

A Bill for an Act Relating to Absolute Liability of Animal Owners: Penalties for Violations.

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

SECTION 1. The legislature finds that recent court decisions allow a dog his “first bite” before an owner can be held liable for injuries caused by the dog, while at the same time holding an owner liable for injuries caused to a trespasser attacked by a dog, even if such injuries occur on the private property of the dog owner. The legislature finds both holdings unacceptable. In the first case, innocent public utility employees, visitors, and others legally on a property often go without a remedy. In the second case, numerous state residents who keep dogs or other animals for protection against the rising crime rate (which the legislature herein specifically finds to exist) are hampered in using an effective means of crime prevention.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 663- Liability of animal owners. (a) The owner or harbinger of an animal, if the animal proximately causes either personal or property damage to any person, shall be liable in damages to the person injured regardless of the animal owner’s or harbinger’s lack of scienter of the vicious or dangerous propensities of the animal.

(b) The owner or harbinger of an animal which is known by its species or nature to be dangerous, wild, or vicious, if the animal proximately causes either personal or property damage to any person, shall be absolutely liable for such damage.”

SECTION 3. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 663- Exception of animal owners to civil liability. (a) As used in this section:

- (1) “Premises” includes any building or portion thereof or any real property owned, leased, or occupied by the owner or harbinger of an animal.
- (2) “Enter or remain unlawfully” means to be in or upon premises when the person is not licensed, invited, or otherwise privileged to be upon the premises. A person is not licensed or privileged to enter or remain in or upon a premises if a warning or warnings have been posted reasonably adequate to warn other persons that an animal is present on the premises. A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part

of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

- (3) The definition of "intentionally" and "knowingly" as contained in sections 702-206(1) and 702-206(2) shall apply.

(b) Notwithstanding sections 663-1 and 663- , any owner or harborer of an animal shall not be liable for any civil damages resulting from actions of the animal occurring in or upon the premises of the owner or harborer where the person suffering either personal or property damage as a proximate result of the actions of the animal is found by the trier of fact intentionally or knowingly to have entered or remained in or upon such premises unlawfully.

(c) Notwithstanding sections 663-1 and 663- , any owner or harborer of an animal shall not be liable for any civil damages resulting from actions of the animal where the trier of fact finds that:

- (1) The animal caused such damage as a proximate result of being teased, tormented, or otherwise abused without the negligence, direction, or involvement of the owner or harborer; or
- (2) The use of the animal to cause damage to person or property was justified under chapter 703."

SECTION 4. New statutory material is underscored.*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 7, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.