

IN THE SENATE

SENATE BILL NO. 1302

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO DOGS; AMENDING SECTION 25-2803, IDAHO CODE, TO PROVIDE FOR ALTERNATIVE MEANS OF IDENTIFICATION; REPEALING SECTION 25-2804, IDAHO CODE, RELATING TO DOGS WITHOUT COLLARS AND TAGS; REPEALING SECTION 25-2805, IDAHO CODE, RELATING TO DOGS RUNNING AT LARGE AND VICIOUS DOGS; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2805, IDAHO CODE, TO PROVIDE FOR THE SEIZURE AND IMPOUNDMENT OF DOGS RUNNING AT LARGE, TO PROVIDE FOR VIOLATION AND PENALTY, TO CLARIFY APPLICABILITY, TO PROVIDE A WAITING PERIOD DURING WHICH TIME AN OWNER MAY RECLAIM A DOG PRIOR TO THE DOG BEING HUMANELY KILLED OR TRANSFERRED TO ANOTHER PARTY AND TO PROVIDE THAT CERTAIN HOUSING OF A DOG BY THE SHERIFF OR HIS DELEGATE SHALL CONSTITUTE REASONABLE EFFORT TO LOCATE THE OWNER; REPEALING SECTION 25-2806, IDAHO CODE, RELATING TO LIABILITY; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2806, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR LIABILITY REGARDING DOGS ATTACKING OR KILLING ANIMALS, TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE APPLICABILITY OF ADDITIONAL PROVISIONS IN CERTAIN SITUATIONS, TO PROVIDE FOR SEVERABLE LIABILITY AND TO PROVIDE FOR VIOLATIONS AND PENALTIES; AMENDING SECTION 25-2808, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2809, IDAHO CODE, TO PROVIDE FOR DEFENSE AGAINST DOG ATTACK, TO CLARIFY A QUALIFICATION AND TO PROVIDE AN EXCEPTION; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2810, IDAHO CODE, TO PROVIDE FOR THE DESIGNATION OF DANGEROUS DOGS AND AT-RISK DOGS, TO CLARIFY PROOF REQUIREMENTS IN THE PROSECUTION OF CERTAIN ACTIONS, TO DEFINE TERMS, TO PROVIDE THAT CERTAIN PROOF SHALL NOT BE REQUIRED IN PROCEEDINGS AND TO PROVIDE EXCEPTIONS; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2811, IDAHO CODE, TO PROVIDE THAT COURTS MAY ORDER CERTAIN DOGS BE KILLED, TO PROVIDE FOR RESTRICTIONS AND REQUIREMENTS, TO PROVIDE FOR THE WAIVER OF RESTRICTIONS AND REQUIREMENTS, TO PROVIDE FOR VIOLATIONS AND TO PROVIDE FOR IMPOUNDMENT; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2812, IDAHO CODE, TO PROVIDE FOR VIOLATIONS AND PENALTIES; AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2813, IDAHO CODE, TO PROVIDE FOR THE LOCAL REGULATION OF CERTAIN DOGS; AND AMENDING CHAPTER 28, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-2814, IDAHO CODE, TO PROVIDE FOR SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 25-2803, Idaho Code, be, and the same is hereby amended to read as follows:

1 25-2803. DOGS AT LARGE -- COLLAR AND TAG OR ALTERNATIVE MEANS OF IDEN-
 2 TIFICATION REQUIRED. No dog shall be permitted to go at large within the
 3 said county without having a collar about its neck with a license tag or disc
 4 attached thereto bearing the number of the license issued by the county as
 5 herein set forth, or by some municipality within said county. Nothing in
 6 this section shall preclude a county or municipality from allowing alter-
 7 native means of identification including, but not limited to, microchip
 8 implantation as an alternative to requiring collar and tag. A violation of
 9 this section is an infraction punishable as provided in section 18-113A,
 10 Idaho Code.

11 SECTION 2. That Section 25-2804, Idaho Code, be, and the same is hereby
 12 repealed.

13 SECTION 3. That Section 25-2805, Idaho Code, be, and the same is hereby
 14 repealed.

15 SECTION 4. That Chapter 28, Title 25, Idaho Code, be, and the same is
 16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 17 ignated as Section 25-2805, Idaho Code, and to read as follows:

18 25-2805. DOGS RUNNING AT LARGE -- IMPOUNDMENT -- PENALTY. (1) The
 19 sheriff of the county may seize and impound any dog running at large.

20 (2) Any person who, after complaint has been made by a person to the
 21 sheriff, who shall serve a copy of said notice upon such person complained
 22 of, willfully or negligently permits any dog owned or possessed or harbored
 23 by him to be, or run, at large without a responsible attendant or master,
 24 within the limits of any city, town or village or in the vicinity of any farm,
 25 pasture, ranch, dwelling house, cultivated lands of another, or state and
 26 federal lands or who willfully or negligently fails, neglects or refuses to
 27 keep any such dog securely confined within the limits of his own premises
 28 when not under the immediate care and control of a responsible attendant or
 29 master shall be guilty of an infraction punishable as provided in section
 30 18-113A, Idaho Code. This provision shall not apply to any dog that is ac-
 31 tively working as a herding dog, herd guarding dog, bear or cougar dog, or
 32 hunting dog, in any place where it may lawfully be that is under the reason-
 33 able control of an owner or keeper.

34 (3) No dog impounded pursuant to this section shall be killed, or owner-
 35 ship thereof transferred to another party, before five (5) days have elapsed
 36 from the time of the taking up of the dog. Only days in which the facility
 37 wherein the dog is impounded is open to the public shall be counted in the
 38 calculation of the five (5) day period. The owner may recover possession of
 39 the dog during that time upon payment of costs and any pertinent fines estab-
 40 lished by local ordinance. After the five (5) days have elapsed and a reason-
 41 able effort has failed to locate the owner, the sheriff or his delegate may
 42 kill the dog in a humane manner or transfer ownership of the dog to another
 43 party. Housing of the dog within the facility commonly known in the commu-
 44 nity to be the designated impoundment facility for stray or impounded dogs
 45 shall be deemed to constitute reasonable effort for purposes of this sec-
 46 tion.

1 SECTION 5. That Section 25-2806, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 6. That Chapter 28, Title 25, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 25-2806, Idaho Code, and to read as follows:

6 25-2806. DOGS ATTACKING OR KILLING DOMESTIC ANIMALS -- LIABILITY FOR
7 DOMESTIC ANIMALS INJURED OR KILLED BY DOGS. (1) For purposes of this chap-
8 ter, "production animal" and "companion animal" shall have the same meanings
9 as defined in section 25-3502, Idaho Code. "Domestic animal" shall mean any
10 animal commonly kept as a pet in family households in the United States and
11 any animal commonly kept for companion or commercial purposes. Any refer-
12 ence in this chapter to "domestic animal" shall be considered as a reference
13 to both companion and production animals. "Dog" shall mean any canine or ca-
14 nine crossbreed.

15 (2) The owner of any companion animal which, while in any place where it
16 may lawfully be, has been damaged by being injured or killed by a dog with-
17 out provocation shall have a cause of action against the owner of the dog for
18 the damages and costs of suit, to be recovered before a court of competent ju-
19 risdiction. Provided however, the provisions of this subsection shall not
20 apply if the incident occurs in a boarding kennel, a dog daycare facility,
21 off-leash park or other designated area in which owners consent to their dogs
22 interacting without control by leashes or other restraint devices, unless
23 the owner of the dog can be shown to have intentionally caused the dog to at-
24 tack, or unless the owner knew or reasonably should have known that the dog
25 would attack.

26 (3) The owner of any production animal which, while in any place where
27 it may lawfully be, has been damaged by being injured, chased, wounded or
28 killed by a dog shall have a cause of action against the owner of the dog for
29 the amount of damages, costs of suit and attorney's fees, to be recovered be-
30 fore a court of competent jurisdiction.

31 (4) In the event a dog damages a companion or production animal, as pro-
32 vided in subsection (2) or (3) of this section, and subsequently damages a
33 domestic animal, the owner of the dog shall, in addition to any liability im-
34 posed by the provisions of this section, be subject to the provisions of sec-
35 tion 25-2811, Idaho Code.

36 (5) In the event one (1) or more dogs owned by different persons partic-
37 ipate in damaging any domestic animal, the owners of the dog or dogs shall be
38 severally liable pursuant to the provisions of this section.

39 (6) The owner of a dog found in violation of the provisions of subsec-
40 tion (2) or (3) of this section shall be guilty of an infraction punishable as
41 provided in section 18-113A, Idaho Code. The owner of a dog found in viola-
42 tion of the provisions of subsection (4) of this section shall be guilty of a
43 misdemeanor punishable as provided in section 25-2812, Idaho Code.

44 SECTION 7. That Section 25-2808, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 25-2808. DOGS USED IN LAW ENFORCEMENT. Neither the state of Idaho, nor
47 any city or county, nor any peace officer employed by any of them, shall be

1 criminally liable under the provisions of section 25-280~~5~~6, Idaho Code, or
 2 civilly liable in damages for injury committed by a dog when: (1) the dog has
 3 been trained to assist in law enforcement; and (2) the injury occurs while
 4 the dog is reasonably and carefully being used in the apprehension, arrest or
 5 location of a suspected offender or in maintaining or controlling the public
 6 order.

7 SECTION 8. That Chapter 28, Title 25, Idaho Code, be, and the same is
 8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 9 ignated as Section 25-2809, Idaho Code, and to read as follows:

10 25-2809. DEFENSE AGAINST DOG ATTACK ALLOWED. (1) In the event any dog
 11 attacks, wounds, injures or chases a person who was peaceably conducting
 12 himself in any place where he may lawfully be, any person, for the purpose
 13 of preventing imminent injury or further injury to the person, may use such
 14 force as is required to stop the dog from continuing to attack, wound, injure
 15 or chase, including killing the dog, and the owners thereof can sustain no
 16 action for damages for the dog against the person taking such action.

17 (2) In the event any dog on the premises of another where calving or
 18 lambing is occurring, wounds, kills, annoys, disturbs, persecutes, chases,
 19 drives, flushes, worries, follows after or on the trail of, stalks or lies
 20 in wait for any domestic animal, any person so finding such dog, may use such
 21 force as is required to stop the dog, including killing the dog, and the own-
 22 ers thereof can sustain no action for damages for the dog against the person
 23 taking such action.

24 (3) For the purposes of this chapter, a person is lawfully upon the pri-
 25 vate property of another when such person is upon the property with the ex-
 26 press or implied consent of the owner. Consent shall not be presumed when the
 27 property is fenced or reasonably posted. Provided however, for purposes of
 28 the provisions of this chapter, utility workers, while engaged in the per-
 29 formance of duties of their employment on the private property of another,
 30 shall be deemed to have the implied consent of the owner to be upon the pri-
 31 vate property.

32 (4) No person shall kill any dog for wounding, injuring, chasing or
 33 killing poultry in a public place, upon a highway or upon the property of the
 34 owner or keeper of the dog.

35 SECTION 9. That Chapter 28, Title 25, Idaho Code, be, and the same is
 36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 37 ignated as Section 25-2810, Idaho Code, and to read as follows:

38 25-2810. DANGEROUS DOGS -- AT-RISK DOGS. (1) "Dangerous dog" means any
 39 dog that:

40 (a) Without provocation, and in an aggressive manner, has inflicted se-
 41 rious injury on a person or kills a person;

42 (b) Has been previously found to be at-risk and thereafter aggressively
 43 bites, physically attacks or endangers the safety of a person without
 44 provocation; or

45 (c) Has been previously found to be at-risk, and thereafter bites,
 46 physically attacks or kills a domestic animal without provocation.

47 (2) "At-risk dog" means any dog that:

1 (a) Aggressively bites a person without provocation; or

2 (b) Has been previously found by a court to have engaged in behavior in
3 violation of the provisions of section 25-2806(2) or (3), Idaho Code,
4 and thereafter bites, physically attacks or kills a domestic animal
5 without provocation.

6 (3) For purposes of this section, the issue of provocation shall be de-
7 termined by whether a reasonable person would expect that the conduct or cir-
8 cumstances would be likely to provoke a dog.

9 (4) For purposes of this section, "aggressively bites" shall mean any
10 bite, made without provocation, that breaks the skin and is accompanied by
11 one (1) or more of the following behaviors: baring teeth, chasing, growling,
12 snapping, pouncing or lunging.

13 (5) For purposes of this section, "serious injury" means any physical
14 injury consisting of broken bones or a permanently disfiguring injury.

15 (6) In determining whether a dog has behaved in a manner consistent with
16 the definition of "dangerous dog" or "at-risk dog," it is not necessary to
17 show that an owner or keeper of the dog had knowledge of the fact that the dog
18 would so behave.

19 (7) No dog may be declared to be a "dangerous dog" or "at-risk dog" when,
20 at the time an injury or damage was sustained:

21 (a) The dog was protecting or defending a person within the immediate
22 vicinity of the dog from an attack or assault;

23 (b) A person was committing a crime or offense upon the property of the
24 owner or keeper of the dog;

25 (c) A person was willfully teasing, tormenting, abusing or assaulting
26 the dog, or in the past had teased, tormented, abused or assaulted the
27 dog;

28 (d) The dog was responding to pain or injury, or protecting itself, its
29 kennel or offspring;

30 (e) A person or domestic animal was disturbing the dog's natural func-
31 tions such as sleeping or eating;

32 (f) The dog was working as a hunting dog, herding dog or predator
33 control dog on the property of, or under the control of, its owner or
34 keeper, and the damage or injury sustained was:

35 (i) To a species or type of domestic animal appropriate to the
36 work of the dog; or

37 (ii) To a person or domestic animal that was interfering with the
38 dog while the dog was working in a place where it was lawfully en-
39 gaged in such activity, including state and federal lands.

40 (g) The injured person was intervening between two (2) or more animals;

41 (h) Such injury or damage was to a cat roaming free off the property of
42 its owner or keeper, or to poultry.

43 SECTION 10. That Chapter 28, Title 25, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 25-2811, Idaho Code, and to read as follows:

46 25-2811. DISCRETIONARY COURT ACTIONS RELATING TO DANGEROUS AND
47 AT-RISK DOGS. (1) In the event a court finds that a dog is dangerous pursuant
48 to the provisions of this chapter, in addition to any other penalty or lia-

1 bility provided in this chapter, the court may order the dog be put to death
2 in a humane manner.

3 (2) In the event a court finds that a dog belonging to an owner or keeper
4 is dangerous or at-risk pursuant to the provisions of this chapter, in addi-
5 tion to any other penalty or liability provided in this chapter, the court in
6 its discretion may order the owner or keeper to comply with one (1) or more of
7 the following restrictions and requirements:

8 (a) When outdoors, the dog shall be confined to a secure enclosure from
9 which it cannot escape, and for which ingress and egress are controlled
10 by the owner or keeper of the premises or owner or keeper of the dog.

11 (b) When off the property of the owner or keeper, and not confined to a
12 secure enclosure, the dog shall be kept on a secure leash.

13 (c) The dog shall be permanently identified by means of a color pho-
14 tograph to be maintained in the court file and/or by a nationally reg-
15 istered microchip for enforcing this provision. Microchip identifica-
16 tion shall be reported in a timely manner by the implanter to the local
17 agency responsible for control of such dogs.

18 (d) The premises on which the dog is kept shall be posted with clearly
19 visible signs stating "Beware of Dog," and may also require posting
20 signs with a warning symbol that informs children of the presence of a
21 dangerous or at-risk dog. Signs shall be visible from the closest road-
22 way.

23 (e) Require the owner or keeper to have the dog examined by a veteri-
24 narian or a dog trainer and to comply with any reasonable treatment or
25 training recommendations from such individuals.

26 (f) Order notification to the court on transfer of a dangerous or
27 at-risk dog to another.

28 (3) In the event a dog designated by a court as at-risk does not subse-
29 quently act in a manner consistent with the provisions of section 25-2810 (1)
30 or (2), Idaho Code, for a period of three (3) years, the restrictions and re-
31 quirements imposed by the court pursuant to subsection (2) of this section
32 shall be waived and the dog shall no longer be classified as at-risk.

33 (4) Any person who fails to comply with sanctions, restrictions and/or
34 requirements imposed by the court, pursuant to the provisions of this sec-
35 tion, shall be guilty of a violation and shall be subject to the provisions of
36 section 25-2812, Idaho Code.

37 (5) In the event of a violation of the provisions of section 25-2806,
38 Idaho Code, or the provisions of this section, an officer authorized to en-
39 force the provisions of this chapter may take the dog into custody and place
40 the dog in a suitable place, at a customary and reasonable expense to the
41 owner or keeper, pending final disposition of the charge against the owner or
42 keeper.

43 SECTION 11. That Chapter 28, Title 25, Idaho Code, be, and the same is
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
45 ignated as Section 25-2812, Idaho Code, and to read as follows:

46 25-2812. PENALTY FOR VIOLATIONS. The following penalty provisions
47 shall apply to any owner or keeper of a dog that, subsequent to damaging a
48 companion or production animal as provided in section 25-2806(2) or (3),
49 Idaho Code, damages a domestic animal:

1 (1) A first violation shall constitute a misdemeanor, punishable for
2 each offense, by a jail sentence of not more than six (6) months or by a fine
3 of not less than one hundred dollars (\$100) or more than five thousand dol-
4 lars (\$5,000), or by both such fine and imprisonment.

5 (2) A second violation, within ten (10) years of the first conviction,
6 shall constitute a misdemeanor, punishable for each offense, by a jail sen-
7 tence of not more than six (6) months or by a fine of not less than two hundred
8 dollars (\$200) or more than seven thousand dollars (\$7,000), or by both such
9 fine and imprisonment.

10 (3) A third or subsequent violation, within ten (10) years of the first
11 conviction, shall constitute a misdemeanor, punishable for each offense,
12 by a jail sentence of not more than twelve (12) months or by a fine of not
13 less than five hundred dollars (\$500) or more than nine thousand dollars
14 (\$9,000), or by both such fine and imprisonment.

15 SECTION 12. That Chapter 28, Title 25, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 25-2813, Idaho Code, and to read as follows:

18 25-2813. LOCAL REGULATION. The provisions of this chapter shall not
19 supersede or invalidate existing ordinances of local governments or pro-
20 hibit local governments from adopting and enforcing ordinances that provide
21 for the control of dogs, provided such ordinances shall not be less restric-
22 tive than the provisions of this chapter. Such ordinances may provide for
23 more restrictive control of dogs than provided in this chapter and may in-
24 clude more restrictive definitions of a dangerous or at-risk dog, provided
25 such definitions are not specific to one (1) or several breeds of dogs.

26 SECTION 13. That Chapter 28, Title 25, Idaho Code, be, and the same is
27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
28 ignated as Section 25-2814, Idaho Code, and to read as follows:

29 25-2814. SEVERABILITY. The provisions of this chapter are hereby de-
30 clared to be severable and if any provision of this chapter or the applica-
31 tion of such provision to any person or circumstance is declared invalid for
32 any reason, such declaration shall not affect the validity of the remaining
33 portions of this chapter.