

HOUSE BILL NO. 1146

Introduced by

Representative Galvin

1 A BILL for an Act to create and enact chapter 36-24 of the North Dakota Century Code, relating
2 to potentially dangerous and vicious dogs; to repeal chapter 42-03, relating to dogs as a public
3 nuisance; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 36-24 of the North Dakota Century Code is created and enacted
6 as follows:

7 **36-24-01. Definitions.** As used in this chapter, unless the context or subject matter
8 otherwise requires:

- 9 1. "Animal control department" means the county or city animal control department, or
10 if the city or county does not have an animal control department, the entity that
11 performs animal control functions.
- 12 2. "Enclosure" means a fence or structure suitable to prevent the entry of a child
13 under eight years of age, and which is suitable to confine a vicious dog in
14 conjunction with other measures which may be taken by the owner or keeper of the
15 dog, and must be designed in order to prevent the animal from escaping.
- 16 3. "Impounded" means taken into custody of the public pound or animal control
17 department or provider of animal control services to the city or county where the
18 potentially dangerous or vicious dog is found.
- 19 4. "Potentially dangerous dog" means:
 - 20 a. Any dog, including a wolf dog, which when unprovoked, bites a person
21 causing an injury that is less severe than a severe injury as defined in
22 subsection 5; or
 - 23 b. Any dog, including a wolf dog, which when unprovoked, on two separate
24 occasions within the prior thirty-six-month period:

- 1 (1) Engages in any behavior that requires a defensive action by any person
2 to prevent bodily injury; or
- 3 (2) Kills, seriously bites, or otherwise causes injury by attacking a person or
4 domestic animal when the person or the animal attacked and the dog
5 are off the property of the owner or keeper of the dog and the incident
6 was reported to an animal control officer or law enforcement officer
7 within five days of its occurrence.
- 8 5. "Severe injury" means any physical injury to a human being that results in muscle
9 tears or disfiguring lacerations or requires multiple sutures or corrective or
10 cosmetic surgery.
- 11 6. "Vicious dog" means:
- 12 a. Any dog, including a wolf dog, which when unprovoked, in an aggressive
13 manner, inflicts severe injury on or kills a human being; or
- 14 b. Any dog, including a wolf dog, previously determined to be and currently listed
15 as a potentially dangerous dog which, after its owner or keeper has been
16 notified of this determination, continues the behavior described in
17 subsection 4 or is maintained in violation of subsection 1, 2, or 3 of section
18 36-24-06.

19 **36-24-02. Immediate seizure.**

- 20 1. If an animal control officer or law enforcement officer determines there is probable
21 cause to believe a dog poses an immediate threat to public safety, then the animal
22 control officer or law enforcement officer may seize and impound the dog pending
23 a hearing to be held pursuant to this chapter. The owner or keeper of the dog is
24 liable to the city or county where the dog is impounded for the costs and expenses
25 of keeping the dog, if the dog is later adjudicated potentially dangerous or vicious.
- 26 2. If a dog has been impounded pursuant to subsection 1 and it is not contrary to
27 public safety, the chief animal control officer may permit the animal to be confined
28 at the owner's expense in a kennel or veterinary facility approved by that officer.

29 **36-24-03. Judicial process.**

- 30 1. Unless an animal owner consents to a classification of the owner's dog as a
31 potentially dangerous or vicious dog, if an animal control officer or a law

1 enforcement officer determines there is probable cause to believe that a dog is
2 potentially dangerous or vicious, the officer or the officer's designee, may petition
3 the municipal court within the judicial district where the dog is owned, or the district
4 court if the animal is kept outside a city or the city does not have a municipal court,
5 for a hearing to determine if the dog in question should be declared potentially
6 dangerous or vicious.

7 2. A city or county may establish an administrative hearing procedure to hear and
8 dispose of petitions filed pursuant to this chapter. A jury is not available.

9 3. The court may find, upon a preponderance of the evidence, that the dog is
10 potentially dangerous or vicious and make any other order authorized by this
11 chapter.

12 **36-24-04. Exceptions.**

13 1. This chapter does not apply to licensed kennels, humane society shelters, animal
14 control facilities, or veterinarians.

15 2. This chapter does not apply to dogs while utilized by any police department or any
16 law enforcement officer in the performance of police work.

17 **36-24-05. Special exceptions.**

18 1. A dog may not be declared potentially dangerous or vicious if any injury or damage
19 is sustained by a person who, at the time the injury or damage was sustained, was
20 committing a willful trespass or other tort upon premises occupied by the owner or
21 keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or
22 was committing or attempting to commit a crime.

23 2. A dog may not be declared potentially dangerous or vicious if:

24 a. The dog was protecting or defending a person within the immediate vicinity of
25 the dog from an unjustified attack or assault; or

26 b. The dog was attacking a domestic animal which, at the time the injury was
27 sustained, was teasing, tormenting, abusing, or assaulting the dog.

28 3. A dog may not be declared potentially dangerous or vicious if the injury or damage
29 to a domestic animal was sustained while the dog was working as a hunting dog,
30 herding dog, or predator control dog on the property of, or under the control of, its

owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

36-24-06. Requirements for potentially dangerous or vicious dogs.

1. Any potentially dangerous dog must be properly licensed and vaccinated. The licensing authority must include the potentially dangerous designation in the registration records of the dog, if the owner or keeper of the dog has agreed to the designation or a court or hearing entity has determined the designation applies to the dog.
2. The city or county may charge a potentially dangerous dog fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of such a dog.
3. A potentially dangerous dog, while on the owner's property, shall, at all times, be kept indoors, or in a securely fenced yard from which the dog cannot escape, and into which a child of under eight years of age cannot trespass. A potentially dangerous animal may be off the owner's premises only if it is restrained by a substantial leash, of appropriate length, and if it is under the control of a responsible adult.
4. If the dog in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous dog shall notify in writing within five working days the animal control department of the changed condition and new location of the dog.
5. If there are no additional instances of the behavior described in subsection 4 of section 36-24-01 within a thirty-six-month period from the date of designation as a potentially dangerous dog, the dog may be removed from the list of potentially dangerous dogs, if the owner or keeper of the dog demonstrates to the animal control department that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk to the public safety.

36-24-07. Disposition of vicious dogs.

1. A vicious dog may be humanely destroyed by the animal control department if it is found, after proceedings conducted under section 36-24-03 that the release of the dog would create a significant threat to the public health and safety.

2. If it is determined that a dog found to be vicious may not be destroyed, the judicial authority may impose conditions upon the ownership of the dog that protect the public health and safety.

3. Any enclosure that is required pursuant to subsection 2 must meet the requirements for an enclosure as defined in section 36-24-01.

4. The owner of a dog determined to be a vicious dog may be prohibited by a city or county from owning, possessing, controlling, or having custody of any dog for a period of up to three years, if it is found, after proceedings conducted under this chapter, that ownership or possession of a dog by that person would create a significant threat to the public health and safety.

36-24-08. Penalties. Any violation of this chapter involving a potentially dangerous dog may be punished by a fine not to exceed five hundred dollars. Any violation of this chapter involving a vicious dog may be punished by a fine not to exceed one thousand dollars.

36-24-09. Construction. This chapter may not be construed to prevent a city or county from adopting or enforcing a more restrictive program to control potentially dangerous or vicious dogs.

SECTION 2. REPEAL. Chapter 42-03 of the North Dakota Century Code is repealed.