by the House August 1
Including Senate Amendments dated April 28 and House Amendments
dated August 1

Sponsored by Senator DECKERT

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.

Makes dog keeper strictly liable for economic damages incurred by person physically injured by dog. Creates exceptions.

Defines potentially dangerous dog and dangerous dog.

Modifies authority of law enforcement officers, dog control boards, county governments and courts relating to impoundment and disposition of certain dogs. [*Requires counties to establish registry of dogs determined to be potentially dangerous or dangerous.*]

Makes [*first*] offense of maintaining potentially dangerous dog punishable by maximum [*\$360*] \$250 fine. [*Makes subsequent offense punishable by 30 days' imprisonment, \$1,250 fine, or both.*]

Makes [*first*] offense of maintaining dangerous dog punishable by maximum [*\$360 fine. Makes subsequent offense punishable by*] one year's imprisonment, \$6,250 fine, or both **unless dangerous dog kills person. Makes offense of maintaining dangerous dog punishable by maximum five years' imprisonment, \$125,000 fine, or both, if dangerous dog kills person.**

[*Increases penalty for dog keeper who maintains dog that is public nuisance to maximum \$360 fine.*] Modifies conditions constituting public nuisance.

A BILL FOR AN ACT

1
2 Relating to dogs; creating new provisions; amending ORS 609.090, 609.093, 609.095 and 609.990; and
3 repealing ORS 609.010 and 609.097.

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

5 **SECTION 1. (1) As used in this section, "keeper" and "potentially dangerous dog" have**
6 **the meanings given those terms in section 4 of this 2005 Act.**

7 **(2) Except as provided in subsection (3) of this section, if a court has determined under**
8 **ORS 609.990 that a dog is a potentially dangerous dog, and subsequent to that determination**
9 **the dog causes physical injury to a person or damage to real or personal property, the keeper**
10 **of the dog is strictly liable to the injured person or property owner for any economic dam-**
11 **ages resulting from the injury or property damage.**

12 **(3) Subsection (2) of this section does not apply if a physical injury is to a person pro-**
13 **voking the dog or assaulting the dog's keeper or to a person who trespasses upon premises**
14 **from which the keeper may lawfully exclude others.**

15 **SECTION 2. (1) As used in this section, "dangerous dog" means a dog that:**

16 **(a) Without provocation and in an aggressive manner inflicts serious physical injury, as**
17 **defined in ORS 161.015, on a person or kills a person;**

18 **(b) Acts as a potentially dangerous dog, as defined in section 4 of this 2005 Act, after**
19 **having previously committed an act as a potentially dangerous dog that resulted in the**
20 **keeper being found to have violated ORS 609.095; or**

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 (c) Is used as a weapon in the commission of a crime.

2 (2) A person commits the crime of maintaining a dangerous dog if the person is the
3 keeper of a dog and the person, with criminal negligence, fails to prevent the dog from en-
4 gaging in an act described in subsection (1) of this section.

5 (3) Maintaining a dangerous dog is punishable as described in ORS 609.990.

6 **SECTION 3.** Section 4 of this 2005 Act is added to and made a part of ORS 609.040 to
7 609.110.

8 **SECTION 4.** As used in ORS 609.040 to 609.110 and 609.990:

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

12 (2) "Dog control officer" means a person whose duties include, but need not be limited
13 to, enforcing the dog control laws for a dog control district.

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

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

17 (b) A humane society or other nonprofit animal shelter;

18 (c) A facility impounding dogs on behalf of a city or county; or

19 (d) A veterinary facility.

20 (4) "Menaces" means lunging, growling, snarling or other behavior by a dog that would
21 cause a reasonable person to fear for the person's safety.

22 (5) "Potentially dangerous dog" means a dog that:

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

25 (b) Without provocation, inflicts physical injury on a person that is less severe than a
26 serious physical injury; or

27 (c) Without provocation and while not on premises from which the keeper may lawfully
28 exclude others, inflicts physical injury on or kills a domestic animal as defined in ORS
29 167.310.

30 (6) "Running at large" means that a dog is off or outside of the premises from which the
31 keeper of the dog may lawfully exclude others, or is not in the company of and under the
32 control of its keeper, except if the dog is:

33 (a) Being used to legally hunt, chase or tree wildlife while under the supervision of the
34 keeper;

35 (b) Being used to control or protect livestock or for other activities related to agricul-
36 ture; or

37 (c) Within any part of a vehicle.

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

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

40 609.090. [(1) When a dog is found running at large in a county, precinct or city that is subject to
41 ORS 609.040 to 609.110 or when a dog is a public nuisance described by ORS 609.095 or subsection
42 (5) of this section, a constable, sheriff, deputy, police officer or dog control officer shall impound it or
43 cite the keeper to court or do both.]

44 (1) A law enforcement officer or dog control officer may cite a keeper, impound a dog,
45 or both if:

1 **(a) The dog is found running at large in violation of ORS 609.060;**

2 **(b) The dog is a public nuisance as described by ORS 609.095; or**

3 **(c) The officer has probable cause to believe that the dog is a dangerous dog as defined**
4 **in section 2 of this 2005 Act.**

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

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

20 (4) In addition to any payment required pursuant to subsection (3) of this section, a dog control
21 board or county governing body may require as a condition for redeeming the dog that the keeper
22 agree to reasonable restrictions on the keeping of the dog. The keeper must pay the cost of com-
23 plying with the reasonable restrictions. As used in this subsection, "reasonable restrictions" may
24 include, but is not limited to, sterilization.

25 (5) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable
26 restrictions imposed under subsection (4) of this section[.] **or** if a keeper fails to provide acceptable
27 proof of compliance to the dog control board or county governing body on or before the 10th day
28 after issuance of the order imposing the restrictions[, *there is a rebuttable presumption that the keeper*
29 *has failed to comply*]. If the board or governing body finds the proof submitted by the keeper unac-
30 ceptable, the board or governing body shall send notice of that finding to the keeper no later than
31 five days after the proof is received.

32 (6) If no keeper appears to redeem a dog within the allotted time, the dog may be killed in a
33 humane manner. The dog control board or county governing body may release the dog to a respon-
34 sible person upon receiving assurance that the person will properly care for the dog and upon pay-
35 ment of a sum established by the county governing body plus cost of keep during its impounding,
36 and purchase of a license if required. The person shall thereafter be [*liable as owner of the dog as*
37 *provided by*] **the keeper of the dog for purposes of** ORS 609.040 to 609.110.

38 (7) If the keeper of a dog is not charged with violating ORS 609.095 (2) or (3)[, *upon finding*] **or**
39 **section 2 of this 2005 Act, and the dog control board or county governing body finds** that the
40 dog has menaced or chased a person when on premises other than the premises [*occupied exclusively*
41 *by the keeper*] **from which the keeper may lawfully exclude others** or has bitten a person, the
42 dog control board or county governing body may order that the dog be killed in a humane manner.
43 Before ordering that the dog be killed, the board or governing body shall consider the factors de-
44 scribed in ORS 609.093 and issue written findings on those factors. Notwithstanding ORS 34.030, if
45 the disposition order issued by the board or governing body provides that the dog is to be killed, a

1 petition by the keeper for a writ of review must be filed no later than the 10th day after the dog
2 control board or county governing body sends notice of the order to the keeper. Notwithstanding
3 ORS 19.270, 19.330 and 34.070, the order for the killing of the dog may not be carried out during the
4 period that the order is subject to review or appeal. If the dog is not killed, the board or governing
5 body may impose reasonable restrictions on the keeping of the dog. The keeper must pay the cost
6 of complying with the reasonable restrictions.

7 (8) If the keeper of a dog is charged with violating ORS 609.095 (2) or (3) **or section 2 of this**
8 **2005 Act**, upon conviction of the keeper the court may determine the disposition of the dog as pro-
9 vided under ORS 609.990.

10 (9) Notwithstanding [*the provisions of*] subsections (2), (3), (6), (7) and (8) of this section, any dog
11 impounded for biting a person shall be held for [*not less than*] **at least** 10 days before redemption
12 or destruction to determine if the dog is rabid.

13 **(10) Notwithstanding subsections (2) and (3) of this section, if the keeper is charged with**
14 **violating section 2 of this 2005 Act, the dog shall be kept in impoundment pending resolution**
15 **of the charges. A court may order the keeper to post a deposit with the dog control board**
16 **or county governing body to cover the cost of keeping the dog in impoundment. If the keeper**
17 **is convicted of violating section 2 of this 2005 Act, the court may order the deposit forfeited**
18 **to the board or governing body.**

19 [(10)] (11) A dog control board or county governing body may impose lesser fees or penalties
20 under subsections (3) and (6) of this section for certain senior citizens under certain circumstances.

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

22 609.093. In determining whether a dog should be killed as provided under ORS 609.090 (7) or
23 609.990 (6), a dog control board, county governing body or court shall consider the following factors:

24 (1) **If the dog has bitten a person**, the circumstances **and severity** of the bite[, *including*
25 *whether the dog was provoked by the person bitten*];

26 (2) Whether the keeper has a history of maintaining dogs that are a public nuisance;

27 (3) The impact of keeper actions on the behavior of the dog;

28 [(4) *The severity of the bite;*]

29 [(5)] (4) The ability and inclination of the keeper to prevent the dog from chasing or menacing
30 another person on premises other than the premises [*occupied exclusively by the keeper*] **from which**
31 **the keeper may lawfully exclude others** or from biting another person;

32 [(6)] (5) Whether the dog can be relocated to a secure facility;

33 [(7)] (6) The effect that a [*transfer of ownership*] **transfer of the keeping of the dog to another**
34 **person** would have on ensuring the health and safety of the public;

35 [(8) *Whether the dog has unjustifiably chased or menaced a person on a prior or subsequent oc-*
36 *casione; and*]

37 **(7) Behavior by the dog before or since the biting, chasing or menacing; and**

38 [(9)] (8) Any other factors that the board, governing body or court may deem relevant.

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

40 609.095. (1) A dog is a public nuisance if it:

41 [(a) *Bites a person;*]

42 [(b) *Chases or menaces persons or chases vehicles on premises other than premises occupied ex-*
43 *clusively by the keeper of the dog;*]

44 **(a) Chases persons or vehicles on premises other than premises from which the keeper**
45 **of the dog may lawfully exclude others;**

1 [(c)] **(b)** Damages or destroys property of persons other than the keeper of the dog;

2 [(d)] **(c)** Scatters garbage on premises other than premises [*occupied exclusively by*] **from which**
3 the keeper of the dog **may lawfully exclude others**;

4 [(e)] **(d)** Trespasses on private property of persons other than the keeper of the dog;

5 [(f)] **(e)** Disturbs any person by frequent or prolonged noises;

6 [(g)] **(f)** Is a female in heat and running at large; or

7 [(h)] *Injures or kills a domestic animal as defined in ORS 167.310.*

8 **(g) Is a potentially dangerous dog, but is not a dangerous dog as defined in section 2 of**
9 **this 2005 Act.**

10 (2) The keeper of a dog in a county, precinct or city that is subject to ORS 609.030 and 609.040
11 to 609.110 maintains a public nuisance if the dog commits an act described under subsection (1) of
12 this section. [*or the keeper does not comply with reasonable restrictions as described in subsection (3)*
13 *of this section. Except as provided under ORS 609.990 (3),*] Maintaining a dog that is a public nui-
14 sance is a violation.

15 (3) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable
16 restrictions imposed under ORS 609.990[.] **or** if a keeper fails to provide acceptable proof of com-
17 pliance to the court on or before the 10th day after issuance of the order imposing the
18 restrictions[, *there is a rebuttable presumption that the keeper has failed to comply*]. If the court finds
19 the proof submitted by the keeper unacceptable, the court shall send notice of that finding to the
20 keeper no later than five days after the proof is received.

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

25 **SECTION 8.** ORS 609.990 is amended to read:

26 609.990. (1) Violation of ORS 609.060 (2), 609.100 or 609.169 is a Class B violation.

27 (2) [*If a dog is a public nuisance for a reason or reasons not including chasing or menacing a*
28 *person on premises other than premises occupied exclusively by the keeper of the dog or biting a per-*
29 *son,*] Maintaining a public nuisance in violation of ORS 609.095 (2) or (3) is punishable by a fine of
30 not more than \$250.

31 [(3) *Except as provided in this subsection, if a dog is a public nuisance because the dog chases or*
32 *menaces a person on premises other than premises occupied exclusively by the keeper of the dog or*
33 *because the dog bites a person, maintaining the public nuisance in violation of ORS 609.095 (2) or (3)*
34 *is punishable by a fine of not more than \$500. If a dog is a public nuisance because the dog chases*
35 *or menaces a person on premises other than premises occupied exclusively by the keeper of the dog or*
36 *because the dog bites a person, a dog keeper maintaining the public nuisance in violation of ORS*
37 *609.095 (2) or (3) commits a Class C misdemeanor if the keeper has previously been convicted of a vi-*
38 *olation or crime because of any dog chasing or menacing a person on premises other than premises*
39 *occupied exclusively by the keeper of the dog or because of any dog biting a person.*]

40 **(3)(a) Except as provided in paragraph (b) of this subsection, violation of section 2 of this**
41 **2005 Act is a Class A misdemeanor.**

42 **(b) If a dog kills a person, violation of section 2 of this 2005 Act is a Class C felony.**

43 **(c) If a keeper violates section 2 of this 2005 Act, the court shall order the dangerous dog**
44 **killed in a humane manner.**

45 **(4) Violation of ORS 609.405 constitutes a Class C misdemeanor.**

1 **(5) In addition to any fine or sentence imposed under this section, a court may order a**
 2 **person who violates ORS 609.060 (2), 609.095, 609.100, 609.169 or 609.405 or section 2 of this**
 3 **2005 Act to pay restitution for any physical injury, death or property damage caused by the**
 4 **dog as a result of the keeper's violation of ORS 609.060 (2), 609.095, 609.100, 609.169 or 609.405**
 5 **or section 2 of this 2005 Act. The court may also order the person to pay the cost of keeping**
 6 **the dog in impoundment.**

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

16 *[(5) In addition to any fine or sentence imposed or restitution ordered of the keeper under this*
 17 *section, the court may order that a dog be killed in a humane manner if the dog has menaced or chased*
 18 *a person when on premises other than the premises occupied exclusively by the keeper or has bitten a*
 19 *person. In determining whether a dog is to be killed, the court must give consideration to the factors*
 20 *described in ORS 609.093 and issue written findings on those factors. If the dog is not killed, the*
 21 *court:]*

22 *[(a) Shall order that the dog undergo sterilization. The sterilization procedure shall be at the ex-*
 23 *penditure of the keeper of the dog; and]*

24 *[(b) May impose reasonable restrictions on the keeping of the dog. The keeper must pay the cost*
 25 *of complying with the reasonable restrictions. If the keeper maintains a public nuisance as described*
 26 *in ORS 609.095 (3) by failing to comply with reasonable restrictions imposed pursuant to this para-*
 27 *graph, the court may reconsider the determination made under this subsection and upon reconsideration*
 28 *may include the failure to comply as evidence regarding the ability and inclination of the keeper to*
 29 *prevent the dog from chasing or menacing another person on premises other than premises occupied*
 30 *exclusively by the keeper or from biting another person.]*

31 [(6)] **(7)** Notwithstanding ORS 19.270 and 19.330, subject to periodic advance payment of the cost
 32 of keeping the dog in impoundment, the killing of a dog pursuant to an order under **subsection (3)**
 33 **or (6) of** this section may not be carried out during the period that the order is subject to the ap-
 34 peal process. Unless otherwise ordered by the Court of Appeals, the dog may be killed during the
 35 appeal period if the keeper fails to maintain advance payment of the cost of keeping the dog
 36 impounded.

37 [(7)] **(8)** If a *[circuit]* court orders a dog killed **under subsection (6) of this section** and the
 38 keeper does not make the dog available for that purpose, the court may issue a search warrant for
 39 a property upon probable cause to believe that the dog is located at that property.

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

41 **SECTION 9. ORS 609.010 and 609.097 are repealed.**

42 **SECTION 10. (1) Sections 2 and 4 of this 2005 Act, the amendments to ORS 609.090,**
 43 **609.093, 609.095 and 609.990 by sections 5 to 8 of this 2005 Act and the repeal of ORS 609.097**
 44 **by section 9 of this 2005 Act apply to acts in which a dog engages on or after the effective**
 45 **date of this 2005 Act.**

1 **(2) The amendments to ORS 609.090, 609.093, 609.095 and 609.990 by sections 5 to 8 of this**
2 **2005 Act and the repeal of ORS 609.010 and 609.097 by section 9 of this 2005 Act do not affect**
3 **any adjudication of a person pending on the effective date of this 2005 Act or affect any de-**
4 **termination pending on the effective date of this 2005 Act regarding the disposition of a dog.**
5 **Any adjudication or determination described in this subsection shall be in accordance with**
6 **ORS 609.010, 609.090, 609.093, 609.095, 609.097 and 609.990 as set forth in the 2003 Edition of**
7 **Oregon Revised Statutes.**

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