



Civil Justice Subcommittee

**Wednesday, October 7, 2015
1:00 PM – 3:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Kathleen Passidomo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, October 07, 2015 01:00 pm

End Date and Time: Wednesday, October 07, 2015 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

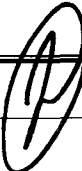

HB 43 Churches or Religious Organizations by Plakon, Cortes, B.

HB 91 Severe Injuries Caused by Dogs by Steube

NOTICE FINALIZED on 09/30/2015 4:02PM by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 43 Churches or Religious Organizations
SPONSOR(S): Plakon; Cortes and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		 Malcolm	Bond 
2) Judiciary Committee			

SUMMARY ANALYSIS

Conscience protection laws prevent individuals and entities from being required to perform services that violate their religious beliefs or moral convictions. These laws have historically applied to abortion, sterilization, and contraception. The bill creates conscience protections for clergy, churches, and religious organizations and their employees who object to solemnizing any marriage or providing services, facilities, or goods related to a marriage if doing so violates the organization or individual's sincerely held religious beliefs.

The bill also protects the state tax exempt status, and the right to apply for grants, contracts, and participation in government programs, of covered organizations that refuse to solemnize a marriage or provide services, facilities, or goods related to a marriage.

The bill does not have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Conscience Clauses

Conscience clauses allow individuals and entities to refuse to provide a service or undertake an activity that violates his or her religious or moral beliefs. A number of states and the federal government have enacted conscience clauses on a wide array of issues, including abortion,¹ the draft,² birth control,³ education,⁴ and adoption.⁵ Florida currently provides conscience clause protections for physicians and hospitals that refuse to perform abortions or dispense contraceptives, family planning devices, services or information for medical or religious reasons.⁶ In June of 2015 Texas enacted conscience clause protections for clergy and religious organizations and their employees regarding marriage services identical to this bill.⁷

Free Exercise Clause

The First Amendment to the United States Constitution provides, in relevant part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”⁸ Prior to 1990, the United States Supreme Court, in determining the constitutionality of laws that infringe upon the free exercise clause of First Amendment to the United State Constitution, “used a balancing test that took into account whether the challenged action imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest.”⁹ Using this test, the Court has held that an employee who was fired for refusing to work on her Sabbath could not be denied unemployment benefits,¹⁰ and that Amish children could not be required to comply with a state law demanding that they remain in school until the age of 16 where their religion required them to focus on Amish values and beliefs during their adolescent years.¹¹

However, in 1990, the Court in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, rejected the compelling interest test.¹² *Smith* concerned two members of the Native American Church who were fired for ingesting peyote for religious purposes. When they sought unemployment benefits, Oregon rejected their claims on the ground that consumption of peyote was a crime, but the Oregon Supreme Court, applying the compelling interest test, held that the denial of benefits violated the free exercise clause.¹³ The United States Supreme Court reversed. It found that the “use of the [compelling interest] test whenever a person objected on religious grounds to the enforcement of a generally applicable law ‘would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind.’”¹⁴ The Court abandoned the compelling interest test in favor of a bright-line test in which, under the First Amendment, “neutral, generally applicable laws

¹ 42 U.S.C. § 300a-7 (2000).

² 50 U.S.C. app. § 456(j) (2010).

³ COLO. REV. STAT. 25-6-102(9) (2015).

⁴ MO. CONST. art. I, § 5; N.H. REV. STAT. ANN. § 186:11 (2015).

⁵ VA. CODE ANN. § 63.2-1709.3(A) (2012); N.D. CENT. CODE § 50-12-07.1.

⁶ ss. 381.0051(5) and 390.0111(8), F.S.

⁷ 2015 TEX. GEN. LAWS ch. 434.

⁸ Article 1, section 3 of the Florida Constitution contains a nearly identical provision (“There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof . . .”).

⁹ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2760-61, (2014).

¹⁰ *Sherbert v. Verner*, 374 U.S. 398, at 408-409 (1963).

¹¹ *Wisconsin v. Yoder*, 406 U.S. 205, at 210-211, 234-236 (1972).

¹² Also called the “balancing test.” See *Smith*, 494 U.S. at 875.

¹³ *Smith*, 494 U.S. at 875.

¹⁴ *Burwell*, 134 S. Ct. at 2760-61 (quoting *Smith*, 494 U.S. at 888).

may be applied to religious practices even when not supported by a compelling governmental interest.”¹⁵

Religious Freedom and Restoration Act

In response to *Smith*, Congress enacted the Religious Freedom Restoration Act (RFRA) to provide religious liberty protections broader than those in *Smith*.¹⁶ The RFRA provides that “Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.”¹⁷ If the government substantially burdens a person’s exercise of religion, that person is entitled to an exemption from the rule unless the government “demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.”¹⁸ In its original form, the RFRA applied to both the federal government and the states; however, the Supreme Court in *City of Boerne v. Flores*, 512 U.S. 507 (1997), ruled the RFRA’s application to the states unconstitutional because “[t]he stringent test RFRA demands . . . far exceed[ed] any pattern or practice of unconstitutional conduct under the Free Exercise Clause as interpreted in *Smith*.”¹⁹

In 1998, in response to *Flores*, the Florida legislature enacted a state version of the RFRA that is similar in substance to the federal RFRA.²⁰ The Florida RFRA (FRFRA), ch. 761, F.S., provides that the government²¹ may not substantially burden a person’s exercise of religion²², even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.²³

In interpreting the FRFRA, the Florida Supreme Court has held that “a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.”²⁴ According to the Court, laws that merely inconvenience the exercise of religion do not create a substantial burden.²⁵ Although the FRFRA prohibits a court from conducting a factual inquiry into the validity of a person’s beliefs, the court will examine the relationship between the person’s religious exercise and the level of government interference to determine whether the interference is a substantial burden or merely inconveniences the exercise of religion.²⁶

Ministerial Exception

In 2012, the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694, unanimously rejected application of its free exercise clause analysis from *Smith*, 494 U.S. 872, instead recognizing a “ministerial exception,” grounded in the First Amendment,

¹⁵ *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997).

¹⁶ See 42 U.S.C. § 2000bb(a)(2).

¹⁷ 42 U.S.C. § 2000bb-1(a).

¹⁸ 42 U.S.C. § 2000bb-1(b).

¹⁹ *City of Boerne*, 521 U.S. at 533-534.

²⁰ A number of states have also enacted state versions of the RFRA. See National Conference of State Legislatures, *State Religious Freedom Restoration Acts*, <http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx> (last visited Sept. 9, 2015).

²¹ “Government” includes any branch, department, agency, instrumentality, or official or other person acting under color of law of the state, a county, special district, municipality, or any other subdivision of the state. s. 761.02(1), F.S.

²² “Exercise of religion” means an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief. s. 761.02(3), F.S.

²³ s. 761.03, F.S.

²⁴ *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004)

²⁵ *Id.* at 1035.

²⁶ See *id.* (finding that Boca Raton’s grave marker regulations did not substantially burden the appellant’s religious beliefs because they “merely inconvenience the plaintiffs’ practices of marking graves and decorating them with religious symbols.”) (quoting *Warner* F. Supp. 2d 1272, 1287 (S.D. Fla. 1999)).

that precludes application of [employment discrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers.”²⁷ Observing that “members of a religious group put their faith in the hands of their ministers,” the Court reasoned that applying employment discrimination in the context of religious institutions to require “a church to accept or retain an unwanted minister, or [punish] a church for failing to do so, intrudes upon more than a mere employment decision.”²⁸ Such action, the Court concluded,

interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.²⁹

Right to Marriage and Obergefell

The United State Supreme Court has consistently held that marriage is a fundamental right under the due process clause of the Fourteenth Amendment.³⁰ In June 2016, the Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584, extended the right to marriage to same-sex couples finding that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.”³¹

Effect of Proposed Changes

The bill creates s. 761.061(1), F.S., to provide that a clergy member, minister, church, religious organization, or any organization supervised or controlled by or in connection with a church or religious organization may not be required to solemnize any marriage or provide services, facilities, or goods related to the marriage if such action would cause the clergy member, minister, church or organization to violate a sincerely held religious belief. These provisions extend to any individual employed by a church or religious organization while acting in the scope of his or her employment.

The bill also provides that a refusal to solemnize any marriage or provide services, facilities, or goods related to the marriage pursuant to s. 761.061(1), F.S., may not serve as the basis for any cause of action or any other action by this state or any political subdivision to penalize or withhold benefits or privileges, including tax exemptions, governmental contracts, grants, or licenses.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1 creates s. 761.061, F.S., related to the rights of churches and religious organizations or individuals.

Section 2 provides for an effective date of July 1, 2016.

²⁷ *Hosanna-Tabor*, 132 S. Ct. at 705. See 42 U.S.C. s. 2000e-1 (providing an exemption for religious organizations and institutions from religious discrimination from the Civil Rights Act of 1964 related to employment discrimination).

²⁸ *Id.* at 706.

²⁹ *Id.*

³⁰ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598; see, e.g., *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Zablocki v. Redhail*, 434 U.S. 374, 383-387 (1978); *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977); *Cleveland Bd. of Ed. v. LaFleur*, 414 U.S. 632, 639-640, (1974); *Loving v. Virginia*, 388 U.S. 1, 11-12 (1967); *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

³¹ *Obergefell*, 135 S. Ct. at 1604.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill appears to implicate separate constitutional provisions: the free exercise clause, and the due process and equal protection clauses.

Free Exercise Clause

The First Amendment to the United States Constitution provides, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" Likewise, Article 1, Section 3 of the Florida Constitution provides that "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof"

As discussed above, with respect to internal decisions of religious institutions, the Supreme Court has recognized a "ministerial exemption" under the First Amendment to the United States Constitution. However, that exemption has only been applied by Court in employment discrimination cases.

In addition to these constitutional protections, as discussed above, Florida's Religious Freedom Restoration Act (FRFRA) guarantees that "The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability" ³²

It may be argued that the language of this bill does not create a new right for churches, religious organizations, and their employees but rather codifies an existing right guaranteed by both the United States and Florida Constitutions and the FRFRA—the right to be free from the government compelling them, as clergy and religious organizations, to engage in conduct their religion forbids.

Due Process and Equal Protection

The due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution provide that "no state shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws." ³³ Similarly, Florida's equal protection clause states that "no person shall be deprived of any right because of race, religion, national origin, or physical disability," ³⁴ and the state's due process clause provides that "no person shall be deprived of life liberty or property without due process of law." ³⁵

A court's analysis of an equal protection or substantive due process claim depends on the nature of the right and the classification of people involved. A court will analyze government action that infringes a fundamental right or discriminates according to race, ethnicity, religion, and national origin with the strictest scrutiny. ³⁶ To survive a constitutional challenge under strict scrutiny, the government must show that the regulation is the least restrictive means necessary to further a compelling state interest. ³⁷ In addition to already recognized protected classes, federal and state courts also recognize quasi-suspect classes. ³⁸ If a claim does not involve a fundamental right, a suspect class, or quasi-suspect class, then a court will uphold the law if it bears a reasonable relationship to the attainment of a legitimate government objective. ³⁹

Although the United State Supreme Court in *Obergefell* held that the due process and equal protection clauses of the Fourteenth Amendment provide the right to same-sex marriage, the Court did not indicate the standard of review it would apply in determining the constitutionality of state action that may infringe this right nor did it indicate whether an individual's sexual orientation is a protected class.

However, the United States Supreme Court has a history of disfavoring private-party discrimination and, instead, finding that state-action may unconstitutionally facilitate private parties' discrimination against a protected class. ⁴⁰ For example, in *Shelley v. Kraemer*, the Supreme Court found that judicial enforcement of racially restrictive covenants in private neighborhoods was sufficient to give

³² s. 761.03(1), F.S.

³³ U.S. CONST. amend XIV, s. 1.

³⁴ FLA. CONST. art. I, s. 2.

³⁵ *Id.* at art. I, s. 9.

³⁶ See, e.g., *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973); *Roe v. Wade*, 410 U.S. 113 (1973); *Bullock v. Carter*, 405 U.S. 134 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Williams v. Rhodes*, 393 U.S. 23 (1968); *Skinner*, 316 U.S. 535 (1942).

³⁷ See *Roe*, 410 U.S. at 155.

³⁸ BLACK'S LAW DICTIONARY (10th ed. 2014) defines quasi-suspect classification as "[a] statutory classification based on gender or legitimacy, and therefore subject to intermediate scrutiny under equal-protection analysis." BLACK'S defines intermediate scrutiny as "[a] standard lying between the extremes of rational-basis review and strict scrutiny. Under the standard, if a statute contains a quasi-suspect classification (such as gender or legitimacy), the classification must be substantially related to the achievement of an important governmental objective."

³⁹ *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

⁴⁰ *Reitman v. Mulkey*, 387 U.S. 369, 375 (1967) (reasoning that "'(t)he instant case presents an undeniably analogous situation' wherein the State had taken affirmative action designed to make private discriminations legally possible."); *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 717 (1961) (finding that discrimination by a lessee of an agency created by the State was sufficient to find that there was "discriminatory state action in violation of the Equal Protection Clause of the Fourteenth Amendment.").

rise to state action that promoted discrimination and thus was in violation of the Fourteenth Amendment.⁴¹

In recent years, some courts have begun recognizing homosexuals as a quasi-suspect class and applying intermediate scrutiny to find laws with discriminatory effects against homosexuals unconstitutional.⁴² Further, some courts, including a Florida state court, have found that laws prohibiting qualified homosexuals from participating in state-sanctioned activity, like adoption, that qualified heterosexuals can participate in freely are not justifiable even under the deferential rational basis review and are unconstitutional.⁴³ However, in 2004, the Eleventh Circuit Court of Appeals held that Florida's law prohibiting homosexuals from adopting did not burden a fundamental right and withstood rational basis scrutiny.⁴⁴ This case remains good law⁴⁵ and established federal precedent that, under Florida law, homosexuals are not a suspect or quasi-suspect class.

On the other hand, the Supreme Court in *Obergefell*

emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.⁴⁶

It is unclear how a court would analyze a challenge to the bill in light of the constitutional provisions and case law provided above. To date, there does not appear to be any precedent directly concerning a conflict between these constitutional rights and how such conflict would be resolved.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear what entity would qualify as "an organization . . . in connection with a church or religious organization" or how such an organization is different than an "organization supervised or controlled by . . . a church or religious organization."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

⁴¹ *Shelley v. Kraemer*, 334 U.S. 1, 21 (1948).

⁴² See *Windsor v. U.S.*, 699 F. 3d 169, 181-82 (2d Cir. 2012), *aff'd on other grounds*, 133 S.Ct. 2675 (2013); *Golinski v. Office of Personnel Mgmt.*, 824 F. Supp. 2d 968, 985-86 (N.D. Cal. 2012).

⁴³ *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So. 3d 79, 86 (Fla. 3d DCA 2010); *Bassett v. Snyder*, 2014 WL 5847607 (E.D. Mich. 2014). BLACK'S LAW DICTIONARY (10th ed. 2014) defines the "rational-basis test" as "[t]he criterion for judicial analysis of a statute that does not implicate a fundamental right or a suspect or quasi-suspect classification under the Due Process or Equal Protection Clause, whereby the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective. Rational basis is the most deferential of the standards of review that courts use in due-process and equal-protection analysis."

⁴⁴ *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804, 818 (11th Cir. 2004).

⁴⁵ The Supreme Court denied certiorari on January 10, 2005. See *Lofton v. Secretary, Florida Dept. of Children and Families*, 543 U.S. 1081 (2005).

⁴⁶ *Obergefell*, 135 S.Ct. at 2607.

1 A bill to be entitled
 2 An act relating to churches or religious
 3 organizations; creating s. 761.061, F.S.; providing
 4 that churches or religious organizations, related
 5 organizations, or certain individuals may not be
 6 required to solemnize any marriage or provide
 7 services, accommodations, facilities, goods, or
 8 privileges for related purposes if such action would
 9 violate a sincerely held religious belief; prohibiting
 10 certain legal actions, penalties, or governmental
 11 sanctions against such individuals or entities;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 761.061, Florida Statutes, is created
 17 to read:

18 761.061 Rights of certain churches or religious
 19 organizations or individuals.-

20 (1) A church or religious organization, an organization
 21 supervised or controlled by or in connection with a church or
 22 religious organization, an individual employed by a church or
 23 religious organization while acting in the scope of that
 24 employment, or a clergy member or minister may not be required
 25 to solemnize any marriage or provide services, accommodations,
 26 facilities, goods, or privileges for a purpose related to the

27 | solemnization, formation, or celebration of any marriage if such
 28 | an action would cause the church, organization, or individual to
 29 | violate a sincerely held religious belief of the entity or
 30 | individual.

31 | (2) A refusal to solemnize any marriage or provide
 32 | services, accommodations, facilities, goods, or privileges under
 33 | subsection (1) may not serve as the basis for a civil or
 34 | criminal cause of action or any other action by this state or a
 35 | political subdivision of this state to penalize or withhold
 36 | benefits or privileges, including tax exemptions or governmental
 37 | contracts, grants, or licenses, from any entity or individual
 38 | protected under subsection (1).

39 | Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 Severe Injuries Caused by Dogs
SPONSOR(S): Steube
TIED BILLS: None **IDEN./SIM. BILLS:** SB 334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Robinson	Bond NB
2) Local Government Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

State laws governing the classification, control, and destruction of "dangerous dogs" are enforced by local animal control authorities. The overall purpose of such laws is to protect public safety by classifying certain dogs as "dangerous" and requiring their owners to follow specific safety restrictions.

Currently, dogs which cause severe injury to or the death of a human being are held strictly liable and must be confiscated and destroyed without regard to whether the dog has been classified as "dangerous" or the consideration of any defense, such as provocation or abuse of the dog.

The bill requires that affirmative defenses be considered in any hearing regarding the destruction of previously unclassified dogs that cause severe injuries to human beings. If affirmative defenses apply, in lieu of destroying the dog, the dog may be classified as "dangerous" and subject to certain safety restrictions or the dog may be returned to its owner with no restrictions.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dangerous Dogs

Chapter 767, Florida Statutes, governs the classification, control, and disposition of “dangerous dogs.” A “dangerous dog”¹ is a dog that, according to the records of the appropriate authority, has:

- Aggressively bitten, attacked, or endangered or has inflicted severe injury² on a human being on public or private property.
- More than once severely injured or killed a domestic animal while off the owner’s property.
- Chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

Investigation and Classification of Dangerous Dogs

Section 767.12, F.S., requires that animal control authorities³ investigate reported incidents involving any dog that may be a dangerous dog. While under investigation, the dog must be impounded with the authorities or securely confined by the owner pending the outcome.⁴

In determining whether a dog is a “dangerous dog”, an animal control authority must consider certain defenses for the dog’s bad acts. If the threat, injury, or damage that is the subject of the reported incident was sustained by a person who was unlawfully on the property where the attack occurred, by a person who was tormenting, abusing, or assaulting the dog or its owner, or when the dog was protecting a human being from an unjustified attack or assault, the dog may not be classified as dangerous.⁵

Otherwise, if the animal control authority finds sufficient evidence that the dog meets the statutory criteria, it may make an initial determination that the dog should be classified as dangerous.⁶ The owner may request a hearing within 7 days of receiving notice of the initial determination. The hearing must be held no earlier than 5 days, but no later than 21 days, after receipt of the owner’s request.⁷

Thereafter, the animal control authority issues a written final determination of the dog’s status as a dangerous dog. The owner may appeal the dangerous dog classification to the county court within 10 days after receipt of the final determination.⁸

¹ s. 767.11(1), F.S.

² “Severe injury” means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. s. 767.11(3), F.S.

³ “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff carries out such duties. s. 767.11(5), F.S.

⁴ s. 767.12(1)(a), F.S.

⁵ s. 767.12(1)(b), F.S.

⁶ s. 767.12(1)(c), F.S.

⁷ Id.

⁸ s. 767.12(1)(d), F.S.

Dangerous Dog Restrictions

The owner⁹ of a dog that has been classified as a dangerous dog must comply with the following requirements and restrictions:

- Within 14 days of the final determination, or the completion of any appeal, the owner must obtain, and annually renew, a certificate of registration which requires proof of current rabies vaccination.¹⁰
- The dog must be marked with a form of permanent identification, such as a tattoo or electronic implant.¹¹
- The owner must provide a proper enclosure¹² to confine the dog and post the premises with warning signs at each entry point.¹³
- The dog must be muzzled and restrained when outside a proper enclosure and when being transported within a vehicle.¹⁴
- The owner must notify animal control if the dog is moved to another address, and, if such address is in a different jurisdiction, inform the authorities of that jurisdiction of the presence of the dog.¹⁵
- The owner must notify the animal control authority when the dog is loose or has attacked a human being or animal.¹⁶
- The owner must notify the animal control authority prior to the dog being sold or given away and provide the contact information of the new owner.¹⁷
- The dog may not be used for hunting purposes.¹⁸

The owner of a dangerous dog is subject to civil penalties for violating any of the specified restrictions¹⁹ and may be criminally charged if the dog subsequently attacks or bites a human being or domestic animal.²⁰

Destruction of Dogs

In addition to classifying dogs as “dangerous”, ch. 767, F.S. also requires animal control authorities to destroy dogs which display dangerous behaviors. The circumstances under which a dog must be destroyed depend upon whether or not the dog has been classified as a dangerous dog.

Dangerous Dogs

A dog that has previously been classified as a dangerous dog must be destroyed if the dog subsequently:

⁹ Subsequent owners of a dog that has been declared dangerous must also comply with all the dangerous dog requirements and the implementing local ordinances, even if the dog is moved from one local jurisdiction to another within the state. s. 767.12(3), F.S.

¹⁰ s. 767.12(2), F.S.

¹¹ s. 767.12(2)(c), F.S.

¹² “Proper enclosure of a dangerous dog” means, while on the owner’s property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure must have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and must also provide protection from the elements. s. 767.11(4), F.S.

¹³ s. 767.12(2)(b), F.S.

¹⁴ s. 767.12(4), F.S.

¹⁵ s. 767.12(3), F.S.

¹⁶ s. 767.12(3)(a)-(b), F.S.

¹⁷ s. 767.12(3)(c), F.S.

¹⁸ s. 767.12(5), F.S.

¹⁹ s. 767.12(7), F.S.

²⁰ s. 767.13, F.S.

- Attacks or bites a human being or domestic animal without provocation.²¹
- Attacks and causes severe injury to a human being.²²
- Attacks and causes the death of a human being.²³

Upon the occurrence of any such event, the dog is immediately confiscated by the animal control authority and placed in quarantine, if necessary, or impounded. The dog is held for 10 business days from the notification of its owner, and then destroyed. During the 10 day time period, the owner may request a hearing before the animal control authority. If an appeal of the destruction order is filed to the county court, the dog may not be destroyed pending the appeal, although the owner will be liable for boarding costs and fees arising from holding the dog.²⁴

Unclassified Dogs

Previously unclassified dogs must be destroyed under a narrower set of circumstances. Section 767.13(2), F.S., provides in pertinent part:

If a dog that has not been declared dangerous attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner.

The owner of a previously unclassified dog that causes severe injury or death to a human being possesses the same rights to a hearing and appeal as the owner of a dangerous dog.²⁵

Difficulty has arisen in the resolution of destruction cases involving previously unclassified dogs that cause severe injuries. Rather than destruction, the classification scheme under s. 767.12, F.S. provides that dogs which cause severe injuries to a human being may be classified as “dangerous” and returned to its owner subject to compliance with certain safety restrictions.

Accordingly, under current law, the investigating animal control authority may treat a previously unclassified dog as either a dangerous dog subject to restriction under s. 767.12, F.S., or as a candidate for destruction under s. 767.13(2), F.S. This dichotomy essentially gives animal control authorities unfettered discretion to determine whether a previously unclassified dog shall be confiscated and destroyed or returned to its owner with safety restrictions. One county court²⁶ has found that “such discretion in the hands of the enforcement authority runs afoul of the constitutional doctrine of nondelegation.”²⁷ The court overturned an order mandating destruction of a dog that, alternately, could have been classified and restricted as a dangerous dog under s. 767.12.

²¹ s. 767.13(1), F.S.

²² s. 767.13(3), F.S.

²³ Id.

²⁴ Id.

²⁵ s. 767.13(2), F.S.

²⁶ Order on Petitioner’s Motion for Rehearing at 4, *In Re: Petition of Gilbert Otero Regarding the Dog “Zeus,”* No. 2007-CC-2863-SC (Sarasota Cty. Ct. Jul. 27, 2007).

²⁷ The doctrine of nondelegation describes the principle that one branch of government may not authorize another entity to exercise the power or function which it is constitutionally authorized to exercise itself. The nondelegation doctrine is explicitly stated in Article II, Section 3 of the Florida Constitution, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” See also *Dickinson v. State*, 227 So. 2d 36, 37 (Fla. 1969)(the legislative exercise of the police power should be so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of the administrative agency charged with responsibility of enforcing the act); *State v. Mitchell*, 652 So. 2d 473, 478 (Fla. 2d DCA 1995)(the legislature may not delegate open-ended authority such that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law.)

Further, if the animal control authority proceeds under the destruction statute, the owner may raise no defense for the dog's bad acts. Under the classification statute, the dog owner can raise a number of affirmative defenses, such as provocation or abuse of the dog, to prevent the classification of his or her dog as dangerous. But, the destruction statute does not authorize any such defenses. Section 767.13(2), F.S. is a strict liability statute and the fate of the dog is determined with finality the moment that the dog inflicts a severe injury or death, regardless of the reason or circumstances. The inability to raise affirmative defenses to the destruction of the dog led the county court in *In Re: "Cody"* to declare s. 767.13(2), F.S. unconstitutional as a violation of the owner's right to substantive due process.²⁸

It truly does defy logic that the owner of a dog facing potential classification as "dangerous" may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense, no matter how valid or compelling, may be raised by a person trying to prevent *execution* of his or her pet. To compel execution of all dogs confiscated under Section 767.13(2) is arbitrary and unduly oppressive. The legislature has given animal control authorities unfettered authority to order the killing of any dog, who has not previously been declared dangerous and who causes "severe injury," regardless of the circumstances. Section 767.13(2), as it is currently written, does not further the government's interest of protecting society from "dangerous dogs."²⁹

The constitutionality of s. 767.13(2), F.S. is currently being challenged in the Twelfth Judicial Circuit Court in and for Manatee County on similar due process grounds.³⁰

Effect of Proposed Changes

The bill requires an animal control authority to consider affirmative defenses in any hearing regarding the destruction of a previously unclassified dog. The affirmative defenses available to the dog and its owner are the same affirmative defenses available in dangerous dog classification cases.

If any such defense is applicable to the dog or its owner, the animal control authority may select any of the following remedies:

- Order the destruction of the dog.
- Declare that the dog is a dangerous dog, order that the dog and its owner comply with the restrictions for dangerous dogs, and return the dog to its owner.
- Return the dog to its owner with no restrictions.

The bill does not revise the standards or procedures for the destruction of previously unclassified dogs that cause the death of a human.

²⁸ The Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the State Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. Dogs and other domestic animals, commonly referred to as pets, are subjects of property or ownership. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967). The owner of such animals may not be deprived of their use, except in accord with all of the elements of due process. *County of Pasco v. Riehl*, 620 So. 2d 229, 231 (Fla. 2d DCA 1993). Due process protects not only basic procedural rights, but also basic substantive rights. In considering whether a statute violates substantive due process, the basic test is whether the state can justify the infringement of its legislative activity upon personal rights and liberties. The statute must bear a reasonable relationship to the legislative objective and not be arbitrary, discriminatory, or oppressive. See *Young v. Broward County*, 570 So. 2d 309, 310 (Fla. 4th DCA 1990); *Joseph v. Henderson*, 834 So. 2d 373, 374 (Fla. 2d DCA 2003).

²⁹ Opinion of the Court at 5, *In Re: "Cody", an adult male, black and tan German Shepard dog, owned by Charles Henshall*, No. 1999-33984-COC1 (Volusia Cty. Ct. May 6, 2003).

³⁰ Dale White, *Attorney cites 'Stand your ground' in Padi case*, Sarasota Herald-Tribune, September 29, 2015, <http://www.heraldtribune.com/article/20150929/ARTICLE/150929611/2416/NEWS?Title=Attorney-cites-Stand-your-ground-in-Padi-case&tc=ar>.

B. SECTION DIRECTORY:

Section 1 amends s. 767.13, F.S., relating to attack or bite by dangerous dog; penalties; confiscation; destruction.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The ability of the hearing officer to declare that a dog is a "dangerous dog" even when certain mitigating factors are present is inconsistent with s. 767.12(1)(b), F.S. which prohibits the classification of a dog as dangerous under the same circumstances.

Due to the number of cases currently pending before local animal control boards and the courts regarding the right to present affirmative defenses at a destruction hearing, the interests of justice and the efficiency of the courts may be served by having the bill take effect upon becoming a law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to severe injuries caused by dogs;
 3 amending s. 767.13, F.S.; specifying circumstances
 4 under which a dog that has caused severe injury to a
 5 human may be returned to its owner rather than be
 6 destroyed; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (2) of section 767.13, Florida
 11 Statutes, is amended to read:

12 767.13 Attack or bite by dangerous dog; penalties;
 13 confiscation; destruction.—

14 (2) (a) If a dog that has not been declared dangerous
 15 attacks and causes severe injury to or death of any human, the
 16 dog shall be immediately confiscated by an animal control
 17 authority and, placed in quarantine, if necessary, for the
 18 proper length of time or held for 10 business days after the
 19 owner is given written notification under s. 767.12, ~~and~~
 20 ~~thereafter destroyed in an expeditious and humane manner.~~ This
 21 10-day time period shall allow the owner to request a hearing
 22 under s. 767.12. The owner is ~~shall be~~ responsible for payment
 23 of all boarding costs and other fees as may be required to
 24 humanely and safely keep the animal during any appeal procedure.

25 (b) Unless the dog is returned to its owner under
 26 paragraph (c), it shall be destroyed in an expeditious and

27 humane manner.

28 (c) If the death of a human has not occurred and the owner
 29 requests a hearing under s. 767.12, at such a hearing the
 30 hearing officer shall consider whether the severe injury was
 31 sustained by a person who, at the time, was unlawfully on the
 32 property or, while lawfully on the property, was tormenting,
 33 abusing, or assaulting the dog, its offspring, its owner, or a
 34 family member of the owner, or if the dog was protecting or
 35 defending a human within the immediate vicinity of the dog from
 36 an unjustified attack or assault. If any one of these factors is
 37 found, in lieu of ordering that the dog be destroyed under
 38 paragraph (b), the hearing officer may declare that the dog is a
 39 dangerous dog and impose the restrictions set forth in s.
 40 767.12(2)-(4) and return the dog to its owner, or order that the
 41 dog be returned to the owner with no restrictions.

42 (d) ~~In addition, if~~ The owner of a ~~the~~ dog described in
 43 paragraph (a) who has ~~had~~ prior knowledge of the dog's dangerous
 44 propensities, yet demonstrates ~~demonstrated~~ a reckless disregard
 45 for such propensities under the circumstances, commits ~~the owner~~
 46 ~~of the dog is guilty of~~ a misdemeanor of the second degree,
 47 punishable as provided in s. 775.082 or s. 775.083.

48 Section 2. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Steube offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. The Division of Law Revision and Information is
 7 directed to designate ss. 767.01-767.07, Florida Statutes, as
 8 part I of chapter 767, Florida Statutes, entitled "Damage By
 9 Dogs", and ss. 767.10-767.16, Florida Statutes, as part II of
 10 that chapter, entitled "Dangerous Dogs."

11 Section 2. Section 767.12, Florida Statutes, is amended to
 12 read:

13 767.12 Classification of dogs as dangerous; certification
 14 of registration; notice and hearing requirements; confinement of
 15 animal; exemption; appeals; unlawful acts.-

16 (1)~~(a)~~ An animal control authority shall investigate
 17 reported incidents involving any dog that may be dangerous and



Amendment No. 1

18 shall, if possible, interview the owner and require a sworn
19 affidavit from any person, including any animal control officer
20 or enforcement officer, desiring to have a dog classified as
21 dangerous.

22 (a) Any animal that is the subject of a dangerous dog
23 investigation because of severe injury to a human being may be
24 immediately confiscated by an animal control authority, placed
25 in quarantine, if necessary, for the proper length of time or
26 impounded and held pending the outcome of the investigation and
27 any hearings related to the determination of a dangerous dog
28 classification. In the event that the dog is to be destroyed,
29 the dog may not be destroyed while any appeal is pending.
30 However, the owner shall be responsible for the payment of all
31 boarding costs and other fees as may be required to humanely and
32 safely keep the animal during any appeal procedure.

33 (b) Any animal that is the subject of a dangerous dog
34 investigation, that is not impounded with the animal control
35 authority, shall be humanely and safely confined by the owner in
36 a securely fenced or enclosed area pending the outcome of the
37 investigation and resolution of any hearings related to the
38 dangerous dog classification. The address of where the animal
39 resides shall be provided to the animal control authority. No
40 dog that is the subject of a dangerous dog investigation may be
41 relocated or ownership transferred pending the outcome of an
42 investigation or any hearings related to the determination of a
43 dangerous dog classification. In the event that a dog is to be

656357 - h0091-strike.docx

Published On: 10/6/2015 5:14:41 PM



Amendment No. 1

44 destroyed, the dog shall not be relocated or ownership
45 transferred.

46 ~~(2)(b)~~ A dog shall not be declared dangerous if:

47 (a) The threat, injury, or damage was sustained by a
48 person who, at the time, was unlawfully on the property or,
49 while lawfully on the property, was tormenting, abusing, or
50 assaulting the dog or its owner or a family member.

51 ~~(b) No dog may be declared dangerous if~~ The dog was
52 protecting or defending a human being within the immediate
53 vicinity of the dog from an unjustified attack or assault.

54 ~~(3)(e)~~ After the investigation, the animal control
55 authority shall make an initial determination as to whether
56 there is sufficient cause to classify the dog as dangerous and
57 shall afford the owner an opportunity for a hearing prior to
58 making a final determination. The animal control authority shall
59 provide written notification of the sufficient cause finding, to
60 the owner, by registered mail, certified hand delivery, or
61 service in conformance with the provisions of chapter 48
62 relating to service of process. The owner may file a written
63 request for a hearing within 7 calendar days from the date of
64 receipt of the notification of the sufficient cause finding and,
65 if requested, the hearing shall be held as soon as possible, but
66 not more than 21 calendar days and no sooner than 5 days after
67 receipt of the request from the owner. Each applicable local
68 governing authority shall establish hearing procedures that
69 conform to this subsection ~~paragraph~~.

656357 - h0091-strike.docx

Published On: 10/6/2015 5:14:41 PM



Amendment No. 1

70 ~~(4)(d)~~ Once a dog is classified as a dangerous dog, the
71 animal control authority shall provide written notification to
72 the owner by registered mail, certified hand delivery or
73 service, and the owner may file a written request for a hearing
74 in the county court to appeal the classification within 10
75 business days after receipt of a written determination of
76 dangerous dog classification and must confine the dog in a
77 securely fenced or enclosed area pending a resolution of the
78 appeal. Each applicable local governing authority must establish
79 appeal procedures that conform to this subsection ~~paragraph~~.

80 (5) Except as otherwise provided in subsection (6), the
81 owner of a dog that has been classified as a dangerous dog shall
82 comply with the provisions of this subsection.

83 ~~(a)(2)~~ Within 14 days after a dog has been classified as
84 dangerous by the animal control authority or a dangerous dog
85 classification is upheld by the county court on appeal, the
86 owner of the dog must obtain a certificate of registration for
87 the dog from the animal control authority serving the area in
88 which he or she resides, and the certificate shall be renewed
89 annually. Animal control authorities are authorized to issue
90 such certificates of registration, and renewals thereof, only to
91 persons who are at least 18 years of age and who present to the
92 animal control authority sufficient evidence of:

93 1.(a) A current certificate of rabies vaccination for the
94 dog.



Amendment No. 1

95 ~~2.(b)~~ A proper enclosure to confine a dangerous dog and
96 the posting of the premises with a clearly visible warning sign
97 at all entry points that informs both children and adults of the
98 presence of a dangerous dog on the property.

99 ~~3.(e)~~ Permanent identification of the dog, such as a
100 tattoo on the inside thigh or electronic implantation.

101
102 The appropriate governmental unit may impose an annual fee for
103 the issuance of certificates of registration required by this
104 section.

105 ~~(b)(3)~~ The owner shall immediately notify the appropriate
106 animal control authority when a dog that has been classified as
107 dangerous:

108 ~~1.(a)~~ Is loose or unconfined.

109 ~~2.(b)~~ Has bitten a human being or attacked another animal.

110 ~~3.(e)~~ Is sold, given away, or dies.

111 ~~4.(d)~~ Is moved to another address.

112
113 Prior to a dangerous dog being sold or given away, the owner
114 shall provide the name, address, and telephone number of the new
115 owner to the animal control authority. The new owner must comply
116 with all of the requirements of this act and implementing local
117 ordinances, even if the animal is moved from one local
118 jurisdiction to another within the state. The animal control
119 officer must be notified by the owner of a dog classified as
120 dangerous that the dog is in his or her jurisdiction.

656357 - h0091-strike.docx

Published On: 10/6/2015 5:14:41 PM



Amendment No. 1

121 ~~(c)(4)~~ It is unlawful for the owner of a dangerous dog to
122 permit the dog to be outside a proper enclosure unless the dog
123 is muzzled and restrained by a substantial chain or leash and
124 under control of a competent person. The muzzle must be made in
125 a manner that will not cause injury to the dog or interfere with
126 its vision or respiration but will prevent it from biting any
127 person or animal. The owner may exercise the dog in a securely
128 fenced or enclosed area that does not have a top, without a
129 muzzle or leash, if the dog remains within his or her sight and
130 only members of the immediate household or persons 18 years of
131 age or older are allowed in the enclosure when the dog is
132 present. When being transported, such dogs must be safely and
133 securely restrained within a vehicle.

134 (6) If a dog is classified as a dangerous dog as the
135 result of an incident that caused severe injury to a human
136 being, based upon the nature and circumstances of the injury and
137 the likelihood of a future threat to the public safety, health,
138 and welfare, the dog may be destroyed in an expeditious and
139 humane manner, or, alternately, the owner shall be required to
140 comply with the requirements of subsection (5). The animal
141 control authority shall inform the owner of the penalty imposed
142 within the notice of sufficient cause. If the owner requests a
143 hearing under subsection (3), the hearing officer may review the
144 penalty imposed by the animal control authority and rule upon
145 the proper penalty under this subsection.



Amendment No. 1

146 ~~(7)-(5)~~ Hunting dogs are exempt from the provisions of this
147 section ~~act~~ when engaged in any legal hunt or training
148 procedure. Dogs engaged in training or exhibiting in legal
149 sports such as obedience trials, conformation shows, field
150 trials, hunting/retrieving trials, and herding trials are exempt
151 from the provisions of this section ~~act~~ when engaged in any
152 legal procedures. However, such dogs at all other times in all
153 other respects shall be subject to this and local laws. Dogs
154 that have been classified as dangerous shall not be used for
155 hunting purposes.

156 ~~(6) This section does not apply to dogs used by law
157 enforcement officials for law enforcement work.~~

158 ~~(8)-(7)~~ Any person who violates any provision of this
159 section is guilty of a noncriminal infraction, punishable by a
160 fine not exceeding \$500.

161 Section 3. Subsection (2) of section 767.13, Florida
162 Statutes, is transferred, renumbered as section 767.135, Florida
163 Statutes, and amended, to read:

164 767.135 ~~767.13~~ Attack or bite by ~~dangerous~~ dog that has
165 not been declared dangerous; penalties; confiscation;
166 destruction.-

167 ~~(2)~~ If a dog that has not been declared dangerous attacks
168 and causes the ~~severe injury to or~~ death of any human, the dog
169 shall be immediately confiscated by an animal control authority,
170 placed in quarantine, if necessary, for the proper length of
171 time or held for 10 business days after the owner is given



Amendment No. 1

172 written notification under s. 767.12, and thereafter destroyed
173 in an expeditious and humane manner. This 10-day time period
174 shall allow the owner to request a hearing under s. 767.12. If
175 the owner files a written appeal under s. 767.12 or this
176 section, the dog must be held and may not be destroyed while the
177 appeal is pending. The owner shall be responsible for payment of
178 all boarding costs and other fees as may be required to humanely
179 and safely keep the animal during any appeal procedure. ~~In~~
180 ~~addition, if the owner of the dog had prior knowledge of the~~
181 ~~dog's dangerous propensities, yet demonstrated a reckless~~
182 ~~disregard for such propensities under the circumstances, the~~
183 ~~owner of the dog is guilty of a misdemeanor of the second~~
184 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

185 Section 4. Section 767.136, Florida Statutes, is created
186 to read:

187 767.136 Attack or bite by unclassified dog that causes
188 severe injury or death; penalties.-

189 (1) If the owner of a dog that has not been declared
190 dangerous, but which attacks and causes severe injury to or the
191 death of a human, had knowledge of the dog's dangerous
192 propensities, yet demonstrated a reckless disregard for such
193 propensities under the circumstances, the owner of the dog
194 commits a misdemeanor of the second degree, punishable as
195 provided in s. 775.082 or s. 775.083.

196 (2) If the dog attacks or bites a person who is engaged in
197 or attempting to engage in a criminal activity at the time of



Amendment No. 1

198 the attack, the owner is not guilty of any crime specified under
199 this section.

200 Section 5. Section 767.16, Florida Statutes, is amended to
201 read:

202 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~
203 ~~quarantine.~~-

204 (1) Any dog that is owned, or the service of which is
205 employed, by a law enforcement agency, is exempt from the
206 provisions of this part.

207 (2) ~~or~~ Any dog that is used as a service dog for blind,
208 hearing impaired, or disabled persons, and that bites another
209 animal or human is exempt from any quarantine requirement
210 following such bite if the dog has a current rabies vaccination
211 that was administered by a licensed veterinarian.

212 Section 6. This act shall take effect upon becoming a law.

213
214 -----

T I T L E A M E N D M E N T

215 Remove everything before the enacting clause and insert:
216 An act relating to severe injuries caused by dogs; providing a
217 directive to the Division of Law Revision and Information;
218 amending s. 767.12, F.S.; providing for discretionary, rather
219 than mandatory, impoundment of dogs that cause severe injuries
220 to humans; specifying circumstances under which a dangerous dog
221 that has caused severe injuries to a human may be euthanized or
222 returned to its owner; transferring, renumbering, and amending
223



Amendment No. 1

224 s. 767.13, F.S.; repealing automatic euthanasia for unclassified
225 dogs which cause severe injuries to humans; creating s. 767.136,
226 F.S.; transferring existing criminal penalty related to severe
227 injuries or death caused by a dog into new statutory section;
228 amending s. 767.16, F.S.; exempting law enforcement dogs from
229 dangerous dog law; providing an effective date.