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Committee on Agriculture, Chesapeake and Natural Resources  
Virginia House of Delegates

Dear Committee on Agriculture, Chesapeake and Natural Resources,

I am writing to voice my opposition to HB 467 “Dangerous and vicious dogs; civil liability, knowledge of propensity not required,” introduced by Del. David L. Bulova on January 11, 2022. Proposed HB 467 would amend § 3.2-6540 to add:

Nothing in this article shall limit the civil liability of the owner of a dog that bites a human being or otherwise attacks a human being causing bodily injury, regardless of whether the owner knew or should have known of the dog's propensity for vicious, dangerous, or otherwise aggressive behavior.

But Virginia has never subscribed to a strict liability model for dog bites, and it should not do so now. Virginia current laws appropriately consider the circumstances of a dog bite, which is in the public interest.

First, § 3.2-6540 addresses the determination of whether a dog is dangerous and the *additional* requirements imposed on the owner of a dangerous dog. For example, the owner of a dangerous dog must buy liability insurance.<sup>1</sup> This article even explicitly states that the owner of a dangerous dog may be required to pay restitution for damages to any person injured by the dog *in addition to* damages awarded in civil court.<sup>2</sup> That is, all owners of a dog that bites someone may be subject to civil liability, but owners of dangerous dogs may have to also pay restitution under this article. But there is nothing in this article that limits the civil liability of a dog owner. The courts are free to—and do—impose civil liability on owners of dogs, even for a dog's first bite.

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<sup>1</sup> Va. Code §§ 3.2-6540(I)(1), § 3.2-6540.01(B)(3)).

<sup>2</sup> Va. Code § 3.2-6541(I)(2) (“[The court] May order the owner of the animal to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. Such order *shall not preclude the injured person from pursuing civil remedies*, including damages that accrue after the original finding that the animal is a dangerous dog[.] (emphasis added)).

What Del. Bulova seems to attempt with this amendment is a sea-change to a multitude of statutes and case law precedents. Whether this amendment does that is questionable (see above), but even so, Del. Bulova's proposal is based on incorrect assumptions and his end goal would harm the public.

According to Del. Bulova, he introduced this bill because he believes that “[i]n Virginia, dog owners are immune from any civil liability if it is the dog's first bite.”<sup>3</sup> But that is incorrect, and there is no such thing as “one free bite” in Virginia.

A dog owner can be held civilly liable for a dog's first bite in many circumstances. For example, if the owner of a dog knows, or should know, that his dog might cause injury, he has a duty to use ordinary care to prevent injury to others.<sup>4</sup> If an owner fails to use ordinary care, then he is negligent and civilly liable. A dog that is known to bare its teeth or snarl at others increases an owner's duties to protect others, even if the dog has never bitten anyone before.<sup>5</sup> And failure to meet these duties results in civil liability. Moreover, an owner maybe found automatically liable if the dog bites someone (even for the first time) while another ordinance designed to protect the public is being violated. For example, violation of a leash law when the bite happens is negligence per se and automatic civil liability.<sup>6</sup>

Virginia balances the considerations of when a dog owner should be held liable (e.g., when he knew or should have known the dog was a risk and did not take the proper precautions or when he was already violating a law meant to avoid such injury) with instances when a dog owner should not be held liable. Several of these considerations are similar to those listed in determining whether a dog is a dangerous dog.<sup>7</sup> For example, if a dog that had never shown any signs of aggression before biting a burglar inside the owner's home, the owner should not be civilly liable for the burglar's injuries. Or if a dog that has never been aggressive before bites someone who is beating him, the owner of the dog should not be liable.

Moreover, Del. Bulova's attempt to impose strict liability for owners who have no reason to know that a dog is dangerous has far-reaching implications. For example, shelters and rescues—including public shelters run by localities—are considered “owners” of dogs in their care, and they are required to ask about the bite history of animals.<sup>8</sup> If there is a history of biting, they must exercise extra care. But under Del. Bulova's amendment, these shelters could be held liable for any bite. This opens the localities that run public shelters to civil liability, and it would hinder the operations of all shelters.

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<sup>3</sup> <http://www.davidbulova.com/blog/2022-general-assembly-my-legislative-agenda>.

<sup>4</sup> See, e.g., Virginia Model Jury Instructions, Instruction 29.020.

<sup>5</sup> *Burton v. Walmsley*, 9 Va. Cir. 309 (Richmond, 1967).

<sup>6</sup> See *Gough v. Shaner, Adm'r*, 197 Va. 572, 576 (1955).

<sup>7</sup> Again, a finding that a dog is not a dangerous dog does not preclude a finding of civil liability. They are two separate determinations. For example, a dog could be found *not* to be a dangerous dog because it was responding to pain or injury, but the owner could still be held civilly liable because he did not exercise ordinary care to keep the injured dog away from others.

<sup>8</sup> Va. Code § 3.2-6509.1.

For at least these reasons, Virginia already properly weighs the interests of dog bite victims with those of owners and the public at large. Moreover, this improperly conflates dangerous dog determination cases with civil court proceedings, muddying the water for civil liability. Therefore, I would encourage you to vote against HB 467.

Sincerely,

  
Jessica L.A. Marks