

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Thursday, March 10, 2016

TIME: 8:00 A.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Rice, Vice Chairman Bayer, Senators Patrick, Souza, Lee, Den Hartog, Harris, Ward-Engelking and Burgoyne

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Rice** called the meeting of the Senate Agricultural Affairs Committee to order at 8:02 a.m.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of February 25, 2016. **Senator Den Hartog** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Rice passed the gavel to Vice Chairman Bayer.

H 525 **Relating to Dangerous and At-Risk Dogs.** **Senator Rice** stated this bill is a rewrite of the vicious dog statute. The old legislation said any dog that is not physically provoked and physically attacks, wounds, bites or otherwise injures any person who is not trespassing is vicious. It is unlawful to harbor a vicious dog outside of a secure enclosure, and if the dog is not in the enclosure the owner is guilty of a misdemeanor. The dog is deemed vicious the first time it bites someone.

The proposed legislation updates sections of Title 25, Chapter 28, Idaho Code, relating to dogs that injure humans. It will be renamed Idaho Dangerous and At-Risk Dogs Act. A dangerous dog means any dog that without justified provocation inflicts serious injury to a person or has been previously found to be at-risk and thereafter bites or physically attacks a person without justified provocation. Page 3, line 9, lists circumstances under which a dog cannot be declared dangerous or at-risk. There are instances where dogs do bite people. This bill allows the person who was injured, their parents or law enforcement to bring an action to have the dog declared dangerous or at-risk. Under these circumstances the court has a range of options, which include putting the dog down and setting restrictions on the keeping of the dog. It allows the court to take a look at the incident and make a decision for what needs to be done with the dog, even without a charge being brought against the owner of the dog. The legislation also spells out transfer of ownership of a dog designated as a dangerous or at-risk dog. The current owner shall notify the new owner of any order issued by a court pursuant to the provisions of this act and provide a copy of such orders.

The bill does not preclude an individual who adopts an at-risk dog to take remedial measures, to train and work to rehabilitate the dog. If the dog is no longer dangerous then the dog would not remain classified as a dangerous dog. If they comply with all of the provisions of the order and the dog demonstrates no aggressive or dangerous behavior and no incidents occur for a period of three years, then the dog will no longer be classified as at-risk. However, paragraph 10, page 4, makes it clear that Idaho is not creating a "free first bite rule". Paragraph 10, line 46, provides that if a dog physically attacks, wounds, bites or otherwise

injures a person who is not trespassing when the dog is not physically provoked or otherwise justified pursuant to that list of justifications, in another section of code, the owner or any person who has accepted responsibility as the possessor of the dog is open to civil liability caused by the dog. On line 2, page 5, that a prior determination that a dog is dangerous or at-risk or subject to any court order shall not be a prerequisite to civil liability for injuries caused by the dog. This is important for a property owner who might have a stray dog that is on their property; the owner of the property is not liable for what the dog may do.

Senator Lee questioned the penalty language on page 5, Section 5, (2), which states a person guilty of a second violation. Would that be a second violation of the same animal or is that a second violation of having another at-risk dog? **Senator Rice** answered that would be a second violation of the act. On page 4, line 30 to 32, any person who fails to comply with the sanctions, restrictions or requirements imposed by the court pursuant to the provisions of this section shall be subject. This would be an individual that within five years violates the court-ordered precautions they are to take with the dog.

Senator Ward-Engelking asked does this legislation only deal with a dog biting a person? Does it include a dog attacking another dog or cat? **Senator Rice** replied that many of the local ordinances deal with a dog that kills someone's chickens or pets or damages property. This particular statute deals with dogs that attack people.

Senator Souza asked about the fines on page 5. She understood that the standard code for a misdemeanor is up to six months in jail and/or a fine of up to \$1,000. **Senator Rice** explained that there is more than one category of misdemeanor. If you state in a code that something is a misdemeanor and there are no specifics included, then the penalty is up to six months in jail and/or a fine of up to \$1,000. The specific fines and provisions are included in this legislation. **Senator Souza** stated she believed \$5,000 is a large amount for a first fine. **Senator Rice** answered that misdemeanors are different than infractions and with a misdemeanor you give a fine range. This gives the court discretion to address how grievous the violation of the order.

Senator Patrick gave an example: I have my farm dog in the back of my truck and someone comes up and tries to pet the dog and the dog bites. Would my dog be deemed an at-risk dog? **Senator Rice** answered this type of scenario is not specifically covered in this legislation. In the current statute, the dog would be deemed a vicious dog and would subject the farmer to a misdemeanor the first time it took place. The proposed legislation would not expose the farmer to having a misdemeanor criminal charge the first time it happened. The farmer would only be subject to that misdemeanor if there was a declaration by the court with an order and then the farmer violated the order. The farmer would still have civil liability before or after this act.

Senator Burgoyne asked about the language on page 1, lines 38 to 40, in the stricken language states "it shall be unlawful for the owner or for the owner of premises on which a vicious dog is present to harbor a vicious dog outside a secure enclosure." As he understands the subsection, it is not necessary that they go to court first to get an adjudication that the dog is vicious then get an order for an enclosure. The proposed bill provides that after adjudication, the court may order that the dog be placed in an enclosure.

Senator Rice said that is correct. What must be understood about the existing language that has been stricken is that it doesn't matter whether an owner has any way to know that the dog might be vicious. What the current statutes stipulate is if the dog bites someone it is vicious and the owner had a duty before they even knew to have it in a secure enclosure at all times. The old statute does not work because if the dog is at-risk or dangerous, it lets the victim's parents or the prosecutor bring an action against the dog to get the incident in front of the court and acquire a specific order, including other incidents, they can put the dog down before it attacks again.

Galan Merrill, grandfather of the victim of the dog injuries, spoke in support of the **H 525**. Their granddaughter had been mauled by a dog. After the injuries were treated the parents found that there was no recourse to deal with the dog and owner or procedures to ensure that the dog did not injure someone else.

Jeff Rosenthal, veterinarian, CEO of the Idaho Humane Society (IHS), spoke in support of the passage of **H 525** saying that IHS provides enforcement of the state vicious dog statute as it currently exists, as well as the varied dangerous dog ordinances throughout Ada County. Because of the large population in IHS's jurisdiction, the officers handle more dangerous dog situations and attacks than any other agency in the State. IHS believes that **H 525** will improve the existing statute. Senator Rice has outlined some of the flaws in the current statute. **Mr. Rosenthal** summarized their enforcement issues with the current statute. The statute on one hand is strict: if the court finds any dog of any size when not provoked physically is responsible for any type of attack or injury of any severity it must order the dog forever confined to a locked enclosure and restrained by a chain for the rest its life. The statute is quite permissive in the case of any dog that is vicious may inflict a very severe unprovoked injury even resulting in the death of a person and no matter how irresponsible and negligent an owner is shown to be the court has no ability to order the destruction of a dog; such order can be made only upon the second mauling or killing of a person. The purpose of a dangerous dog statute is to mitigate the risk to the public from dogs that truly prove unacceptable risk of injury to people. IHS appreciates that the language in the new statute would provide the court with sufficient discretion to provide the right practical methods to prevent future injuries without unnecessarily overburdening every single dog owner that has conflict under the law with stringent control measures that are out of proportion to the action of the dog. The specific measures listed in subsection 4 and 5 are nothing more than what most owners are already providing for their dogs without a court order. In IHS's experience, these measures usually are enough to prevent injuries and incidents. Under this legislation there is an opportunity for a court to provide more stringent and focused recommendations that can be deliberated in lieu of destroying a dog.

As an agency with limited resources, the monitoring and recordkeeping of the offending dog and owner is provided for but it is not overly cumbersome for IHS. Also, providing for IHS to use discretion in what happens in the immediate period after an incident will decrease IHS's and owners' expenses.

Nancy Merrill, grandmother of the dog-injury victim, stated when they began the process of dealing with the dog injuries, they looked into available recourse. One of the first things they wanted to ensure is that this would not happen again. The family was frustrated with the county's lack of response and unwillingness to have the dog evaluated or to secure the dog. They looked at Idaho's law and found it very inconsistent. They decided to meet with their District Representative and IHS to improve the legislation in order to best protect the owners, dogs and people. As a minimum the legislation should have consistency and certainty across the board for Idaho. The proposed legislation protects the dogs that are doing their jobs but gives the court and victims some opportunities to declare a dog at-risk or dangerous. The

processes defined in the bill are clear to the dog owners, victims, cities and counties in Idaho. She urged support of **H 525**.

Kathy Wilkans, grandmother of the dog injury victim, spoke in support of **H 525** stating it is the first duty of any community to stand between the innocent and danger. When citizens fail to do that, it becomes the obligation of the community to pass legislation to protect the public. This law is about changing the behavior of people before this type of incident takes place. Her granddaughter's attack might have been prevented if this legislation had been in place because the owner would have kept the dog contained in its cage instead of letting it out while there were children on the property. The second reported incident of this dog resulted in the shooting of the dog in order to release its victim. This second incident might not have occurred if the proposed legislation was in place. When individual citizens fail to do their duty to protect others from danger that is when the public relies upon the law, law enforcement and the courts to implement consequences that change dangerous behavior.

Chelsea Merrill, mother of the dog injury victim, spoke in support of **H 525** explaining that her daughter was the first reported attack. After three weeks the family contacted the owner and the response from the owner was that the dog was not a mean dog and it did not need to be put down. A couple of weeks later the dog attacked the owner's son and the dog was shot. In dealing with this at-risk animal their family found there were no definitions or consequences in legislation to guide next steps for this at-risk dog. Attachment 1 contains a petition of 470 signatures of individuals who have read the bill and are in support of **H 525** passage.

Luke Merrill spoke in support of **H 525** stating this bill gives an opportunity to other victims that their family wasn't afforded.

Ralph Jordan spoke in support of **H 525**. He said dog bites might be more common than we think. The Journal of the American Medical Association reported a study of the incidents of treated dog bites, which are the second leading cause for emergency rooms visits. Dog bites cost money. There are 3,500 dog bite cases per year in Idaho, resulting in 86 hospital stays costing \$1.5 million per year.

Daniel Luker, Idaho Trial Lawyers Association (ITLA), spoke in support **H 525** as it is presently constituted. ITLA's initial concern about the proposed bill is that the standard for civil liability and remedy that existed in the current statute remain intact if under the new legislation. The amendment that passed by the House has cleared up this issue. The legislation provides clarity both for the court and individuals who are bringing claims.

Lisa Parks of Ada County spoke in support of **H 525** stating that as a child she was attacked by a neighborhood dog that had come into their backyard; they found that the dog had attacked others and was eventually put down. This bill will protect her children in ways that she was not protected.

Chairman Rice said this bill maintains the current negligence standard, it makes clear that there are certain defenses that are recognized, it provides that if there is another circumstance that court feels is adequate justification the court has defined procedures. This provides avenues to address at-risk dogs that did not exist in the present legislation. The sponsors intentionally wrote it so the State would retain the current standard for civil liability.

MOTION: **Senator Den Hartog** moved to send **H 525** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Bayer passed the gavel to Chairman Rice.

HCR 49

Rejecting Certain Rules of the Idaho Wheat Commission. Representative Batt said **HCR 49** reflects the will of the House Agriculture Committee in the rejection of a portion of the Wheat Commission rule. This concurrent resolution rejects section 301, subsections 01, 02 and 03, concerning the elevator operator reports. The elevator operators were unaware of the rule; no negotiated rulemaking was done.

Senator Burgoyne asked what were the elevator operators' concerns about the rule change. **Representative Batt** answered the elevator operators said they had not been informed of the rule change. The rule change said elevator operators must submit to the Wheat Commission annually a report listing the name and contact information for growers who delivered to their elevators. The elevator operators did not want to divulge the growers' names and contact information. **Senator Burgoyne** stated that he expected to see negotiated rulemaking unless there is a very good reason not to.

MOTION:

Senator Burgoyne moved to send **HCR 49** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

H 531

Relating to Agricultural Facilities and Operations Unlawful to Damage, Poison or infect the Crops, Livestock or Products. Representative Batt stated this bill addresses the exploitation of agriculture's vulnerability to breeches of biosecurity. This bill will makes it unlawful to knowingly commit the acts of attempting to release and spread or aiding, abetting or conspiring to release or spread contagious, communicable and infectious disease or poison with the intent to damage, poison or infect crops, livestock or agricultural facilities.

MOTION:

Senator Ward-Engelking moved to send **H 531** to the floor with a **do pass** recommendation. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

H 382

Relating to Veterinarians. Jodie Ellis, Executive Director, Board of Veterinary Medicine, said BOVM requested a change to Idaho Code § 54-2118 (1) (b), which authorizes the BOVM to extend a non-disciplinary option (NDO) to veterinarians and certified technicians who violate continuing education and recordkeeping requirements. Because of BOVM's positive experiences with using NDOs, the BOVM wishes to extend its possible use to other violations of the Veterinarian Practice Act. On March 1 the Senate Agricultural Affairs Committee asked that the BOVM to work with Senator Burgoyne in amending the original proposed legislation to address some concerns that came up during the original presentation. The amendments that were agreed upon improved the legislation and **Ms. Ellis** discussed those changes: 1. Clarifying what circumstance the BOVM would not consider the use of NDOs, Section 54-2118, (1) (b) (v), the act or omission committed by the person that either: 9a) caused significant harm to an animal, (b) created a substantial risk likely to cause significant harm to an animal; or (c) involved fraud or deception. 2. Consider having the entire BOVM participate in the decision as to whether the NDO would be used in each case. After much discussion with BOVM it was decided that this could lead to problems. Example: If after reviewing a case BOVM decided that the NDO was inappropriate and referred for formal discipline and potential evidentiary hearing, this could lead to an allegation that the BOVM had become biased or otherwise unable to impartially and fairly decide the case. In Section 54-2118, (1) (b), BOVM instead proposed that the most senior experienced member of the BOVM, liaison officer, collaborate with and gain the approval of the second most experienced member of BOVM, board president, when deciding if the NDO is appropriate. 3) In Section 54-2118, (1) (b) (i), a person will not be eligible for alternative to discipline if that person has been subjected to an alternative to discipline within the last five years. Section 54-2118,

(1) (b) (v), BOVM removed the term "reasonable paralegal and attorney fees" and replaced it with "cost associated with the file."

MOTION: **Senator Lee** moved that **H 382** be referred to the 14th Order for amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PAGE GRADUATION: **Farewell to Committee Page Tabitha Manor.** **Senator Rice** asked Tabitha Manor to tell the Committee about her experience as a page for the Committee and share her plans for the future.

ADJOURNED: There being no further business, **Chairman Rice** adjourned the meeting at 9:40 a.m.

Senator Rice
Chair

Carol Deis
Secretary