

JAMAICA

No. 13 – 2020

I assent,

[L.S.]

sgd. P. L. Allen
Governor-General.

22nd day of December 2020

AN ACT to Repeal the Dogs (Liability for Injuries by) Act, and to provide for liability for attacks by dogs and for connected matters.

[23rd day of December 2020]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Dogs (Liability for Attacks) Act, Short title. 2020.

Interpretation.

2. In this Act—

“agent”, where used in relation to the Government, includes an independent contractor employed by the Government;

“attack” means any circumstance which results in injury;

“injury” means—

- (a) injury to an individual, and includes death, disease or any impairment of an individual’s physical or mental condition; or
- (b) injury to an animal and includes death, disease or any impairment of any animal’s physical condition;

“occupier”, in relation to premises or any public place, means a person who under the Occupiers’ Liability Act has a duty of care to visitors of the premises or public place, and includes a tenant;

“owner”, in relation to a dog, means—

- (a) the person presumed under section 3 to be the owner of the dog;
- (b) the person having the custody or care of the dog at the time the injury concerned occurred; or
- (c) where a dog is in a public place, the person who caused the dog to be in that public place;

“premises” means land or buildings, regardless of use;

“public place”, for the avoidance of doubt, has the meaning assigned to it in the Interpretation Act;

“veterinary surgeon” means a person registered as veterinary surgeon under the Veterinary Act.

Presumption
of ownership
of dog

3.—(1) The occupier of any premises where a dog is kept, or permitted to live or remain, shall be presumed to be the owner of the dog.

(2) For the purposes of this section, where there is more than one occupier of the premises concerned, being premises let in separate apartments or lodgings (however described), the occupier of that

particular part of the premises at which the dog was kept, or permitted to live or remain, at the time in question shall be presumed to be the owner of the dog.

(3) Nothing in this section precludes more than one person being presumed to be the owner of a dog and being held liable for injury caused by the dog accordingly.

(4) A person may rebut a presumption of ownership under this section by proving that the person was not the owner of the dog at the time in question and that the dog was kept, or permitted to live or remain, at the premises without the person's sanction or knowledge.

(5) Where an individual who is presumed under this section to be the owner of a dog is under the age of eighteen years, any individual over the age of eighteen years who is the parent or guardian of that individual shall be presumed to be the owner of the dog.

4.—(1) The owner of a dog shall ensure that, at all times while the dog is in a public place, the dog is kept under control and that the dog is— Duties of owners

- (a) fitted with a restraint (such as a secured leash attached to a collar or harness) or a muzzle and such a restraint; or
- (b) contained in a receptacle,

that allows the movements of the dog to be kept under control and prevents the dog from attacking, or presenting a menace to, any individual or animal.

(2) The owner of a dog shall not permit the dog to enter any public place at which a notice prohibiting entry by dogs is prominently displayed, unless the dog—

- (a) is being used, by the occupier, to secure the place;
- (b) is being used for a lawful purpose by a constable or other agent of the Government; or
- (c) is guiding a “person with a disability” as that term is defined in the Disabilities Act.

(3) An owner of a dog who contravenes subsection (1) or (2) in any case where that owner had previously been warned under section 10 (whether in respect of the same dog or another dog) commits an offence and shall be liable upon conviction therefor before a Judge of a Parish Court to a fine not exceeding five hundred thousand dollars.

Civil liability.

5.—(1) The owner of a dog shall be liable in damages for injury done by the dog in any place, other than the premises (or part thereof) referred to in section 3 where the dog is kept, or permitted to live or remain, and it shall not be necessary for the party seeking compensation in damages to show—

- (a) a previous mischievous propensity in the dog;
- (b) the owner's knowledge of a previous mischievous propensity in the dog; or
- (c) that the injury was attributable to neglect on the part of the owner.

(2) Nothing in subsection (1) precludes the liability of a person under any other law for injury done on premises where a dog is kept, or permitted to live or remain.

(3) Compensation referred to in subsection (1) shall be recoverable in any court of competent jurisdiction by the person claiming the compensation.

(4) A person shall not be liable under this section if the person proves that at the time when the injury occurred the dog was in the custody or care of another person whom the first mentioned person reasonably believed to be a fit and proper person to exercise the duties referred to in section 4.

(5) Subsection (4) shall not apply in any case where the first mentioned person has employed or contracted the other person to provide a security service using the dog, and the other person, in providing that service, acted in the course of the person's duties.

(6) An action under this section shall be brought within six years after the date on which the injury occurred.

6. Where a dog causes injury in a public place, the owner of the dog commits an offence. Criminal liability

7. It shall be a defence in any proceedings under section 5 or 6 for the defendant to prove— Defences.

- (a) that the attack by the dog occurred in the defence against an offence (whether to person or property) being carried on by the individual attacked by the dog;
- (b) the person was not the owner of the dog at the time of the attack;
- (c) the individual or animal attacked was trespassing or was in a place where that individual or animal was not authorised to be;
- (d) the attack was caused by the deliberate provocation of the dog by the individual attacked or another individual, being in each such case an individual over the age of fourteen years; or
- (e) the attack was by a dog being used by a constable, or other agent of the Government, in the lawful execution of the duties of the constable or other agent (as the case may be).

8.—(1) A person who commits an offence under section 6 shall be liable, upon conviction therefor before— Penalty upon criminal liability

- (a) a Parish Court, summarily, to a fine not exceeding five hundred thousand dollars or, in default of payment of the fine, to imprisonment for a term not exceeding six months, in any case where the person had not previously been warned under section 10 (whether in respect of the same dog or another dog);
- (b) a Parish Court, summarily, to a fine not exceeding one million dollars or, in default of payment of the fine to imprisonment for a term not exceeding six months, in any case where the

person had previously been warned under section 10 (whether in respect of the same dog or another dog);

- (c) a Circuit Court to a fine, or to imprisonment for a term not exceeding five years, in any case where the attack results in the death of, or debilitating injury to, an individual; or
- (d) a Circuit Court, to a fine, or to imprisonment for a term not exceeding fifteen years, in any case where the attack results in the death of an individual and the offender is proved to have been present at the time of the attack and to have failed to attempt to restrain the dog or to render assistance to the individual attacked.

(2) The Minister may by order subject to affirmative resolution amend the penalties specified in this section.

(3) For the purposes of the Criminal Records (Rehabilitation of Offenders) Act, an offence under subsection (1)(a) or (b), section 4(3) or section 10(5) shall not form part of the criminal record of the offender.

(4) Notwithstanding subsection (1)(a) and (b), in any case where the injury concerned consists solely of injury to an animal, the Court may instead of sentencing the offender to imprisonment in default of payment of the fine, make with the consent of the offender a community service order under section 10 of the Criminal Justice (Reform) Act, as if the offence were an offence originally punishable with imprisonment.

9.—(1) In addition to any penalty that a court may impose upon conviction under section 8, the court may—

- (a) order that the dog be humanely euthanised by a veterinary surgeon, at the expense of the owner of the dog and in such manner as shall be specified in the order; or
- (b) make an order specifying the measures to be taken, as the court considers appropriate, for the management and control of the dog.

(2) In making an order under subsection (1), the court shall take into consideration—

- (a) the seriousness of any injury resulting from the attack;
- (b) any circumstances that explain the attack; and
- (c) such precautions as have been taken by the owner since the attack, which are likely to preclude any further attacks by the dog.

10.—(1) A constable may serve a warning upon the owner of a dog, if— Powers of constable.

- (a) it comes to the attention of the constable that the owner has contravened section 4(1) or (2); and
- (b) the constable is satisfied that that owner has not previously been warned under this section (whether in respect of the same dog or another dog).

(2) A warning under subsection (1) shall be in such form as may be prescribed, and shall include—

- (a) the date on which the warning is served on the owner, and a statement that the warning takes effect on the date of such service;
- (b) the name and address of that owner;
- (c) a general description of the dog concerned;
- (d) a statement of the fact of the presence of the dog in a public place and of the particulars of the alleged contravention of section 4;
- (e) a direction to that owner to take immediate steps to ensure that the dog is not permitted to be in a public space in any circumstances that contravene the owner's duties under section 4; and
- (f) a statement that in the event that the owner is found on a subsequent occasion to have contravened section 4, the

owner may be liable in respect of an offence under section 4.

(3) A Judge of a Parish Court may, on the application of a constable and if satisfied that there is reasonable cause to believe that a dog presents a danger to any individual or animal, in a public place, issue a warrant authorising any constable with the assistance of such persons as may be specified, being persons having the appropriate expertise in the control of dogs, to seize and detain the dog, and the warrant may authorise a constable to enter upon premises at any reasonable time for the purpose of seizing the dog.

(4) A dog detained pursuant to subsection (3) shall be dealt with in such manner as shall be directed by the Judge who issued the warrant.

(5) A person who hinders or obstructs a constable attempting to execute a warrant issued under this section commits an offence and shall be liable, on summary conviction therefor before a Parish Court, to a fine not exceeding three hundred thousand dollars or, in default of payment, to imprisonment for a term not exceeding three months.

Regulations

11.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for—

- (a) the taking of evidentiary samples from a dog detained under section 10 and from any dog reasonably suspected of having attacked an individual or animal;
- (b) the custody and care of a dog detained under section 10, and the costs thereof; and
- (c) the form of warning to be given under section 10 and the procedure otherwise relating thereto.

12. The Dogs (Liability for Injuries by) Act is repealed.

Repeal of
Dogs
(Liability for
Injuries by)
Act.

Passed in the Honourable House of Representatives this 17th day of November, 2020 with seventeen (17) amendments.

M. DALRYMPLE PHILIBERT
Speaker.

Passed in the Senate this 4th day of December, 2020 with twenty-four (24) amendments.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

On the 8th day of December, 2020 the House of Representatives agreed to the amendments made by the Senate with one (1) further amendment.

M. DALRYMPLE PHILIBERT
Speaker.

On the 11th day of December, 2020 the Senate agreed to the amendment made by the House of Representatives.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgd. Valerie A. Curtis
Clerk to the Houses of Parliament. (Acting)