

Pennsylvania's Dog Law as it Relates to Agricultural Liability

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Introduction

Few symbols are more closely equated with the American farm than the good old farm dog lazily sleeping away the long summer days on the front porch or under the shade of an old oak tree. The farm dog is an integral part of the American farm, and whether used for farm labor or just a companion to scratch behind the ears, in today's litigious society, farmers need to know their legal liability if old Sounder should happen to get into some mischief in between naps.

3 P.S. § 459-551 is known as the "*Dog Law*" and controls the ownership of domestic dogs in the state of Pennsylvania. The purpose of this article is to present a brief overview of the *Dog Law* and include those sections of the law that apply most directly to agriculture.

Please note that the *Dog Law* is a large statute and this article is only concerned with a small percentage of the law as a whole. However, there are a few sections that all dog owners need to be aware of. The first is § 459-305, which is titled "Confinement of Dogs." More commonly known as the *Leash Law*, this section mandates that:

- It shall be unlawful for the owner or keeper of any dog to fail to keep at all times such dog either:
 1. **Confined within the premises** of the owner;
 2. Firmly **secured** by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
 3. **Under the reasonable control of some person**, or when engaged in lawful hunting, exhibition or field training.

A second mandate of Pennsylvania law that farmers need to keep in mind concerns mandatory rabies vaccinations for dogs. Chapter 7A of Title 3 (not part of the *Dog Law*) requires that every person in Pennsylvania, who owns a dog or cat over three months of age, must have the dog or cat vaccinated against rabies. Finally, § 459-201 of the *Dog Law* mandates that every owner of a dog in the state of Pennsylvania must, on or before

January 1st of each year, apply to the county treasurer of his or her county for a license for his or her dog(s).

There are two types of liability that this article is concerned with. The first can be termed *negligence per se*, which is a type of strict liability. This first type of liability is imposed for violations of the *Dog Law* itself. These violations are generally summary offenses and are punishable by fine, forfeiture of the dog to the authorities, et cetera. The Commonwealth is always the plaintiff under this first type of liability and suits are filed against dog owners in order to punish for violations of the *Dog Law*. All of the discussion found in this article, with the exception of the section titled *Liability of Dog Owners — Reservation of the Right to File Suit*, concerns this first type of liability.

The second type of liability is traditional negligence/traditional tort liability. This liability would arise in the context of private law suits that a farmer may be faced with, or that a farmer could initiate against another party, even if the authorities (the State) do not enforce the first type of liability (statutory violation). Under the second type of liability, the farmer may be sued, or can sue another, privately for damages resulting from the actions of a misbehaving dog. The following may be helpful:

Liability Type 1 — Liability for violating the *Dog Law*. *Negligence per se*=statutory violation. Usually a low-level summary offense punishable by fine, etc. Enforced against the violator by the Commonwealth. **Commonwealth v. Dog Owner**

Liability Type 2 — Private lawsuit initiated by a private individual that has been harmed by the dog, not the Commonwealth. The action is not to penalize for violating the *Dog Law* but is to recover damages done to property by the offending dog. **Private Party v. Dog Owner**

Liability for Owning a Dangerous Dog (Type 1 Liability)

Section 459-502-A of Article V of Pennsylvania's *Dog Law* is titled "Dangerous Dogs." According to the act, "The owner or keeper of the dog shall be guilty of the summary offense of harboring a dangerous dog if the district justice finds beyond a reasonable doubt that the following elements of the offense have been proven:"¹

(A) The dog has done one or more of the following:

1. Inflicted severe injury on a human being without provocation on public or private property.²
2. Killed or inflicted severe injury on a domestic animal without provocation while off the owner's property.
3. Attacked a human being without provocation.

4. Been used in the commission of a crime.

If the district justice determines that a particular dog is a dangerous dog within the meaning of that term as found in the act, a myriad of licensing, registration and control requirements must be met by the owner. However, there is an agricultural exception in Article V-A that can limit the liability of farmers. Section 459-507-A part (e) states in full:

(E) Farm Dogs — No farmer who owns a dog kept on the farm shall be guilty of keeping a dangerous dog if:

1. The dog does not leave the farm property to attack; and
2. The farm is conspicuously posted alerting visitors to the presence of a watch or guard dog at all points of ingress and egress.

While the above agricultural exception to the Dog Law does protect complying farmers from having to face the liability associated with owning a dog that is classified as "dangerous," the farmer still has to comply with other sections of Article V-A. For example, § 459-502 mandates that:

a. **Confinement** — Any dog which bites or attacks a human being shall be confined in quarters approved by a designated employee of the Department of Health, a State dog warden or employee of the Department of Agriculture, an animal control officer or a police officer. Such dog may be detained and isolated in an approved kennel or at the dog owner's property. Where such dog is detained is at the discretion of the investigating officer. All dogs so detained must be detained for a minimum of ten days. Any costs incurred in the detaining and isolation of such dog shall be paid by the offending dog's owner. When the dog's owner is not known, the Commonwealth is responsible for all reasonable costs for holding and detaining such dog.

b. **Bite Victims** — The investigating officer shall be responsible for notifying the bite victim of the medical results of the offending dog's confinement. Any cost to the victim for medical treatment resulting from an attacking or biting dog must be paid fully by the owner of such dog. The Commonwealth shall not be liable for medical treatment costs to the victim.

Rights of Farmers When Dogs Pursue or Attack Livestock

Unfortunately, not every dog owner is responsible enough to keep his pet in check to the point that the animal poses no danger to neighboring livestock. Article V, "Offenses to Dogs," spells out the rights of farmers when a domestic dog pursues, wounds or kills livestock on their land. § 459-501 includes the following:

a. **Legal to kill certain dogs**³ — Any person may kill any dog which he sees in the act of pursuing or wounding or killing any domestic animal, wounding or killing other dogs, cats or household pets, or pursuing, wounding or attacking human beings, whether

or not such a dog bears the license tag required by the provisions of this act. **There shall be no liability on such persons in damages or otherwise for such killing.**⁴

- b. **Private nuisance** — Any dog that enters any field or enclosure where livestock or poultry are confined, provided that the enclosure is adequate for the purpose intended, shall constitute a private nuisance and the owner or tenant of such field, or their agent or servant, may detain such dog and turn it over to the local police authority or State dog warden or employee of the Department. While so detained, the dog shall be treated in a humane manner.
- c. **Licensed dogs not included** — Licensed dogs, when accompanied by their owner or handler, shall not be included under the provisions of this section, unless caught in the act of pursuing, wounding or killing any livestock, wounding or killing poultry, wounding or killing any domestic animal, wounding or killing any dogs, cats or household pets, or pursuing, wounding or attacking human beings.

Compensation for Damage Caused by Dogs

Under the *Dog Law*, Pennsylvania farmers do have the option of filing a damage claim seeking compensation from the State if a dog enters their land and causes damage to livestock. § 459-701 states the following:

- a. **Reimbursement** — A person may make application to the department for reimbursement for damage to a domestic animal by a dog, whether or not the domestic animal is directly damaged by the dog or is necessarily destroyed due to damage caused by the dog, if **all** of the following apply:
 - 1. The damage occurs when the domestic animal is confined in a field or other enclosure adequate for confinement of such animal. (See footnote 3 for case that describes enclosure requirement).
 - 2. The damage was not caused by a dog owner or harbored by the owner of such damaged domestic animal.
 - 3. The owner of the offending dog is unknown
- b. **Complaint** — To receive reimbursement under subsection (a), a person must file a written, signed complaint with the department. The complaint must state **all** of the following:
 - 1. The time, place and manner of the damage.
 - 2. The number and type of domestic animals damaged.
 - 3. The amount of the damage. The amount under this paragraph is limited to \$10,000 for each domestic animal.
- c. **Limitation** — A written complaint under subsection (b) must be filed within five business days of discovery of the damage.
 - d. **Investigation** — Within 48 hours of receipt of a complaint under subsection (b), a State dog warden shall investigate the complaint by examining the site of the occurrence. The State dog warden may examine witnesses under oath or affirmation

- e. **Determination** — (1) Within ten business days after the initiation of the investigation under subsection (d), the State dog warden shall issue one of the following determinations:
 - 1. Dismissal of the complaint.
 - 2. A damage award. The amount under this subparagraph is limited to \$10,000 for each domestic animal and in no instance shall the award exceed 90% of the appraised value of the domestic animal. — Failure to act within the time period under paragraph (1) shall be deemed a damage award in the amount claimed in the complaint under subsection (b)(3).
- f. Regards arbitration procedures, appeals and judicial review.
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 - i. **Payment of Claims** — All damage claims shall be paid from the *Dog Law* Restricted Account. **No payment shall be made for any claim that has already been paid by the claimant's insurance carrier.** The claimant must certify to the department that he has not received payment for any damages under this section by any person.

Liability of the State (Type 1 Liability)

If the State (i.e. police, dog wardens, et cetera) is responsible for the illegal killing of an owner's dog, the *Dog Law* does provide for legal action to be commenced against the State. § 459-1101 states in full:

Liability of the State — Nothing in this act shall be construed to prevent the owner of a licensed dog from recovering by action at law the value of any dog which has been illegally killed by any person, provided the Commonwealth shall be liable to the owner of any legally licensed dog, for the value thereof, if illegally killed by any police officer or employee of the Commonwealth and the Commonwealth may thereupon recover the amount so paid to such owner from the police officer or employee of the Commonwealth doing the illegal killing, by an action at law. Whenever the Commonwealth shall be liable for any killing, the value of said dog shall be ascertained in the same manner as provided in section 701 (quoted above) for assessing the damage done to livestock by dogs.⁵

Liability of Dog Owners — Reservation of the Right to File Suit (Type 2 Liability)

§ 532 of the *Dog Law* is an important section with regard to liability and one that farmers should be aware of. The section essentially stipulates that the *Dog Law* in no way bars any legal cause of action against the owner of a dog that causes any type of damage. This is important because while the *Dog Law* does contain agricultural exceptions for certain classifications, ultimately, nothing in the law bars an injured party from filing a tort action against the owner of any dog that does any damage. The following is the section in its entirety:

How Damages Recovered — The owner or owners of any dog or dogs shall be liable for all damages done or caused to be done by any and every such dog or dogs, in an action or trespass vit et armis, in the name of the person or persons injured, to be sued for and recovered before any court or justice of the peace having jurisdiction of the amount so claimed.

In conclusion, the decision to bring a dog into the home is one that brings with it a significant amount of both moral and legal responsibility. While dog-related problems do occur more frequently in heavily populated urban and suburban areas, the typical farm dog can get into plenty of trouble as well. Farmers should be aware of the *Dog Law* and its relevance to both dogs kept on the farm and dogs that come onto the farm, and should take the steps necessary to prevent any unfortunate incidents from happening. By being responsible pet owners, farmers can avoid many of the liability headaches that mischievous dogs may create. Also, by knowing the law, farmers can prevent roaming dogs from causing unnecessary damage to their livestock. In modern America, farmers have more than their share of legal headaches to deal with. By knowing and following the law, farmers can prevent the lazy old farm dog from becoming one of them.

¹ See *Commonwealth v. Bender* 27 Pa. D & C4th 153, (1994). In this case, two dogs owned by Bender attacked and killed a neighbor's cat. Opinion describes the registration, enclosure and financial security that must be provided after a district justice has found a dog to be, "dangerous." Court held that a dog that participates in a fatal attack that was initiated by another dog would not be considered a dangerous dog under the statute.

² See *Commonwealth v. Figley*, 547 Pa. 372, (1995). In this case, the Supreme Court affirmed that an Akita that had never exhibited propensity for vicious or aggressive behavior was not a dangerous dog under the *Dog Law* when she attacked a five-year-old child in instinctual response to a chicken which a child was holding very close to the child's face. Although severe injury resulted, it was merely the result of an accident.

³ See also § 531 titled, "Dogs Worrying or Accustomed to Worry Sheep." This section seems redundant and says that it shall be legal for a person to shoot and kill a dog that is found or known to be chasing or worrying sheep. No liability would follow for killing the dog(s).

— See also *Kerr v. O'Connor*, 63 Pa. 341, (1869). A joint action will lie against all the owners of several dogs, which at one time kill and wound the plaintiff's sheep. The court said that the statute is broad enough to permit suit against all the owners of several dogs which together and at one and the same time, kill and wound a flock of sheep. They are all answerable for the act of killing. *Campbell v. Brown*, 19 Pa. 359, (1852) adds that the defendant is liable, not only for the sheep killed, but for other injuries to flock (i.e. such as are caused by fright.)

⁴ See *King v. Kline*, 6 Pa. 318, (1847). In this case, a dog came into defendant's enclosed garden and began to destroy the garden and eat some herring that were hung to dry on the

fence. The owner had placed a trap in the ground and the dog was caught and subsequently shot by the property owner. The Supreme Court held that the property owner was justified in killing the dog because the dog was within the enclosure of the garden and the owner had sufficient proof that the dog was, "fierce and of an ugly disposition."

⁵ See *Mayo v. Lichtenwalner*, 557 A.2d 798, (1989). Allegations that county dog law enforcement officer illegally shot and killed owner's dogs although they did not constitute a threat to the public health and welfare were sufficient to state a claim under this section.

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