

DOG BITES IN MARYLAND AND OTHER STATES: DATA, INSURANCE COVERAGE, AND LIABILITY



DEPARTMENT OF LEGISLATIVE SERVICES 2013

Dog Bites in Maryland and Other States: Data, Insurance Coverage, and Liability

**Department of Legislative Services
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
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Warren G. Deschenaux
Director

November 19, 2013

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Members of the Maryland General Assembly

Ladies and Gentlemen:

A 2012 Maryland Court of Appeals ruling modified the common law by holding that a dog owner, landlord, or other person having the right to control a dog's presence on the premises is strictly liable on proof that (1) the dog that attacked the victim is a pit bull or a mixed-breed pit bull and (2) the owner, landlord, or other person knew or should have known that the dog is a pit bull or a mixed-breed pit bull.

Although the court reconsidered its decision and limited its application to purebred pit bulls, the ruling drew criticism from dog owners, animal advocacy groups, landlords, and insurers as news reports emerged relating to landlords banning pit bulls and animal shelters preparing for an influx of pit bulls. In response, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls. The task force did not propose its own bill, but legislators introduced several different bills during the Second Special Session of 2012 and the 2013 regular session. However, the General Assembly has been unable to reach a consensus.

The Office of Policy Analysis prepared *Dog Bites in Maryland and Other States: Data, Insurance Coverage, and Liability* in an effort to better understand the extent of dog bites, the impact of dog bites on homeowners' insurance coverage, and the recovery of damages for injury caused by dogs.

We trust this report will prove useful to the General Assembly in better understanding the impact of dog bites in Maryland and other states. If you would like additional information regarding this report, please contact Kaitlyn S. Shulman, Marie H. Razulis, or Amy A. Devadas at (410) 946-5510.

Sincerely,

Warren G. Deschenaux
Director

WGD/TDB/tas

cc: Mr. Karl S. Aro

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Chapter 1. Dog Bite Data

There is no uniform collection of dog bite data in United States and no national agency in charge of collecting dog bite data. As a result, it is difficult to draw conclusions on dog bite trends. Dog bite data is collected by different entities and under different circumstances. Data is collected by hospitals, animal control departments, the U.S. Postal Service, law enforcement agencies, state and local health departments, government agencies, and various interest groups. Data can be self reported, collected from hospital administrative records, or collected in surveys. A dog bite incident is defined and verified by the data collecting entity, which range in their qualifications and standards. A “dog bite” could include anything from a benign nip to a severe bite. In some circumstances, coding decisions by some organizations could result in a scratch being tallied as a bite incident. In addition, information on the circumstances surrounding the incident, such as whether the dog was provoked, is not usually collected.

In Maryland, local health departments report on a monthly basis to the State Public Health Veterinarian at the Department of Health and Mental Hygiene (DHMH) on animal bites to humans in each county, broken down by species. A representative from DHMH, however, cautioned that the county breakdown for this data could be unreliable because counties define “bite” differently and use different tracking and reporting systems.

On the national level, the most reliable information on dog bites is collected through samples of hospital administrative data. Nationally, representative samples of hospital inpatient and emergency department data allow research on national dog bite trends with limited problems from duplicate reports of the same incident, self reporting errors, varying definitions and verification standards, and political bias. This data still provides an incomplete picture, however, because the vast majority of dog bites are not severe enough to warrant a trip to the emergency room.

Data Sources

This part of the report attempts to estimate trends in dog bite injuries in Maryland since 2005 using Maryland hospital and emergency department treat and release administrative data available through the Agency for Healthcare Research and Quality’s (AHRQ) Healthcare Cost and Utilization Project (HCUP).

HCUP is a family of databases and related software tools and products developed through a Federal-State-Industry partnership and sponsored by AHRQ. It includes the State Inpatient Databases (SID), the State Emergency Department Databases (SEDD), Nationwide Inpatient Sample (NIS), and the Nationwide Emergency Department Sample (NEDS).

SID are databases that contain inpatient discharge abstracts from participating states, translated into a uniform format to facilitate multi-state comparisons and analyses. SID encompass about 97% of all annual discharges in the United States. Some states include discharges from specialty facilities, such as acute psychiatric hospitals.

SEDD are databases that capture discharge information on all emergency department visits that do not result in an admission, collected by data organizations in participating states.

Maryland Dog Bites

According to a December 2010 report from AHRQ, the number of Americans hospitalized because of dog bites increased by nearly 100% in the 15-year period between 1993 and 2008. This increase was greater than population growth during that same period, and pet ownership only increased slightly. **Exhibit 1.1** shows the number of dog-bite related treat and release visits to emergency departments in Maryland from 2005 to 2010, broken down by age. While the number of emergency room visits in 2008 is higher than the prior two years, the more recent trend is a decrease. This recent decrease occurred despite a 2.7% increase in the population from 2008 to 2010. The greatest decrease was for the 1-17 age range.

Exhibit 1.1
Dog Bite Related Emergency Department Treat and Release Visits
in Maryland by Age of Victim
2005-2010

<u>Age Group</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<1	37	26	26	25	21	36
1-17	2,113	1,934	1,820	1,875	1,937	1,774
18-44	1,939	1,869	1,861	2,007	1,934	1,754
45-64	1,008	1,033	985	1,065	1,008	976
65-84	320	277	307	343	334	305
85+	30	30	36	48	35	35
All Visits	5,447	5,169	5,035	5,363	5,269	4,880

Note: Dog bite treat and release visits are emergency department (ED) visits in which patients are treated and released from the ED, during which the diagnosis of dog bite (E906.0) is among the listed diagnoses. Data for calendar 2011 is not available at this time.

Source: The State Emergency Department Databases (SEDD); HCUPne; Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Exhibit 1.2 shows the number of dog bite related hospital admissions that resulted in discharges from 2005 to 2011 in Maryland, broken down by age. The total number of discharges per year increased over the six-year period but saw the greatest increase (14.2%) from 2010 to 2011. That increase was about equally distributed across the age groups. The total per year increased by 7.9% from 2008 to 2009, but the 18-44 and 45-64 age ranges increased while the 1-17 range decreased. The data in these exhibits suggest that for both treat and release cases and hospitalizations, victims were generally under the age of 65.

Exhibit 1.2
Dog Bite Related Hospital Discharges in Maryland by Age of Victim
2005-2011

<u>Age Group</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<1	*	*	49	42	*	38	41
1-17	41	44	48	52	33	56	62
18-44	59	61	55	60	81	81	89
45-64	51	58	27	34	56	24	33
65-84	25	17	*	*	28	*	*
85+	*	0	0	*	*	*	*
All Discharges	181	186	183	190	205	204	233

Note: Dog bite hospital discharges are hospital stays during which the patient received the ICD-9-CM code for dog bite (E906.0) among listed diagnoses during a stay.

Numbers may not add to totals because the values are based on 10 or fewer discharges or fewer than two hospitals in the State. Statistics (SID) are suppressed to protect confidentiality of patients and are designated with an asterisk (*).

Source: The State Inpatient Databases (SID); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

As shown in **Exhibits 1.3** and **1.4**, in Maryland the number of treat and release visits per 100,000 dogs decreased by 5.5% from 2005 to 2010, but the number of hospital discharges per 100,000 dogs increased by 32% from 2005 to 2011.

In Exhibit 1.3, from 2005 to 2010, the rate of emergency department (ED) treat and release visits per 100,000 dogs decreases and increases each year but remains around the average of 547 visits per 100,000 dogs. The number of visits per 100,000 people closely tracks the number of visits per 100,000 dogs, except from 2008-2009, when the visits per 100,000 dogs increased by 5.6% and the visits per 100,000 people decreased by 2.9%. Exhibit 1.4 shows that rate of hospital discharges per 100,000 dogs increased steadily between 2005 and 2011, although the increase is still relatively small; the average from 2005 to 2011 is 21. The number of hospital discharges per 100,000 people again mirrors the trend in the number of discharges per 100,000 dogs, but from 2008-2009 the rate per 100,000 dogs increased by 15.0%, while the rate per 100,000 people only increased by 5.9%.

Exhibit 1.3
Dog Bite Related Emergency Department Treat and Release Visits and
Population in Maryland
2005-2010

<u>Year</u>	<u>Visits</u>	<u>Dogs</u>	<u>Visits per 100,000 Dogs</u>	<u>Population</u>	<u>Visits per 100,000 People</u>
2005	5,447	967,740	563	5,461,318	99.7
2006	5,169	969,310	533	5,615,727	92.0
2007	5,035	966,261	521	5,618,344	89.6
2008	5,363	971,009	552	5,633,597	95.2
2009	5,269	903,417	583	5,699,478	92.4
2010	4,880	917,352	532	5,785,982	84.3

Note: The number of dogs in the State is based on the American Community Survey one-year household estimates, the American Veterinary Medical Foundation (AVMF) estimate of the percentage of households that own dogs, and the AVMF's estimate of the mean number of dogs per dog-owning household. The AVMF's 2007 data was used for the percentage of dog-owning households (29%) and the mean number of dogs per dog-owning household (1.6) for estimating the dog population for 2005-2008. The AVMF's 2012 data was used for the percentage of dog-owning households (30.8%) and the mean number of dogs per dog-owning household (1.4) for estimating the dog population for 2009-2012. Data for calendar 2011 is not available at this time.

Source: U. S. Census Bureau; "S1101: Households and Families." *American Community Survey 1-Year Estimates, 2005-2010*; U.S. Pet Ownership & Demographics Sourcebook, 2007 and 2012; American Veterinary Medical Association

Exhibit 1.4
Dog Bite Related Hospital Discharges and Population in Maryland
2005-2011

<u>Year</u>	<u>Hospital Discharges</u>	<u>Dogs</u>	<u>Discharges per 100,000 Dogs</u>	<u>Population</u>	<u>Discharges per 100,000 People</u>
2005	181	967,740	19	5,461,318	3.3
2006	186	969,310	19	5,615,727	3.3
2007	183	966,261	19	5,618,344	3.3
2008	190	971,009	20	5,633,597	3.4
2009	205	903,417	23	5,699,478	3.6
2010	204	917,352	22	5,785,982	3.5
2011	233	920,404	25	5,828,289	4.0

Source: The State Inpatient Databases (SID); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/U.S.> Pet Ownership & Demographics Sourcebook, 2007 and 2012; American Veterinary Medical Association

Injuries Caused by Dog Bites Compared to Injuries Resulting from Other External Causes

Exhibits 1.5 and **1.6** compare the number of injuries that result from dog bites and the number of injuries that result from other external causes. A dog bite is one ICD-9-CM code, while the CCS E code categories are made up of multiple ICD-9-CM codes. This should be considered when drawing conclusions about the proportion of total externally caused injuries that are caused by dog bites. The dog bite code (E906.0) is usually included under the Natural/Environment CCS category but was separated out for the purposes of comparison. Exhibit 1.5 shows that dog bites are consistently about 1.0% of the total number of CCS E code injuries. Exhibit 1.6 shows that dog bite injuries are an even smaller proportion of hospitalizations. Dog bites are less than 0.2% of the total number of CCS E code injury hospitalizations.

Exhibit 1.5
Number of Dog Bite Related Emergency Department Treat and Release Visits
vs. Other Injury Emergency Department Treat and Release Visits
in Maryland
2005-2010

<u>CCS E Code Category</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Drowning/Submersion	305	222	297	396	418	154
Suffocation	725	710	668	665	702	768
Firearm	1,155	835	884	775	730	744
Machinery	2,638	2,400	2,174	2,071	1,958	1,775
Transport, not MVT	4,538	4,698	4,553	4,674	4,551	4,141
Dog Bites	5,447	5,169	5,035	5,363	5,269	4,880
Fire/Burn	7,523	7,324	7,050	7,198	6,759	6,703
Adverse Effects of Medical Care	9,119	9,338	9,502	9,833	9,536	9,111
Poisoning	9,591	8,036	7,973	8,526	8,878	8,665
Adverse Effects of Medical Drugs	10,469	11,446	12,184	12,565	13,657	13,361
Natural/Environment*	16,300	15,371	14,522	15,152	16,992	17,122
Cut and Pierce	49,971	47,352	45,120	41,459	37,581	36,544
Overexertion	57,131	57,421	57,388	57,930	53,080	51,423
Motor Vehicle Traffic	84,964	81,056	81,246	79,923	84,539	80,906
Struck By, Against	91,495	92,392	91,672	89,213	87,482	83,102
Fall	137,386	132,831	141,055	141,931	147,771	146,029
Total	488,757	476,601	481,323	477,674	479,903	465,428

MVT: Motor Vehicle Traffic

*Natural/Environment total does not include dog bites in this table.

Note: Clinical Classifications Software (CCS) categorizes patient diagnoses and procedures into a manageable number of clinically meaningful categories. These categories include multiple ICD-9-CM codes. To see the ICD codes that comprise each CCS category: <http://www.hcup-us.ahrq.gov/toolssoftware/ccs/AppendixASingleDX.txt>. Data for calendar 2011 is not available at this time.

Other injury emergency department treat and release visits are emergency department (ED) visits in which patients are treated and released from the ED, during which the patient receives a diagnostic code that falls under one of the external cause of injury CCS categories.

Source: The State Emergency Department Databases (SEDD); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality; Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Exhibit 1.6
Number of Dog Bite Related Hospital Discharges vs. Other Injury Related Discharges in Maryland 2005-2011

<u>CCS E Code Category</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Drowning/Submersion	52	55	54	63	56	44	57
Dog Bites	181	186	183	190	205	204	233
Machinery	287	232	205	182	208	168	170
Suffocation	476	556	474	707	705	615	649
Transport, not MVT	745	664	723	634	611	504	505
Fire/Burn	770	802	756	830	866	791	809
Overexertion	865	884	876	974	932	756	653
Firearm	1,044	1,117	976	987	814	743	652
Natural/Environment*	1,516	1,435	1,464	1,560	1,489	1,673	1,570
Cut and Pierce	2,601	2,684	1,764	1,700	1,483	1,541	1,432
Struck By, Against	2,647	2,758	2,593	2,701	2,723	2,479	2,535
Poisoning	6,946	7,746	4,742	5,254	5,224	4,984	4,902
Motor Vehicle Traffic	7,636	7,760	7,335	7,100	6,713	5,815	5,635
Fall	21,280	22,045	23,575	26,544	26,789	25,381	24,727
Adverse Effects of Medical Drugs	34,298	35,706	40,004	50,074	51,143	50,272	49,134
Adverse Effects of Medical Care	45,402	44,224	46,358	51,856	50,941	45,633	43,690
Total	126,746	128,854	132,082	151,356	150,902	141,603	137,353

MVT: Motor Vehicle Traffic

*Natural/Environment total does not include dog bites in this table.

Note: Other injury related discharges are hospital stays during which the patient receives a diagnostic code that falls under one of the external cause of injury CCS categories (among listed diagnoses during a stay).

Source: The State Inpatient Databases (SID); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Maryland Compared to Other States

Exhibits 1.7 through 1.10 compare the number of dog bite related ED treat and release visits and dog bite related hospitalizations in Maryland to that in other states. Exhibit 1.8 shows the rate of ED visits per 100,000 people for 2005 and 2010. Very few states had data available, but based on those few, Maryland was in the middle of the spectrum in 2005 but dropped to the lower end of the spectrum in 2010.

Exhibit 1.7
Dog Bite Related Emergency Department Treat and Release Visits
by State
2005-2010

<u>State</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Average</u>
Arizona	6,407	5,868	6,135	6,415	7,164	7,400	6,565
Florida	18,699	17,781	17,630	19,021	19,334	19,716	18,697
Hawaii	1,158	1,216	1,268	1,262	1,330	1,453	1,281
Illinois					11,365	11,677	11,521
Iowa	2,504	2,695	2,932	2,982	3,076	3,139	2,888
Kentucky	1,168	3,674	4,340	4,163	4,497	4,808	3,775
Maryland	5,447	5,169	5,035	5,363	5,269	4,880	5,194
Minnesota	3,425	3,499	3,242	3,498	3,803	3,923	3,565
North Carolina			8,652	9,155	9,692	10,057	9,389
South Carolina				4,074	4,453	4,473	4,333
Tennessee	7,213	7,347	7,168	7,241	7,391	7,412	7,295
Utah	2,077	1,890	1,862	2,108	2,118	1,954	2,002
Vermont	829	767	804	785	787	798	795

Note: States missing from the table did not have data available. Empty cells indicate data was unavailable for that year. Data for calendar 2011 is not available at this time.

Source: The State Emergency Department Databases (SEDD); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Exhibit 1.8
Dog Bite Related Emergency Department Treat and Release Visits by State,
by Population
2005 and 2010

<u>State</u>	<u>2005</u>	<u>Visits Per 100,000</u> <u>People in 2005</u>	<u>2010</u>	<u>Visits Per 100,000</u> <u>People in 2010</u>
Arizona	6,407	110	7,400	116
Florida	18,699	108	19,716	105
Hawaii	1,158	94	1,453	107
Illinois			11,677	91
Iowa	2,504	87	3,139	103
Kentucky	1,168	29	4,808	111
Maryland	5,447	100	4,880	85
Minnesota	3,425	69	3,923	74
North Carolina			10,057	105
South Carolina			4,473	97
Tennessee	7,213	124	7,412	117
Utah	2,077	86	1,954	71
Vermont	829	138	798	128

Data for calendar 2011 is not available at this time.

Source: U.S. Census Bureau; "DP05: ACS Demographic and Housing Estimates." *2005, 2011 American Community Survey 1-year Estimates*

Exhibits 1.9 and 1.10 show the number of dog related hospital discharges between 2005 and 2011 and the rate of dog related hospital discharges per 100,000 people for 2005 and 2011. Maryland appears to be at about the average number of discharges for the states with available data.

Exhibit 1.9
Dog Bite Related Hospital Discharges by State
2005-2011

<u>State</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Average</u>
Arizona	123	124	129	265	466	550	658	331
Arkansas	61	51	50	71	52	65	80	61
California	885	783	793	973	1,014	1,103	1,112	952
Colorado	144	150	156	127	149	146	167	148
Florida	626	599	680	811	881	914	996	787
Hawaii	43	40	40	33	37	43	48	41
Illinois					381	394	435	403
Iowa	48	45	66	70	63	87	88	67
Kansas	39	51	55	62	64	53	57	54
Kentucky	87	120	120	120	131	121	133	119
Maine	45	30	21	28	47	35	34	34
Maryland	181	186	183	190	205	204	233	197
Massachusetts	181	180	186	200	239	216	233	205
Michigan	375	352	345	342	317	332	358	346
Minnesota	102	108	123	112	125	147	118	119
Missouri	209	217	213	250	225	261	239	231
Nebraska	26	39	29	37	36	43	32	35
Nevada	70	70	69	112	136	86	108	93
New Hampshire	20	25	12	36	28			24
New Jersey	317	358	324	30	369	398	408	315
New Mexico					85	70	128	94
New York	722	698	701	699	749	788	815	739
North Carolina	232	245	240	271	278	266	319	264
Oklahoma	60	73	56	76	111	67	116	80
Oregon	71	70	53	88	95	103	113	85
Rhode Island	38	24	36	38	58	49	46	41
South Carolina	76	97	122	104	102	138	135	111
Tennessee	202	188	188	238	214	194	251	211
Texas			625	672	683	724	764	694
Utah		28	25	*	37	44	38	34
Vermont	14	11	16	*	19	17	19	16
Washington	137	147	185	159	197	196	192	173
West Virginia	27	26	*	57	57	52	75	49
Wisconsin	162	159	156	144	169	146	137	153
Wyoming			13	17	14	19	14	15

Note: Data unavailable for Alabama, Alaska, Connecticut, Delaware, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia. Empty cells indicate data was unavailable for that year. Values based on 10 or fewer discharges or fewer than two hospitals in the state. Statistics (SID) are suppressed to protect confidentiality of patients and are designated with an asterisk (*).

Source: The State Inpatient Databases (SID); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Exhibit 1.10
Dog Bite Related Hospital Discharges by State, by Population
2005 and 2011

<u>State</u>	<u>2005</u>	<u>Discharges per 100,000 in 2005</u>	<u>2011</u>	<u>Discharges per 100,000 in 2011</u>
Arizona	123	2	658	10
Arkansas	61	2	80	3
California	885	3	1,112	3
Colorado	144	3	167	3
Florida	626	4	996	5
Hawaii	43	3	48	4
Illinois			435	3
Iowa	48	2	88	3
Kansas	39	1	57	2
Kentucky	87	2	133	3
Maine	45	4	34	3
Maryland	181	3	233	4
Massachusetts	181	3	233	4
Michigan	375	4	358	4
Minnesota	102	2	118	2
Missouri	209	4	239	4
Nebraska	26	2	32	2
Nevada	70	3	108	4
New Hampshire	20	2		
New Jersey	317	4	408	5
New Mexico			128	6
New York	722	4	815	4
North Carolina	232	3	319	3
Oklahoma	60	2	116	3
Oregon	71	2	113	3
Rhode Island	38	4	46	5
South Carolina	76	2	135	3
Tennessee	202	3	251	4
Texas			764	3
Utah			38	1
Vermont	14	2	19	3
Washington	137	2	192	3
West Virginia	27	2	75	4
Wisconsin	162	3	137	2
Wyoming			14	3

Source: The State Inpatient Databases (SID); HCUPnet, Healthcare Cost and Utilization Project; Agency for Healthcare Research and Quality, Rockville, Maryland; <http://hcupnet.ahrq.gov/>

Fatalities

Data on dog bite related fatalities are easier to collect, but it is unclear what conclusions can be made from those data. As shown in **Exhibit 1.11**, according to DogsBite.org, a public education website about dangerous dogs, from 2005 to 2012, 251 U.S. citizens died due to dog bite injuries. Since 2005, only one death in Maryland resulted from dog bites. The man suffered numerous bite wounds from his daughter's three pit bulls which were in the house at the time.

Exhibit 1.11
Breeds Involved in Dog Bite Fatalities in the United States
2005-2012

<u>Breed</u>	<u>Deaths</u>	<u>Percentage of Total Deaths</u>
Pit Bull	151	60.0
Rottweiler	32	13.0
Husky	10	4.0
Mixed Breed	10	4.0
American Bulldog	9	3.6
German Shepherd	9	3.6
Mastiff/Bullmastiff	8	3.0
Boxer	5	2.0
Malamute	4	1.6
Labrador	4	1.6
Multiple dog breeds	9*	3.6
Total	251	100.0

*Each breed associated with 3 or fewer deaths.

Source: Dog bite fatalities and dog bite statistics from <<http://www.dogsbite.org/dog-bite-statistics-fatalities.php>>

DogsBite.org collects its data from media reports which can be inaccurate or skewed, especially with regard to breed identification. The National Canine Resource Council (NCRC) also collects data on dog bite related fatalities but only reports species when there is sufficient documentation or “reasonable evidence.” As shown in **Exhibits 1.12** and **1.13**, for the three years of available data from NCRC, the total number of dog related fatalities matched the total number of dog related fatalities reported by DogsBite.org, except for one fatality in 2009 which NCRC did not count because the individual died of an infection almost a week after the incident. The NCRC data shows that in over 50% of the fatalities, the dog breed could not be identified. In 2011, NCRC could only identify 2 dogs as pit bulls, whereas DogsBite.org identified 22 dogs as pit bulls.

Exhibit 1.12
Breed Documented and Breed Evidence in Dog Bite Fatalities in the
United States
2009-2011

	2009		2010		2011	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
Breed Indeterminate	22	71	19	58	21	68
Documented	4	13	9	27	6	19
Dog Never Located	0	0	3	9	2	6
Reasonable Evidence	5	16	2	6	2	6
Evidence of Recent						
Abuse or Neglect	6	0.2	N/A*	N/A	8	26
Dogs Had Been						
Spayed or Neutered	5	0.2	4	12	1	0.03
Total Dog Bite						
Related Fatalities	31	100	33	100	31	100

*Not Available

Source: National Canine Research Council. Dog bite related fatalities.
<http://www.nationalcanineresearchcouncil.com/dogbites/dog-bite-related-fatalities/>.

Exhibit 1.13
Breeds Identified in Dog Bite Fatalities in the United States
2009-2011

Breed	<u>2009</u>		<u>2010</u>		<u>2011</u>	
	Number	Evidence	Number	Evidence	Number	Evidence
Rottweiler	2	Photo, Pedigree	4	2 Pedigree 1 Photo 1 AKC	3	2 Pedigree; 1 Photo
American Bulldog	0	N/A	1	NKC	1	Pedigree
Cane Corso	0	N/A	0	N/A	1	Pedigree
American Pit Bull Terrier	2	1 Pedigree/Photo 1 ADBA	1	UKC	2	2 Registered
Doberman Pinscher	0	N/A	0	N/A	1	Pedigree
American Staffordshire Terrier	0	N/A	0	N/A	1	Photo
American Bully/ American Pit Bull Terrier	0	N/A	1	ABKC/UKC	0	N/A
Siberian Husky	2	Photo; Photo	1	BSO	0	N/A
Mixed Breed	0	N/A	1	DNA	0	N/A
Wolf Dog Cross	0	N/A	1	DNA	0	N/A
Boxer	3	AKC	1	AKC	0	N/A
German Shepherd	0	N/A	1	Pedigree	0	N/A
Great Dane	1	Pedigree	0	N/A	0	N/A
Weimaraner	1	Pedigree	0	N/A	0	N/A

Documentation types: (1) Pedigree (Ped), (2) DNA evidence/forensics (DNA), (3) Registered: American Kennel Club (AKC); American Bully Kennel Club (ABKC); UKC (United Kennel Club); or American Dog Breeders Association (ADBA).

Reasonable Evidence: (1) Photographs submitted to NCRC Advisor Dr. Amy Marder, VMD, CAAB which show sufficient evidence of breed (photo), (2) Adopted from breed specific organization (BSO).

Source: National Canine Research Council. Dog bite-related fatalities.

<<http://www.nationalcanineresearchcouncil.com/dogbites/dog-bite-related-fatalities/>>.

Limitations

There are a number of limitations with the available data. These include:

- **Not all bites result in a trip to the emergency room.** The Maryland data on dog bites and other injuries from SID and SEDD originate from the Health Services Cost Review Commission (HSCRC). HSCRC does not have data on outpatient treatment of dog bites or dog bite victims that did not seek professional medical attention.
- **Listed external cause of injuries may not be the primary reason the person is seeking medical attention.** External cause of injury codes (E codes) are found under all listed diagnoses, the first-listed or principal diagnosis plus additional conditions that coexist at the time of the ED visit/hospital stay, or that develop during the stay and which have an effect on the treatment or length of stay in the hospital. Therefore, these external causes may not be the primary reason the person is seeking medical attention.
- **There is very little information on the severity of the injuries.** The available data allows the comparison of treat and release dog bite injuries and dog bite related hospitalizations over time, but even if there were a consistent severity level threshold that resulted in hospitalization, it is still unclear what that severity level is. Furthermore, there is no data on the severity of dog bite injuries within each category.
- **No data on species is available from the HCUP databases.** In general, data is not collected on species for a variety of reasons. The problems with species data is discussed further below.

Species

During the 1980s and 1990s, many researchers were interested in studying the connection between dog breeds and likelihood of attacks. There are many problems with making inferences about dog breeds based on the data available. These include:

- Larger breed dogs will be reported more often, not necessarily because they are more aggressive than small dogs, but because when they become aggressive, they end up doing more damage.
- More common breeds are more likely to appear in dog bite statistics simply because of their greater prevalence. There is a link between the increase in popularity of some large breed dogs and the number of bite reports associated with those breeds. According to an analysis of American Kennel Club puppy registrations, there was a peak in registration of Rottweilers between 1990 and 1995. Rottweilers started to be listed as the top

“biting breed” for the first time in studies of bites causing hospitalizations in the late 1990s and early 2000s.¹ It is impossible to control for prevalence because prevalence of breeds cannot be reliably tracked.

- Research has shown that people cannot reliably identify the breeds of dogs. Research at Western University of Health Sciences and a study from the University of Florida and Michigan State University indicate that observers, even those with significant experience with dogs, often incorrectly identify the breed of dogs of unknown origin. In the studies, there were major discrepancies between the breeds identified by staff at shelters and adoption agencies for a set of dogs and the breeds of those dogs as identified by DNA analysis. For example, out of 120 dogs from four shelters in Florida, 16 staff members identified 55 as “pit bulls.” According to DNA analysis, only 25 dogs were pit bulls. The staff missed identifying 20% of the dogs that were pit bulls by DNA analysis, while only 8% of the “true” pit bulls were identified by all staff members.
- Dogs that have a reputation for aggression, even if unfounded, are more likely to be bought and trained to be aggressive by people raising backyard guard dogs and fighting dogs. These improperly trained, and often abused, dogs then reinforce the breed reputation.

As a result of these problems with reporting accuracy and identification, the Centers for Disease Control and Prevention stopped collecting data on dog breeds in dog attacks in 1998. Some interest groups continue to collect data on breeds, especially for fatal dog bite incidents, which are better documented than less serious dog bite incidents. Politicians and insurance companies continue to pursue breed-specific legislation and breed-specific underwriting standards, but given the data problems, it is unclear how successful these measures will be.

Conclusion

Based on available data, dog bite injuries were not a large proportion of the injuries in emergency rooms and hospitals from 2005 to 2011. Since 2005, there has only been one death in Maryland due to a dog bite injury. Dog bite injuries do not appear to increase over time. The rate of dog bite related hospitalizations per 100,000 dogs has increased over time but still represents only 25 hospitalizations per 100,000 dogs. Maryland has an average number of dog bite injuries, or fewer, compared to other states, when controlling for population.

The limitations of data and the problems with species identification do not allow any conclusions to be made on various dog species and their relationship to dog bite injuries. Similarly, the lack of data on the circumstances surrounding bite incidents makes it difficult to make general policy conclusions on dog aggression or specific breeds.

¹ Thompson P. Aggression Effects – From a Human Perspective and Solutions. *Urban Animal Management Conference Proceedings* 2004.

Chapter 2. Homeowner's Insurance Coverage of Dogs

Homeowner's Insurance – Generally

According to the Maryland Insurance Administration (MIA), in 2012 there were approximately 130 admitted insurers and 15 surplus lines insurers that were actively writing homeowner's insurance in the State.

Of these insurers, the top 10 insurers/insurer groups wrote approximately 85%¹ of the homeowner's insurance market in Maryland, by premium volume. The top 10 insurers and/or insurer groups by market share for homeowner's insurance in Maryland are:

1. State Farm and Casualty;
2. Allstate (including Encompass);
3. Traveler's Home & Marine Insurance Company;
4. Nationwide (including Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, and Allied Property and Casualty Insurance Company);
5. Erie Insurance Exchange;
6. Garrison Property and Casualty (USAA) (including USAA Casualty Insurance Company and USAA General Indemnity Company);
7. Liberty Mutual (including Liberty Mutual Fire Insurance Company, Ohio Casualty Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company of America);
8. Sentinel Insurance (including Sentinel Insurance Co., Ltd, Trumbull Insurance & Hartford Fire Insurance Company, Hartford Casualty Insurance Company & Hartford Accident and Indemnity Insurance Company, and Hartford Insurance Company of the Midwest);
9. Chubb Group of Insurance Companies; and
10. Fireman's Fund (including The American Insurance Company and National Surety Corporation).

MIA publishes several documents that provide information to consumers on homeowner's insurance, including "A Consumer Guide to Homeowners Insurance" and "A Comparison Guide to Rates." Premium rates vary based on a variety of risk factors, including prior claims, territory, the type of construction, the age of the house, local fire protection, and the amount of coverage. Premium rates also vary depending on the amount of the deductible and any discounts, endorsements, and exclusions. Insurers may offer a safety and security devices discount, a new home discount, and a multi-policy discount. Insurers may require a separate deductible for wind, hurricanes, or other storms losses. Premium rates also are

¹ MIA's "2013 Report on the Effect of Competitive Rating on the Insurance Markets in Maryland" with 2012 data is anticipated to be released in November 2013.

impacted if the insurer provides replacement cost coverage. Insurers may offer other additional endorsements, including water backup, earthquake, and theft. Insurers may also require certain exclusions as it pertains to breed-specific dogs, as discussed below in this part of the report.

Underwriting Guidelines and Policy Exclusions

All Dogs

In June 2012, MIA reviewed the policy forms and underwriting guidelines of the top 10 insurers/insurer groups. The results of MIA's review indicated that none of the insurers/insurer groups had a policy exclusion for losses caused by all dogs and none had underwriting guidelines that would make all dog owners ineligible for coverage. Recently, MIA indicated that a new entrant to the Maryland market (Universal Property and Casualty Insurance Company) excludes liability coverage for all dogs.

Breed-specific Dogs

The MIA June 2012 review also indicated that homeowner's insurance policies underwritten by one insurer group contained liability exclusions for any dog bite losses caused by specific, identifiable breeds. This insurer group, Nationwide Insurance, agreed to limited disclosure that in its policy forms it excludes liability for bodily injury or property damage caused by specific breeds of dogs.

In addition, the MIA June 2012 survey showed that 4 of the top 10 insurers/insurer groups had underwriting standards that applied to specific breeds of dogs. For three of those four insurers/insurer groups, the underwriting standards prohibited them from offering coverage to any applicants and renewing coverage for any insureds who own or keep the specific breeds. The fourth required insurance producers to refer applicants owning specific breeds of dogs to the underwriting department for additional review before binding coverage. In a follow-up survey conducted by MIA in July 2012, two of the four insurers indicated that they had discontinued the use of breed-specific underwriting standards. In a letter to Senator Edward R. Reilly from the Maryland Insurance Commissioner dated August 7, 2012, the Insurance Commissioner stated that the two insurers/insurer groups that agreed to limited disclosure that they have breed-specific underwriting guidelines are Allstate and certain Liberty Mutual companies (Liberty Mutual Fire Insurance Company and Safeco Insurance Company of America).

The breeds included in breed-specific underwriting guidelines or that require the applicant to be referred for further review are:

- Alaskan Malamute;
- American Staffordshire Terrier, American Pit Bull Terrier, Staffordshire Bull Terrier ("Pit Bull" breeds);
- Akita;
- Boerbel;
- Chow Chow;
- Doberman Pinscher;
- English Bull Terrier;
- German Shepherd;
- Kyiapo;
- Mastiff, American Bondogge Mastiff, Neapolitan Mastiff;
- Presa Canario (Dogo Canario, Canary Dog, Peroo Basto, Verdino);
- Rottweiler;
- Siberian Husky;
- Wolf Hybrid; and
- any dog that is a mix of an ineligible dog breed.

"Dangerous" Dogs

According to the MIA June 2012 survey, 9 of the 10 homeowner's insurers with the highest premium volume in Maryland did not underwrite coverage for risks with a "dangerous dog" on the premises. As indicated by MIA, an insurer may define a "dangerous dog" as one that has a bite or attack history; that has been trained as an attack, guard, personal protection, or fighting dog; or that has caused an injury for which an insurer has paid a claim.

Under Section 10-619 of the Criminal Law Article, "dangerous dog" means a dog that:

- “(i) without provocation has killed or inflicted severe injury on a person; or
- (ii) is determined by the appropriate unit of a county or municipal corporation under subsection (c) of this section to be a potentially dangerous dog and, after the determination is made:
 1. bites a person;
 2. when not on its owner's real property, kills or inflicts severe injury on a domestic animal; or
 3. attacks without provocation.”

September 2013 Update

Top 10 Insurers

MIA recently notified the Senate Finance Committee, by letter dated September 23, 2013, of several changes in market trends regarding the availability of homeowner's or renter's insurance for owners of dogs and, particularly, for owners of "dangerous" dogs. Two insurer groups in the top 10 that previously prohibited the underwriting of dangerous dogs have eliminated that underwriting guideline. Another insurer group no longer absolutely prohibits underwriting dangerous dogs and now requires insurance producers to refer the risk to the underwriting department for further review before binding or declining coverage. One insurer group in the top 10 continues to offer to renew coverage when a dangerous dog (one that has bitten someone during the term of the policy) is on the premises; however, the insurer requires an endorsement to the policy to exclude all further liability for losses involving that specific dog, regardless of the breed of the dog. Further, two insurer groups that previously refused to insure or renew risks based on breed-specific underwriting guidelines no longer do so.

Exhibit 2.1 compares the underwriting guidelines and policy exclusions of the top 10 insurers or insurer groups in June 2012 and September 2013.

Exhibit 2.1
Top 10 Insurers or Insurer Groups
Underwriting Guidelines and Policy Exclusions

	Dangerous Dog Underwriting <u>Guidelines</u>	Breed-specific Underwriting <u>Guidelines</u>	Breed-specific Policy <u>Exclusion</u>	No Dog Related Underwriting Guidelines or <u>Exclusions</u>
June 2012	9 Ineligible for coverage	3 Ineligible for coverage	1	1
	Liability Exclusion Endorsement available in some cases	1 Referral to Underwriting Department for further review		
September 2013	6 Ineligible for coverage	1 Ineligible for coverage	1	2
	Liability Exclusion Endorsement available in one case			
	1 Referral to Underwriting Department for further review	1 Referral to Underwriting Department for further review		

Source: Maryland Insurance Administration

According to MIA, 7 of the top 10 insurer or insurer groups currently have filings containing underwriting guidelines for homeowner's insurance that are under review by MIA. MIA has requested support for dog-related underwriting guidelines and is considering whether those guidelines may continue to be lawfully applied by the insurers or insurer groups.

Additional Insurers or Insurer Groups

Since MIA conducted its June 2012 survey of the top 10 insurers/insurer groups, at least 13 additional insurers or insurer groups have submitted their underwriting guidelines for homeowner's, renter's, or condominium insurance to MIA for review. MIA has completed its review of 10 of the additional 13 insurers. **Exhibit 2.2** summarizes the underwriting guidelines and policy provisions of those insurers.

Exhibit 2.2

10 Additional Insurers or Insurer Groups Beyond Top 10

Underwriting Guidelines and Policy Exclusions

	<u>Breed-specific Policy Exclusion</u>	<u>Dog-specific Policy Exclusion</u>	<u>Any Animal Policy Exclusion</u>	<u>No Dog Related Underwriting Guidelines or Exclusions</u>
September 2013	1	1	1	7*

*Of those seven, four removed underwriting guidelines relating to dangerous and/or specific breeds of dogs during the course of the MIA's review.

Source: Maryland Insurance Administration

Complaints Relating to Homeowner's Insurance

Between 2009 and June 2012, MIA had received three complaints regarding either the cancellation or nonrenewal of a homeowner's insurance policy due to a dog bite claim and another seven complaints regarding the denial of a claim, binder cancellation, refusal to underwrite, or cancellation or nonrenewal of a homeowner's insurance policy due to a possession of a restricted breed.

During the one-year period from June 2012 to June 2013, nine complaints regarding dog related insurer actions were received by MIA. In the course of the MIA investigation of those complaints, nonrenewal notices or cancellation notices were rescinded or withdrawn in six of the nine cases.

Impact of a Broad Strict Liability Standard

In 2012, MIA sent an inquiry to all state departments of insurance through the National Association of Insurance Commissioners' consumer assistance bulletin board to determine the impact of a strict liability standard on the availability of insurance coverage for dogs. At the end of May 2013, MIA indicated that it has received responses from 19 states, 15 with strict liability of some degree. Only 1 of the 15 states' responses indicated that insurers may not use breed-specific underwriting; the balance of the states responded that their state laws do not prohibit breed-specific underwriting and insurers are permitted to reject applicants or nonrenew policies based on the homeowner owning specific breeds of dogs.

The impact of a broad strict liability standard in Maryland on insurance availability and affordability is difficult to estimate. (For further information about broad strict liability, see Chapter 3 of this report.) It is possible that more insurers may change policy forms to exclude liability coverage for damage or bodily injury caused by dogs.

In determining the impact of a broad strict liability standard for dog bites on the cost and availability of homeowner's insurance, various insurers and representatives of the insurance industry were asked if they had any information on the cost and availability of homeowner's insurance in states that have a broad strict liability standard. For purposes of this request, the following 21 states were considered to impose a broad strict liability standard for dog bites: Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio, South Carolina, Utah, Washington, and Wisconsin.

A representative of the Property Casualty Insurers Association of America (PCI) replied that there are so many factors which affect the cost and availability of homeowner's insurance that it would be impossible to identify the impact of liability standards for dog bites. In addition, this representative noted that the actual standards of "strict liability" states vary greatly. A representative of the American Insurance Association (AIA), a property and casualty insurance trade association, responded that they have no information on the cost and availability of homeowner's insurance in strict liability states.

Dog Bite Claims – Nationwide and State Farm Insurance Company

Nationwide, dog bites accounted for more than one-third of all homeowner's insurance liability claims paid out in 2011 and 2012, costing nearly \$491 million (16,695 claims) and \$490 million (16,459 claims), respectively, according to the Insurance Information Institute (I.I.I.). I.I.I. is an association that provides information and analysis of insurance data to improve public understanding of insurance. As shown in **Exhibit 2.3**, liability claims in 2011 accounted for 2.20% of the total losses incurred under homeowner's insurance, and property damage claims accounted for 97.76%

Exhibit 2.3
Homeowner's Insurance Losses by Cause
2007-2011 ⁽¹⁾
(Percent of Losses Incurred)

<u>Cause of Loss</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Property Damage ⁽²⁾	93.20%	94.96%	95.20%	95.96%	97.76%
Fire, Lightning, and Debris Removal	38.82	27.53	27.26	25.82	19.65
Wind and Hail	18.67	35.27	32.22	36.13	45.56
Water Damage and Freezing	23.55	21.76	24.36	21.38	22.03
Theft	3.33	3.00	3.24	3.07	2.36
All Other Property Damage ⁽³⁾	8.84	7.42	8.13	9.56	8.16
Liability ⁽⁴⁾	6.73%	4.95%	4.70%	3.93%	2.20%
Bodily Injury and Property Damage	6.51	4.78	4.48	3.74	2.05
Medical Payments and Other	0.22	0.16	0.22	0.19	0.14
Credit Card and Other ⁽⁵⁾	0.07%	0.09%	0.10%	0.11%	0.04%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

(1) For homeowners multiple peril policies, excludes tenants and condominium owners' policies.

(2) First party, *i.e.*, covers damage to policyholder's own property.

(3) Includes vandalism and malicious mischief.

(4) Payments to others for which policyholder is responsible.

(5) Includes coverage for unauthorized use of various cards, forgery, counterfeit money and losses not otherwise classified.

Source: Insurance Information Institute

An analysis of homeowner's insurance data by I.I.I. found that the average nationwide cost paid out for dog bite claims was \$29,752 in 2012, up 1.21% from \$29,396 in 2011. From 2003 to 2012 the cost of the average dog bite claim increased by 51.40%. The number of claims declined 1.40% from 16,695 in 2011 to 16,459 in 2012.

As the largest writer of homeowner's insurance nationwide (about 20% of the market share) and in Maryland (about 22% of the market share), State Farm reported that it does not refuse insurance in any state based on the breed of dog that a customer owns. State Farm bases its underwriting decisions on the behavior of the dog, not the breed. The general assumption is that the cost of the premium will go up for dog bites, but it is difficult to tease out what portion of the premium (homeowner's or commercial) is coverage for dog bites.

Companywide, State Farm paid out more than \$109 million as a result of its nearly 3,800 dog bite claims in 2011 and \$108 million as a result of its 3,670 dog bite claims in 2012. **Exhibit 2.4** shows the State Farm 2012 companywide data by state.

State Farm provides data to I.I.I., which is included on a webpage, called “Dog Bite Claims: Infographic,” located on its website <http://www.iii.org/dog-bite-claims-infographic.html>.

As shown in Exhibit 2.4, companywide, State Farm paid out 51 dog bite claims in Maryland in 2012 totaling \$1,584,676, an average of \$31,072 paid out per claim. The number of claims combines homeowner's and commercial insurance claims paid out.

Exhibit 2.4
Dog Bite Claims Received by State Farm Insurance Company
(Homeowner's and Commercial Insurance Claims Combined)
2012

<u>State</u>	<u>Number of Claims</u>	<u>Total Paid Out</u>	<u>Average Cost Per Claim</u>
Alabama	46	\$855,333	\$18,594
Alaska	5	187,026	37,405
Arizona*	72	2,834,182	39,363
Arkansas	20	398,170	19,909
California*	451	17,111,297	37,941
Colorado	66	1,353,052	20,501
Connecticut*	17	628,860	36,992
Delaware*	19	322,206	16,958
District of Columbia	4	14,958	3,740
Florida*	123	7,122,250	57,904
Georgia	121	3,330,255	27,523
Hawaii	18	736,317	40,907
Idaho	16	203,768	12,736
Illinois*	337	9,063,316	26,894
Indiana	148	2,747,670	18,565
Iowa*	51	950,232	18,632
Kansas	28	133,973	4,785
Kentucky*	56	962,410	17,186
Louisiana*	60	1,772,877	29,548
Maine	7	678,635	96,948
Maryland	51	1,584,676	31,072
Massachusetts*	2	3,334	1,667
Michigan*	151	4,666,849	30,906
Minnesota*	106	2,817,249	26,578
Mississippi	16	173,245	10,827
Missouri*	80	1,901,015	23,763
Montana	11	304,231	27,657
Nebraska*	32	354,713	11,085
Nevada	22	967,695	43,986
New Hampshire*	14	673,026	48,073
New Jersey*	74	4,767,400	64,424
New Mexico	25	702,103	28,084
New York	116	6,460,626	55,695
North Carolina	88	1,263,824	14,361
North Dakota	3	36,601	12,200
Ohio*	235	5,010,446	21,321

<u>State</u>	<u>Number of Claims</u>	<u>Total Paid Out</u>	<u>Average Cost Per Claim</u>
Oklahoma	39	1,365,284	35,007
Oregon	77	1,186,108	15,404
Pennsylvania	165	4,554,813	27,605
Rhode Island	0	0	0
South Carolina*	59	1,848,305	31,327
South Dakota	13	216,428	16,648
Tennessee	66	819,001	12,409
Texas	236	4,387,900	18,593
Utah*	40	825,338	20,633
Vermont	6	66,170	11,028
Virginia	57	1,818,966	31,912
Washington*	69	3,159,902	45,796
West Virginia	16	465,288	29,081
Wisconsin*	93	1,729,507	18,597
Wyoming	9	361,875	40,208
<i>Subtotal</i>	<i>3,636</i>	<i>105,898,705</i>	<i>29,125</i>
Select Canadian Provinces	34	2,101,292	61,803
Total	3,670	\$108,000,000	\$29,428

*States with broad strict liability.

Note: Also provided on the I.I.I. website is "Homeowners and Renters Insurance" data, which provides statistics on premium costs and causes of claims. In Maryland in 2010, the average homeowner premium was \$784, compared to U.S. average of \$909 (ranked twenty-seventh in the United States), and the average renters premium was \$156, compared to \$185 (ranked thirtieth in the United States). The link to this website is: http://www.iii.org/facts_statistics/homeowners-and-renters-insurance.html.

Source: Insurance Information Institute and State Farm

Legislation Relating to Dog Ownership and Homeowner's Insurance

Maryland

Chapter 406 of 2013 (House Bill 1203) requires an insurer that offers a homeowner's insurance or renter's insurance policy in the State that does not provide coverage for losses caused by specific breeds of dogs to provide, at the time of application for or issuance and each renewal of a policy, an applicant or insured a written notice that (1) states that the policy does not provide coverage for losses caused by specific breeds or specific mixed breeds of dogs and (2) identifies the specific breeds or specific mixed breeds of dogs for which the policy does not provide coverage. The Act authorizes the insurer to make the disclosures in an annual statement

otherwise required to be provided to the insured. The Act applies to all homeowner's or renter's insurance policies issued, delivered, or renewed in the State on or after January 1, 2014.

Senate Bill 296 of 2013 (failed) would have prohibited an insurer from refusing to issue or renew a homeowner's or renter's insurance policy solely because the applicant or insured owns a dog. A homeowner's or renter's insurance policy would have not been able to exclude coverage for bodily injury, property damage, or medical payments arising out direct physical contact with a dog owned by or under the care, custody, or control of the insured. In a letter to MIA dated February 12, 2013, the Senate Finance Committee indicated that it understands that MIA recently began tracking complaints about the availability of homeowner's or renter's insurance for owners of dogs. As MIA monitors the availability of insurance, the committee requested that MIA immediately notify the committee if MIA learns of a change in the market trends of the availability of insurance that warrants the committee's attention.

Other States

Pennsylvania² and Michigan³ each have laws precluding an insurer from refusing to issue or renew coverage due to possession of a specific breed of dog. The New York State Assembly introduced similar legislation⁴ in 2012 that did not become law.

² 3 P.S. § 459-507-A (effective 1990).

³ Bulletin 2003-07-INS (effective 2003).

⁴ Bill No. A03507 of 2012.

Chapter 3. Recovery of Damages for Injury Caused by Dogs

This part of the report reviews the tort law that governs recovery of damages in a civil claim for an injury caused by a dog, beginning with an explanation of the traditional means of recovery under the common law on which many states still rely as the only method for determining liability for an injury caused by a dog.

This part also compares the most significant features of the statutes of states that have enacted some form of strict liability for an injury caused by a dog. In addition, this section identifies the states that have broad strict liability statutes as opposed to the states that have limited strict liability statutes.

Further, this part reviews the extent to which applicable statutory caps on noneconomic damages and modifications of the collateral source rule have been enacted in states with broad strict liability statutes. These two specific tort reforms may significantly diminish a plaintiff's recovery of damages for an injury caused by a dog depending on the particular facts of a claim. Determining the extent to which these statutes have been enacted in broad strict liability states may be useful in a comparative analysis of the states' tort systems and their relationship to the availability and affordability of liability insurance for an injury caused by a dog.

Liability for Injury by Dog under Common Law

Under Maryland common law, an owner or keeper of a dog may be responsible for an injurious act of the dog under two alternate theories of liability: (1) negligence; or (2) strict liability arising from the defendant's knowledge of the dog's propensity to cause harm. *Slack v. Villari*, 59 Md. App. 462, 470 (1984), citing *McDonald v. Burgess*, 254 Md. 452, 456 (1969), *Finneran v. Wood*, 249 Md. 643 (1968), and *Herbert v. Ziegler*, 216 Md. 212, 216 (1958).

Under a negligence claim, a defendant is held liable for damages if it is found that the defendant "...failed to exercise reasonable care in controlling the animal or preventing the harm caused by [the animal]." *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 357 (1986) citing *Slack v. Villari*, 59 Md. App. 462, 476 (1984). The defendant's actions or omissions must be the proximate cause of the plaintiff's injuries and the resulting damages. For example, a violation of an animal control law may establish a *prima facie* case of negligence.

Under the common law, absent a showing of negligence, a defendant is not liable for an injury caused by a dog unless, at the time of the attack, the defendant knew or had reason to know of the dog's vicious tendencies or propensities (scienter). Though commonly referred to as the "one bite rule," a plaintiff seeking to recover damages for injuries caused by a dog is not required to prove that the dog actually bit someone prior to the attack on the plaintiff. The defendant's knowledge of the dog's vicious propensity "need only be such as to put him on his

guard, and to require him as an ordinary prudent person to anticipate the act or conduct of the dog resulting in the injury for which the owner is sought to be held liable.” *Shields v. Wagman*, 350 Md. 666, 686 (1998), quoting *Bachman v. Clark*, 128 Md. 245, 248 (1916). On a showing of knowledge of the dog’s vicious propensity, a plaintiff may recover under the common law on the basis of strict liability. *Slack v. Villari*, at 473.

Strict Liability Statutes

In General

Thirty-two states (Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wisconsin) have modified the common law by enacting a statute that imposes strict liability for any dog bite, including a first bite, under specified circumstances.

In the remaining 18 states and the District of Columbia, a claim for an injury caused by a dog is governed almost exclusively by the common law of the individual state. (Hawaii and the District of Columbia have modified the common law governing a negligence claim based on a dog injury, but have not enacted a strict liability statute. Although New York and North Carolina have enacted a strict liability statute that applies only if the dog was previously declared dangerous, their statutes should not be considered as significantly modifying the common law.)

For detailed information on liability for dog bites or injuries in each state and the District of Columbia, please see **Appendix 1**. For detailed information on the Maryland Court of Appeals ruling in *Tracey v. Solesky*, 427 Md. 627 (2012), please see **Appendix 2**.

How Dog Causes Injury

Twenty-two states (Alabama, Connecticut, Delaware, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, West Virginia, and Wisconsin) apply strict liability to any injury caused by a dog.

Ten states (Arizona, California, Colorado, Florida, Indiana, Michigan, Missouri, Montana, New Jersey, and Washington) limit the scope of their statutes to an injury caused by a dog bite.

Type of Defendant Covered

Eighteen states (Arizona, Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Utah, West Virginia, and Wisconsin) impose strict liability on a person who owns or keeps a dog.

Fourteen states (Alabama, California, Delaware, Florida, Illinois, Iowa, Louisiana, Michigan, Montana, Nebraska, New Jersey, Oklahoma, Tennessee, and Washington) have strict liability statutes that apply only to an owner of a dog.

Behavior of Person Injured by Dog

The behavior of a person who is injured by a dog may provide a complete defense to a strict liability claim or reduce the extent to which the person may recover damages.

Provocation

Twenty-two states (Alabama, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska,¹ Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Washington) provide an exception from strict liability if the dog was teased, tormented, abused, or provoked by the person who was injured.

Not Acting Peaceably

Three states (Illinois, Indiana, and Minnesota) provide an exception from strict liability if the injured person was not acting peaceably.

Trespass, Tort, or Crime

Twenty-three states (Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Kentucky,² Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, and Washington) provide exceptions from strict liability if the person who was injured by the dog was trespassing or committing another tort or criminal offense.

¹ Pursuant to Nebraska case law. *Paulsen v. Courtney*, 277 N.W.2d 233 (Neb. 1979)

² Pursuant to Kentucky case law. *Dykes v. Alexander*, 411 S.W.2d 47 (Ky. App. 1967)

Assumption of the Risk

Assumption of the risk is an affirmative defense under common law under which a plaintiff who "...voluntarily consents, either expressly or impliedly, to exposure to a known risk cannot later sue for damages incurred from exposure to that risk."³

Appellate courts in six states (California, Georgia, Illinois, Kentucky, Massachusetts, and New Jersey) have determined that assumption of the risk is an available defense in statutory strict liability dog bite cases.⁴ Conversely, appellate courts in seven states (Arizona, Connecticut, Florida, Iowa, Minnesota, Montana, and Ohio) have determined that assumption of the risk is not applicable in these cases.⁵

Negligence or Other Fault

The following 10 states have statutory language or case law that provides an exception to strict liability or reduces recovery if the injured person was negligent or at fault: California, Florida, Kentucky, Louisiana, Maine, Missouri, New Hampshire, New Jersey, Utah, and Wisconsin.⁶ All of these states are comparative fault jurisdictions. The impact of a plaintiff's negligence will depend on the type of comparative fault system utilized by the state: (1) pure comparative fault; (2) modified comparative fault/"less than 50%" at fault; or (3) modified comparative fault/"less than or equal to 50%" at fault.

California, Florida, Kentucky, Louisiana, and Missouri are among the states with pure comparative fault systems. Under a pure comparative fault system, each party is held responsible for damages in proportion to the party's fault.⁷ Regardless of the level of the plaintiff's own negligence, the plaintiff can still recover something from a negligent defendant.

Under a modified comparative fault system, each party is held responsible for damages in proportion to his or her fault, unless the plaintiff's negligence reaches a certain designated percentage of fault.⁸ If the plaintiff's own negligence reaches this percentage bar, then the plaintiff cannot recover any damages.

Under a "less than 50%" at fault system, an injured plaintiff can recover only if the degree of fault attributable to the plaintiff's own conduct is less than the degree of fault attributable to the defendant. If the plaintiff's negligence is equal to or greater than the defendant's, all recovery is barred. Maine and Utah have "less than 50%" modified comparative fault systems.

³ 57B Am Jur 2d Negligence §761 (2004).

⁴ Jay M. Zitter, *Intentional Provocation, Contributory or Comparative Negligence, or Assumption of Risk as Defense to Action for Injury by Dog*, 11 A.L.R.5th 127 (1993).

⁵ *Id.* at §3b.

⁶ *Id.* at §§3.5 – 4b.

⁷ *E.g., Li v. Yellow Cab Co. of California*, 13 Cal.3d 804, 532 P.2d 1226 (1975).

⁸ H. Shulman, F. James, O. Gray and D. Gifford. *Cases and Materials on the Law of Torts* 442 (4th ed. 2003).

Under a “less than or equal to 50%” at fault system, the plaintiff would be allowed to recover if the plaintiff and the defendant are equally at fault, or if the defendant is more at fault than the plaintiff, but not if the plaintiff’s fault is greater than that of the defendant. New Hampshire, New Jersey, and Wisconsin have “less than or equal to 50%” modified comparative fault systems.

Broad Strict Liability Statutes vs. Limited Strict Liability Statutes

Twenty-one states (Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, Ohio, South Carolina, Utah, Washington, and Wisconsin) have strict liability statutes that can be described accurately as being broad in their scope.

Another 11 states (Alabama, Colorado, Georgia, Indiana, Maine, Montana, Oklahoma, Pennsylvania, Rhode Island, Tennessee, and West Virginia) have relatively limited strict liability statutes because of various limiting provisions relating to the (1) identity of the victim; (2) place of the attack; and (3) types of damages eligible for recovery. These provisions are described below.

Identity of Victim

Indiana’s statute is limited to a police officer, firefighter, postal worker, or other person who is required because of a legal duty to be at a location where the attack occurred.

Place of Attack

Five states (Georgia, Maine, Rhode Island, Tennessee, and West Virginia) apply strict liability only if the dog is “allowed to go at liberty,” “at large,” “outside the enclosure of the dog’s owner or keeper,” or “not on the owner’s or keeper’s premises.”

Montana applies strict liability only to a dog located within an incorporated municipality. Oklahoma provides that strict liability does not apply in a “rural area.”

Types of Damages Eligible for Recovery

Pennsylvania limits recovery of damages by a plaintiff to the cost of medical treatment in the case of a nonsevere injury and all expenses in the case of a severe injury.

Alabama limits recovery to actual expenses.

Colorado limits the scope of recovery to economic damages for serious bodily injury or death.

Broad Strict Liability States and Certain Tort Reform Statutes

Other aspects of a state's statutory law may affect recovery in a dog liability claim. Two of the most significant statutory tort reforms that may come into play in such a claim are (1) a cap on noneconomic damages and (2) modification of the collateral source rule.

A comparison of these tort reforms in the states with broad strict liability statutes is included below.

Caps on Noneconomic Damages

Of the 21 states with broad strict liability statutes, only Ohio has limits on noneconomic damages in applicable tort claims. Ohio limits noneconomic damages in tort actions based on a sliding scale of \$250,000 to \$500,000 for each occurrence that forms the basis of the claim. There is no limit on noneconomic damages in cases involving severe injury. The remaining 20 states have (1) not enacted caps on noneconomic damages; (2) enacted caps in cases that are not related to dog-inflicted injuries (*e.g.*, medical malpractice); or (3) enacted caps that were later held unconstitutional by courts.

Modification of Collateral Source Rule

Under the common law collateral source rule, if an injured person receives compensation for an injury from a source independent of the defendant, those payments should not be deducted from the injured person's recovery in damages.⁹ The collateral source rule also prohibits introduction of evidence of this compensation.¹⁰

Opponents of modifications of the collateral source rule argue that a victim is entitled to full recovery for his injuries and the costs incurred for bringing a legal claim, and that an injured party should not be penalized for being responsible enough to pay for and maintain an insurance policy.¹¹ Proponents of modifications to the collateral source rule argue that it results in overcompensation.¹²

⁹ *Black's Law Dictionary* 299 (9th ed. 2009).

¹⁰ Bryce Benjet, *A Review of State Law Modifying the Collateral Source Rule: Seeking Greater Fairness in Economic Damages Awards*, 76 Def. Couns. J. 210 (2009).

¹¹ Rebecca Levenson, Comment, *Allocating the Costs of Harm to Whom They Are Due: Modifying the Collateral Source Rule After Health Care Reform*, 160 U. Pa. L. Rev. 921, 927-929 (2012).

¹² *Id.* at 931-932.

Of the 21 states with broad strict liability statutes regarding an injury caused by a dog, 7 states have enacted various statutory restrictions of the collateral source rule that could affect recovery for the injury. Statutes in the following states reduce damages to reflect recovery from some collateral sources, permit juries to limit damages in light of collateral source payments, or authorize the introduction of evidence of collateral source payments: Connecticut,¹³ Iowa,¹⁴ Michigan,¹⁵ Minnesota,¹⁶ Nebraska,¹⁷ New Jersey,¹⁸ and Ohio.¹⁹

Exhibit 3.1 contains information on caps on noneconomic damages and modifications of the collateral source rule in states with broad strict liability statutes. **Appendix 3** lists sources used in compiling information for this part of the report.

¹³ Benjet, *supra* note 10, at 216.

¹⁴ *Id.* at 221. Under Iowa Code Section 668.14, a court in a personal injury case must permit certain evidence or argument as to previous payments or future right to payment for specified medical care unless the payment or right to payment is pursuant to a state or federal program or was from assets of the claimant or the claimant's immediate family. If this evidence or argument is permitted, the court must also permit evidence or argument as to the costs to the claimant of procuring the payment or future right to payment and any rights to indemnification or subrogation. If any of this evidence or argument is permitted, the statute also requires the court to instruct the jury to answer special interrogatories or requires the court to make finding indicating the effect of the evidence on the verdict.

¹⁵ *Id.* at 228. Michigan's statute applies to personal injury cases in which economic damages are sought. Reductions in damages for payments to collateral sources are offset by insurance premiums paid by the claimant. Payments subject to subrogation claims are exempt, but an assertion of subrogation rights is required within 20 days of a required notice of a verdict. Medicare payments are not a collateral source payment.

¹⁶ *Id.* at 227. Minn. Stat. § 548.251 (2012) (formerly §548.36 (2008)) does not apply to collateral payments with subrogation rights and reductions in damages are offset by the amount paid to secure the collateral source benefit.

¹⁷ *Id.* at 227. Neb. Rev. Stat. § 44-2819 provides that evidence of medical reimbursement insurance is inadmissible. However, after the jury has awarded the plaintiff damages the court shall hold a separate hearing regarding deduction from the judgment amount by any amount of nonrefundable medical reimbursement insurance minus any premiums paid by the plaintiff.

¹⁸ *Id.* at 229. Under N.J. Rev. Stat. § 2A:15-97 reductions in damages for collateral source payments are offset by insurance premiums that were paid for directly by the plaintiff or the plaintiff's family on behalf of the plaintiff during the applicable policy period.

¹⁹ *Id.* at 232. The following are exceptions to admissible evidence of collateral source payments under Ohio Rev. Code § 2315.20: (1) benefits paid to the plaintiff with a right of subrogation; and (2) life insurance or disability payments, unless the plaintiff's employer paid for the life insurance or disability policy, and the employer is a defendant in the tort action. If the defendant introduces such evidence, the plaintiff may introduce the amount the plaintiff paid or contributed to secure the right to receive the benefits.

Exhibit 3.1**States with Broad Strict Liability Statutes – Caps on Noneconomic Damages and Modifications of the Collateral Source Rule²⁰**

<u>State</u>	<u>Cap on Noneconomic Damages in Applicable Tort Actions</u>	<u>Modification of the Collateral Source Rule</u>
Arizona	None	
California	None	
Connecticut	None	x
Delaware	None	
Florida	None	
Illinois	None	
Iowa	None	x
Kentucky	None	
Louisiana	None	
Massachusetts	None	
Michigan	None	x
Minnesota	None	x
Missouri	None	
Nebraska	None	x
New Hampshire	None	
New Jersey	None	x
Ohio	Sliding Scale between \$250,000 and \$500,000 per occurrence on which the tort action is based. No limit in cases involving severe injuries, such as loss of limb, physical deformity, or loss of a bodily organ system	x
South Carolina	None	
Utah	None	
Washington	None	
Wisconsin	None	

Source: *Defense Counsel Journal*, April 2013²¹

²⁰ Some states have enacted caps on non-economic damages in medical malpractice claims or tort claims not applicable to claims for dog bites or dog-related injuries. For purposes of this chart, a state that has enacted a cap on noneconomic damages that is not applicable to claims for dog bites or dog-related injuries is listed as not having a cap on noneconomic damages. A state whose statutory limit on noneconomic damages has been held unconstitutional is also listed as not having a cap.

²¹ J. Chase Bryan, Walter H. Boone, and Jordan M. Mason, *Are Non-Economic Caps Constitutional?*, 80 Def. Couns. J. 154 (2013).

Appendix 1

Dog Liability in U.S. Jurisdictions

Alabama

Citations: Ala. Code §§ 3-6-1 through 3-6-4

Statute: Alabama has a strict liability statute that holds a dog owner liable for damages for bites and any other injuries caused by the owner's dog without provocation if the injured person was injured while he was on public property, lawfully on property owned or controlled by the dog's owner, or was pursued by the dog off of the dog owner's property.

A dog owner is entitled to plead and prove in mitigation of damages that he had no knowledge of any circumstances indicating that the dog was vicious, dangerous, or mischievous. If a dog owner successfully proves this lack of knowledge, the dog owner is liable for actual expenses incurred by the injured person as a result of the bite or injury.

Exceptions/Defenses:

Provocation

Trespass

Alaska

Alaska has retained the common law standard for dog bite liability and does not have a strict liability statute.

Arizona

Citations: Ariz. Rev. Stat. §§ 11-1025 through 11-1028

Statute: The owner or keeper of a dog is strictly liable for an injured person's damages if the injured person was bitten by the dog while he was in or on a public place or lawfully in or on a private place, including the dog owner's property. The statute does not apply to military/police dogs under specified circumstances.

Provocation of the attack by the victim is a defense in an action under the strict liability statute. The standard is whether a reasonable person would expect that the conduct or circumstance would be likely to provoke a dog.

Exceptions/Defenses:

Provocation

Trespass

Military/Police Dogs

Notes: Assumption of the risk is not a defense under the dog bite statute. *Massey v. Colaric*, 151 Ariz. 65 (1986).

Arkansas

Arkansas does not have a statewide strict liability statute and has retained the common law standard of liability for dog bite cases.

California

Citation: Cal. Civil Code § 3342

Statute: A dog owner is liable for damages suffered by a person bitten by the owner's dog while the person was in a public place or lawfully in a private place, including the dog owner's property. The statute contains an exception for military/police dogs under specified circumstances.

Exceptions/Defenses:

Trespass

Military/Police Dogs

Courts have held provocation, assumption of the risk, and comparative negligence are all defenses in a cause of action brought under the strict liability statute. *See Burden v. Globerson*, 252 Cal.App.2d 468 (1967); *Johnson v. McMahon*, 68 Cal.App.4th 173 (1998). California is a "pure" comparative fault jurisdiction.

Colorado

Citation: Colo. Rev. Stat. § 13-21-124

Statute: A person may bring a civil action for economic damages against a dog owner (including a possessor, keeper, or harbinger of a dog) when a person suffers a "serious bodily injury" as result of being bitten by the owner's dog while lawfully on public or private property, regardless of the dog's viciousness or dangerous propensities or the dog owner's knowledge or lack of knowledge of those traits of the dog.

"Serious bodily injury" means an injury that involves a substantial risk of death, serious permanent disfigurement, loss or impairment of a bodily function or organ, or a break, fracture, or second or third-degree burn.

A dog owner is not liable under the statute to a person who suffers bodily injury, serious bodily injury, or death from a dog bite if:

- The injured person was unlawfully on public or private property at the time of the attack;
- The injured person was on the property of the dog owner and the property was clearly marked with "No Trespassing" or "Beware of Dog" signs;
- The attack was caused by a military/police dog under specified circumstances;

- The injured person knowingly provoked the dog;
- The injured person was a veterinary health care worker, dog groomer, etc. acting in the performance of his official duties; or
- The dog was working as a hunting dog, farm/ranch dog, etc.

In order to recover noneconomic damages or in cases that do not involve serious bodily injury, the injured person must prove that the dog owner is liable under another legal doctrine (e.g., scienter, negligence, negligence *per se*).

Exceptions/Defenses:

Nonserious Bodily Injury

Trespassing

Provocation

Victim was performing official animal-related duties at the time of injury

Type of dog (military/police dog, hunting dog, farm dog, etc.)

Connecticut

Citation: Connecticut General Statutes, § 22-357

Statute: The owner or keeper of a dog is liable for damage to the body or property of any person unless, at the time of the incident, the injured person was committing a trespass or other tort, or was teasing, tormenting, or abusing the dog.

A minor under the age of seven years is presumed not to have (1) committed a trespass or other tort; or (2) teased, tormented, or abused the dog. In such cases, the defendant bears the burden of proof.

Exceptions/Defenses:

Trespass/Tort

Provocation

Notes: Connecticut courts have held that the burden is on the plaintiff to prove that he did not provoke the dog or was not committing a trespass/tort at the time of the injury. *Hanson v. Carroll*, 52 A.2d 700, 701 (Conn. 1947).

Assumption of risk is not a defense under the statute. *Duell v. Coyle*, 171 A.2d 427 (Conn. 1961).

Delaware

Citation: 9 Del.C. § 913

Statute: The owner of a dog is liable in damages for any injury, death, or loss to person or property caused by the dog unless the injury, death, or loss was caused by a person who, at the time was (1) committing or attempting to commit a trespass or other criminal offense on the dog owner's property; (2) committing or attempting to commit a criminal offense against any person; or (3) teasing, tormenting, or abusing the dog.

Exceptions/Defenses:

Trespass

Commission of a Criminal Offense

Provocation

Notes: Comparative fault and assumption of risk are generally not applicable under the statute unless expressly stated. *Russo v. Ziegler*, C.A. N11C-08-120PRW (2013).

District Of Columbia

Citation: D.C. Code § 8-1812

The District of Columbia does not have a strict liability statute and has retained the common law doctrine of liability in dog bite cases. However, the District of Columbia does have a statute that specifies that when a dog injures a person while running at large, lack of knowledge of the dog's vicious propensity standing alone shall not absolve the owner from a finding of negligence.

Florida

Citations: Fla. Stat. §§ 767.01 and 767.04

Statute: Dog owners are liable for any damages done by their dogs to a person or to any "domestic animal" or "livestock." The owner of a dog that bites any person while that person is in or on a public place or lawfully in or on a private place is liable for damages suffered by the person bitten.

If negligence by the victim was a proximate cause of the biting incident, the owner's liability will be reduced by the percentage that the bitten person's negligence contributed to the biting incident.

An owner is not liable if he posted an easily readable "Bad Dog" sign in a prominent place on his property, unless the victim is under six years old or the injuries were caused by the owner's negligence.

Exceptions/Defenses:

Trespass

“Bad Dog” Sign

Comparative fault

Notes: A dog owner in a case brought under the dog bite/injury statute may only use the defenses expressed in the statute. *Donner v. Arkwright-Boston Mfrs. Mut. Ins. Co.*, 58 So.2d 21 (Fla. 1978)

Comparative fault/comparative negligence by a plaintiff in a case brought under the dog statute must “...be more than a mistake on the plaintiff’s part as to the intention of the dog to bite or attack him.” *Smith v. Allison*, 332 So.2d 631, 634 (Fla. 1976).

A child under the age of six is conclusively presumed to be incapable of committing contributory negligence. *Swindell v. Hellkamp*, 242 So.2d 708 (Fla. 1970).

Florida is a “pure” comparative fault jurisdiction.

Georgia

Though Georgia does have a statute regarding liability for an injury caused by a dog, when compared to statutes in other jurisdictions, it resembles a hybrid statute more than a strict liability statute.

Citation: Ga. Code Ann. § 51-2-7

Statute: In order for a dog owner or keeper to be held liable under Ga. Code Ann. § 51-2-7 for damages caused to a person who, without provocation, was injured by the owner/keeper’s dog:

- (1) The dog must have been vicious or dangerous, the owner/keeper must have had knowledge of the dog’s viciousness or dangerousness, and the owner/keeper must have carelessly managed the animal or allowed the animal to go at liberty; or
- (2) The owner/keeper must have failed to keep the dog on a leash or at heel as required by ordinance and must have carelessly managed the animal or allowed the animal to go at liberty.

Exceptions/Defenses:

Provocation

Assumption of Risk – *Durham v. Mason*, 568 S.E.2d 530 (Georgia 2002).

Hawaii

Though Hawaii does have a dog bite statute, it is considered by case law to be a common law liability state.

Citations: Haw. Rev. Stat. §§ 663-9 and 663-9.1

Statute: Section 663-9

- (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 663-9.1 creates exceptions to the civil liability under § 663-9 when (1) the injured person intentionally or knowingly entered or remained on the premises of the dog's owner/harbinger unlawfully; (2) the injured person teased, tormented, or otherwise abused the animal; or (3) the use of the animal to cause damage to the person or property was justified.

Judicial Interpretation: As interpreted by the courts, Haw. Rev. Stat. § 663-9(a) does not establish strict liability, but merely eliminates the need for an injured person to prove scienter on the part of a dog owner/harbinger in a claim based on negligence. *Hubbell v. Iseke*, 727 P.2d 1131,1134 (Haw. App. 1986).

The *Hubbell* opinion does mention that § 663-9(b) imposes strict liability for damage to person or property on owners or harborers of animals known by their species or nature to be dangerous, wild, or vicious if the damage is proximately caused by the animal. However, the court referred to language in a legislative conference committee report indicating that the legislature did not consider dogs to be included in the class of animals covered under § 663-9(b) when the statute was enacted in 1980. *Hubbell* at 1135.

Exceptions/Defenses:

Trespass

Provocation

Justifiable use of the animal to cause damage to person or property

Idaho

Idaho does not have a strict liability statute and has retained the common law standard of liability in dog bite cases.

Illinois

Citation: 510 ILCS 5/16

Statute: A person injured by an animal can recover damages against the owner of the animal if the animal attacks, attempts to attack, or injures the person and (1) the animal proximately caused the injury; (2) the animal was unprovoked; (3) the person was conducting himself/herself peaceably; and (4) the person was in a place where he had a legal right to be at the time of the injury.

Exceptions/Defenses:

Provocation

Trespass

Injured person was not conducting himself peaceably at the time of the injury

Assumption of Risk – *Malott v. Hart*, 167 Ill. App.3d 209 (1988)

Notes: Comparative fault/negligence does not apply in cases brought under the dog statute. *See Johnson v. Johnson*, Nos. 1-06-2759, 1-07-0029 (November 5, 2008)

Indiana

Citation: Ind. Code § 20-1-3

Statute: Indiana has a strict liability statute that only applies when a dog, without provocation, bites a person who was acting peaceably and who was at the location of the incident because of a legal duty (e.g., police officer, postal worker, firefighter, etc.).

Under the statute, the owner of the dog (including a possessor, keeper, or harbinger of the dog) is liable for all damage suffered by the injured person as a result of the bite even if the dog had not previously engaged in vicious behavior or the owner had no knowledge of prior vicious behavior by the dog.

Injured persons who do not fall into the category of plaintiffs covered by the statute must pursue their claims through other legal doctrines.

Exceptions/Defenses:

Provocation

Injured person was not acting peaceably

Iowa

Citation: Iowa Code § 351.28

Statute: A dog owner is liable for all damages if the owner's dog:

- (1) bites, attempts to bite, or attacks a person; or
- (2) is caught in the act of worrying, maiming, or killing a domestic animal.

The statute does not apply if:

- (1) the victim was doing an unlawful act directly contributing to the injury; or
- (2) the dog was affected by hydrophobia, unless the owner had reasonable grounds to know that the dog was afflicted with hydrophobia and by reasonable effort could have prevented the injury.

Exceptions/Defenses:

Victim was committing an unlawful act contributing to the injury
Hydrophobia

Notes: Assumption of risk is not a defense under the statute. *Collins v. Kenealy*, 492 N.W.2d 679 (Iowa 1992).

Kansas

Kansas does not have a dog bite statute and maintains common law liability in dog bite cases.

Kentucky

Citation: Ky. Rev. Stat. Ann. § 258.235

Statute: Any owner, keeper, or harborer whose dog is found to have caused damage to a person, livestock, or other property shall be responsible for that damage.

Exceptions/Defenses:

Comparative Fault/Negligence: Comparative negligence is a defense under the dog statute. *Carmical v. Bullock*, 251 S.W.3d 324 (Ky. App. 2007); *Johnson v. Brown*, 450 S.W.2d 495 (Ky. App. 1970). Comparative negligence does not apply if the injured party is a child under age seven. *Lehman v. Patterson*, 298 Ky. 360 (1944).

Assumption of Risk – *Jordan v. Lusby*, 81 S.W.3d 523 (Ky. App. 2002).

Trespass – A trespasser, including a child, may not recover damages under the dog statute. *Dykes v. Alexander*, 411 S.W.2d 47 (Ky. App. 1967).

Notes: Kentucky is a “pure” comparative fault jurisdiction.

Louisiana

Citation: La. Civ. Code Ann. § 2321

Statute: A dog owner is liable for damages for injuries to person or property caused by the dog which the owner could have prevented and which did not result from provocation of the dog. Courts have interpreted “which the owner could have prevented” to mean that the dog bite victim is required to prove that the dog posed an unreasonable risk of harm.

The statute also contains negligence liability provisions that hold an owner of an animal answerable for the damages caused by the owner’s animal upon a showing that the owner knew, or in the exercise of reasonable care, should have known that his animal’s behavior would cause damage, that the damage could have been prevented with reasonable care, and that the owner failed to exercise such reasonable care.

Exceptions/Defenses:

Provocation

Comparative Fault/Negligence applies in cases brought under the statute. *Howard v. Allstate Insurance Co.*, 520 So.2d 715 (La. 1988).

Notes: Louisiana is a “pure” comparative fault jurisdiction.

Maine

Citation: 7 M.R.S.A. § 3961

Statute: In Maine, when a dog injures a person who is not on the owner’s or keeper’s premises at the time of injury, the owner or keeper of the dog is liable to the person injured for the injured party’s damages. There is no reduction in damages for comparative negligence unless the victim’s fault exceeds the fault of the dog’s owner or keeper.

Section 3961 also contains negligence provisions. Under these provisions, when an animal damages a person or a person’s property due to negligence of the animal’s owner or keeper, the owner or keeper is liable to the person injured if the damage was not occasioned through fault of the person injured.

Exceptions/Defenses:

Dog was on owner/keeper’s property

Notes: Maine generally follows a Modified/Less Than 50% comparative fault system.

Maryland

Maryland does not have a strict liability statute and maintains common law liability in dog bite cases.

However, in *Tracey v. Solesky*, 427 Md. 627 (2012), the Maryland Court of Appeals held that strict liability applies to dog owners, landlords, and any individual with control over the animal's presence on the premises in cases involving purebred pit bulls. For detailed information on the *Solesky* ruling, please see Appendix 2.

Massachusetts

Citation: Mass. Gen. Laws ch. 140, § 155

Statute: A dog owner or keeper is strictly liable for damages to the body or property of any person unless the injured person was trespassing, teasing, tormenting, or abusing the dog, or committing another tort at the time the damage was sustained. It is presumed that a child under the age of seven was not engaged in any of these activities, and the burden of proof is on the defendant to prove otherwise.

The owner or keeper of a dog that was previously ordered to be restrained by a local authority is liable for triple damages if the dog thereafter injures a person.

Exceptions/Defenses:

Trespass/Commission of a Tort

Provocation

Assumption of Risk – *Miller v. Fickett*, 724 N.E.2d 354 (2000)

Notes: Courts in Massachusetts have held that the plaintiff must prove that he was not committing a trespass/tort or teasing/tormenting the dog at the time of the injury. *Sullivan v. Ward*, 304 Mass. 614, 615-616 (1939); *Curran v. Burkhardt*, 310 Mass. 466, 467 (1941); *Rossi v. DelDuca*, 344 Mass. 66, 69 (1962).

Michigan

Citation: Mich. Comp. Laws § 287.351

Statute: The owner of a dog is liable for damages to a person bitten by the owner's dog if (1) the dog was not provoked and (2) the injured person was on public property or lawfully on private property (including the dog owner's property) at the time of the injury.

Exceptions/Defenses:

Provocation

Trespass

Michigan courts have held that comparative fault (excluding provocation) does not apply to a case eligible for strict liability under § 287.351. *Hill v. Sacka*, 256 Mich. App. 443 (2003).

Minnesota

Citation: Minn. Stat. § 347.22

Statute: The owner of a dog is liable to a person attacked or injured by the owner's dog if (1) the dog was unprovoked and (2) the victim was acting peaceably in any place where he may lawfully be.

“Owner” includes a harbinger or keeper of a dog. However, the owner is primarily liable.

Exceptions/Defenses:

Provocation

Trespass

Victim was not acting peaceably

Notes: Comparative fault is not permitted as a defense under the dog bite statute. *Seim v. Garavalia*, 306 N.W.2d 806 (Minn. 1981).

Common law affirmative defenses do not apply in cases brought under the dog injury statute. *Lewellin ex rel. Lewellin v. Huber*, 465 N.W.2d 62, 64 (Minn.1991).

Mississippi

Mississippi does not have a dog bite liability statute and has maintained common law liability in dog bite cases.

Missouri

Citation: Mo. Rev. Stat. § 273.036

Statute: The owner or possessor of a dog that bites a person is liable for damages suffered by the bitten person if (1) the dog was not provoked and (2) the victim was on public property or lawfully on private property, including the property of the owner or possessor of the dog. If it is determined that the damaged party had fault in the incident, the damages owed by the owner or possessor of the dog must be reduced by the injured party's percentage of fault.

Owners or possessors are also liable for damage to property or livestock proximately caused by the dog.

Owners found liable under the statute are also subject to a fine of up to \$1,000.

Exceptions/Defenses:

Provocation

Trespass

Comparative Fault/Negligence

Notes: Missouri is a “pure” comparative fault jurisdiction.

Montana

Citation: Mont. Code Ann. § 27-1-715

Statute: The owner of a dog that bites a person is liable for the injured person’s damages if (1) the dog bite was not provoked; (2) the bite occurred within an incorporated city or town; and (3) the victim was on or in a public place or lawfully on or in a private place, including the property of the dog’s owner.

Exceptions/Defenses:

Provocation

Trespass

Notes: Comparative fault or any other affirmative defenses are not permitted under the dog bite statute. The only defenses are provocation and trespass, which are specified in the statute. *Stroop v. Day*, 271 Mont. 314 (1995).

Nebraska

Citation: Neb. Rev. Stat. § 54-601

Statute: A dog owner is liable for any damages (1) to any person except a trespasser that may have accrued as a result of a dog bite and (2) to any person, firm, or corporation by reason of the dog killing, wounding, injuring, worrying, or chasing any person or person or any sheep or other domestic animals belonging to the person, firm, or corporation. The statute does not apply to military/police dogs under specified circumstances.

Exceptions/Defenses:

Trespass

Military/Police Dogs

Intentional Provocation - *Paulsen v. Courtney*, 277 N.W.2d 233 (Neb. 1979)

Notes: The statute does not apply to playful or mischievous acts of a dog. *Underhill v. Hobelman*, 776 N.W.2d 786, 788-789 (Neb. 2009).

Nevada

Nevada does not have a dog bite statute and has maintained common law liability in dog bite cases.

New Hampshire

Citation: New Hampshire Statutes, § 466.19

Statute: The owner, keeper, or possessor of a dog is strictly liable for injuries or damage to property caused by the dog unless the injured person was trespassing or committing some other tort at the time of the injury.

Courts have determined that the statute applies to vicious and mischievous acts of a dog, which do not have to include a bite. *Noyes v. Labrecque*, 106 N.H. 357 (1965); *Bohan v. Ritzo*, 141 N.H. 210, 218 (1996).

Exceptions/Defenses:

Trespass/Commission of a tort

Comparative Fault applies in cases brought under the statute. *Bohan v. Ritzo*, 141 N.H. 210 (1996). However, comparative fault is applied in these cases through a comparative causation jury instruction. The instruction is appropriate if the evidence shows that the plaintiff created or exacerbated his risk of harm by knowingly putting himself into a dangerous situation. The jury should not be given this instruction absent proof of provocation or misconduct on the part of the plaintiff. Walter L. Murphy and Daniel C. Pope, *New Hampshire Civil Jury Instructions §17.1* (Matthew Bender & Company, Inc., 2012).

Notes: New Hampshire is a Modified/less than or equal to 50% comparative fault jurisdiction.

New Jersey

Citation: N.J. Rev. Stat. § 4:19-16

Statute: A dog owner is strictly liable for damages suffered by a person bitten by the owner's dog while the person was in or on a public place or lawfully in or on private property, including the dog owner's property.

Exceptions/Defenses:

Trespass

Comparative fault applies if the injured party knew the dog had a propensity to bite because of the dog's known viciousness or if the injured party's actions were deliberate acts to incite the

dog. *Dougan v. Nunes*, 645 F. Supp. 2d 319 (D.N.J. 2009). There is a rebuttable presumption that a child under age seven is incapable of negligence. *Bush v. N.J. & N.Y. Transit Co.*, 30 N.J. 345 (1959).

Assumption of the risk is an available defense under certain circumstances. *Reynolds v. Lancaster County Prison*, No. A-3732-9713, Slip op. at 11 (N.J. App. Div. October 27, 1999).

Notes: New Jersey is a Modified/less than or equal to 50% comparative fault jurisdiction.

New Mexico

New Mexico does not have a dog bite statute and has maintained common law liability in dog bite cases.

New York

Citation: N.Y. AGRI & MKTS §121

Statute: New York has limited strict liability statute. Under the law, the owner or lawful custodian of a “dangerous dog” is liable for medical costs resulting from injury caused by the dog to a person, companion animal, farm animal, or domestic animal. The law contains specified circumstances under which the conduct of the dog is justified and an owner of a dangerous dog will not be held to this liability standard (*e.g.* the injured person was committing a crime or offense against the dog’s owner or custodian, the injured person tormented the dog, etc.).

A “dangerous dog” is a dog that:

- (1) without justification attacks and injures or kills a person, companion animal, farm animal or domestic animal and causes physical injury or death; or
- (2) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more of the foregoing.

There is an exception in the dangerous dog definition for police dogs. The conduct of the victim can also exempt a dog from being classified as a dangerous dog.

Common law liability applies to nonmedical costs in cases involving dangerous dogs and all costs in cases involving nondangerous dogs. New York requires a plaintiff to prove scienter in negligence dog bite cases. Violation of a relevant state law may constitute negligence *per se*. However, violation of a local law is considered evidence of negligence *per se*. *Elliott v. City of New York*, 2001 N.Y. Int. 31 (2001).

North Carolina

Citations: N.C. Gen. Stat. §§ 67-4.1, 67-4.4 and 67-12

Statute: The owner of a “dangerous dog” is liable in civil damages for any injuries or property damage the dog inflicts upon a person, his property, or another animal.

A “dangerous dog” is a dog that:

- (1) is owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or
- (2) without provocation, has killed or inflicted severe injury on a person or is determined by the person or animal control board to be potentially dangerous because the dog has engaged in one or more of the following acts—inflicting a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization, killed or inflicted severe injury upon a domestic animal when not on the owner's real property, or approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

In addition, the owner of a dog is strictly liable for injuries inflicted by the dog to a human being or property if the owner intentionally, knowingly, and willfully violates North Carolina’s prohibition against dogs running at large. However, the prohibition only applies to a dog over six months of age that is running at large at night unaccompanied by the owner, a member of the owner’s family, or some other person.

North Dakota

North Dakota does not have a dog bite statute and has maintained common law liability in dog bite cases.

Ohio

Citation: Ohio Rev. Code § 955.28

Statute: The owner, keeper, or harbinger of a dog is liable in damages for injury, death, or loss to person or property caused by the dog unless the victim was (1) committing or attempting to commit a trespass or other criminal offense (other than a minor misdemeanor) on the property of the owner, keeper, or harbinger; (2) committing or attempting to commit a criminal offense against any person; or (3) teasing, tormenting, or abusing the dog on the owner’s, keeper’s, or harbinger’s property.

The owner, keeper, or harbinger of a dog is also liable for damages for injuries, death, or loss to person or property of an individual who was on the owner's, keeper's, or harbinger's property solely to engage in door-to-door sales or solicitation, so long as the victim was not committing a criminal offense (other than a minor misdemeanor) and was not teasing, tormenting, or abusing the dog at the time of the injury.

Exceptions/Defenses:

Commission or Attempted Commission of a Trespass/Criminal Offense
Provocation

Notes: Pursuant to case law, assumption of the risk is not a permissible defense under Ohio Rev. Code § 955.28. *Pulley v. Mallek*, 25 Ohio St.3d 95 (1986); *see also Quellos v. Quellos* 643 N.E.2d 1173 (Ohio Ct. App. 1994).

Oklahoma

Citation: 4 O.S. § 42.1

Statute: The owner of a dog is liable for damages sustained when the owner's dog bites or injures a person, so long as the injured person did not provoke the dog and the injured person was in a place where he had a lawful right to be.

Under 4 O.S. § 42.3, the dog bite statute does not apply to rural areas or cities or towns without U.S. mail delivery service.

Exceptions/Defenses:

Provocation
Trespass
Rural Area

Oregon

Oregon does not have a dog bite statute and has maintained common law liability in dog bite cases.

Pennsylvania

Citations: 3 Pa. Cons. Stat. §§ 459-101 - 1025 ("The Dog Law")

Statute: Under Pennsylvania's Dog Law, a dog owner is liable for all damages to a victim who was severely injured without provocation by the owner's dog. If the victim was not severely injured, the owner is liable for the victim's medical expenses. A victim who is not severely

injured or who wishes to recover non-medical damages has to rely on another legal doctrine (scienter, negligence, etc.).

Exceptions/Defenses:

Provocation

Notes: In Pennsylvania, the doctrine of negligence *per se* does not provide automatic or strict liability. In *Villaume v. Kaufman*, 550 A.2d 793 (1988), the Pennsylvania Superior Court held that in a case where proof of negligence is reliant upon a violation of the dog law, "...liability does not attach unless a violation is a substantial factor in bringing about the injury sustained."

Rhode Island

Citation: R.I. Gen. Laws, § 4-13-16

Statute: The owner or keeper of a dog is liable for damages from a dog attack if the victim was attacked when the dog was not within the owner/keeper's enclosure. The owner or keeper may be held liable for double damages if the dog attacks again.

Exceptions/Defenses:

Dog was within owner/keeper's enclosure at time of attack

South Carolina

Citation: S.C. Code Ann. § 47-3-110

Strict Liability Statute: The owner or keeper of a dog is liable for damages to an injured person who was bitten or otherwise attacked by the dog while the person was in a public place or lawfully in a private place, including the owner/keeper's property. The owner or keeper is not liable if the injured person provoked the dog.

Exceptions/Defenses:

Provocation

Trespassing

South Dakota

South Dakota does not have a dog bite statute and maintains common law liability in dog bite cases.

Tennessee

Citation: Tenn. Code Ann. § 44-8-413

Statute: The owner of a dog is liable for the injuries inflicted by the dog on a person if (1) the dog was not under reasonable control or (2) the dog was running at large. The law does not impose liability if the attack occurred on residential, farm, or other noncommercial property owned, rented, or leased by the dog owner or property occupied by the dog owner with permission or as a lawful tenant or lessee unless the victim proves that the dog's owner knew or had reason to know of the dog's vicious or dangerous propensities.

Exceptions/Defenses:

The law contains exceptions for:

- (1) police/military dogs;
- (2) a dog that was protecting someone from being attacked;
- (3) a dog confined in a kennel or something similar;
- (4) injuries that occurred while the victim was trespassing upon private nonresidential property of the dog's owner; or
- (5) injuries sustained as a result of the victim enticing, disturbing, alarming, harassing, or otherwise provoking the dog.

Texas

Texas does not have a dog bite statute and maintains common law liability in dog bite cases.

Utah

Citation: Utah Code § 18-1-1

Statute: The owner or keeper of a dog is liable in damages for injury caused by the dog. The statute does not apply to law enforcement dogs under specified circumstances.

Exceptions/Defenses:

Law Enforcement Dogs

Comparative fault applies in cases brought under the dog bite statute. *S.H. v. Bistryski*, 923 P.2d 1376 (Utah 1996).

Notes: Utah is a Modified/less than 50% comparative fault jurisdiction.

Vermont

Vermont does not have a dog bite statute and has maintained common law liability in dog bite cases. However, Vermont courts have interpreted the common law as providing liability based on negligence (and not strict liability) when the dog owner knew or had reason to know of the

dog's viciousness or dangerous propensity. *See Carr v. Case*, 135 Vt. 524 (1977). Because common law liability in Vermont is based on negligence, a victim's recovery is reduced in proportion to the victim's fault.

Notes: Vermont is a Modified/less than or equal to 50% comparative fault jurisdiction.

Virginia

Virginia does not have a dog bite statute and has maintained common law liability in dog bite cases.

Washington

Citations: Wash. Rev. Code §§16.08.040 and 16.08.060

Statute: The owner of a dog is liable for damages suffered by a person bitten by the owner's dog while the person was in a public place or lawfully in or on a private place, including the owner's property. The law does not apply to police dogs.

Provocation of the attack by the injured person is a complete defense.

Exceptions/Defenses:

Provocation

Trespass

Police Dogs

West Virginia

Citation: W. Va. Code § 19-20-13

Statute: Under West Virginia's statute, the owner or keeper of a dog running at large is liable for any damages inflicted upon the person or property of another by the dog while the dog was running at large.

A person injured by a dog while the dog was not running at large must pursue his claim through another legal doctrine.

Wisconsin

Citation: Wis. Stat. §174.02(1)

Strict Liability Statute: The owner (including a harborer or keeper) of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal, or property. The owner is liable for two times the full amount of damages if the owner

was notified or knew that the dog previously injured or caused injury to a person, domestic animal, or property.

Exceptions/Defenses:

Comparative negligence is the only defense in a case brought under the dog statute. *See Becker v. State Farm Mutual Auto Insurance Company*, 141 Wis.2d 804, 808, 416 N.W.2d 906 (Wis. Ct. App. 1987).

Courts may utilize six public policy factors (formerly known as proximate cause) to limit liability in appropriate cases under the statute. *See Fandrey v. American Family Mutual Insurance Company*, 680 N.W.2d 345 (Wis. 2004).

Wyoming

Wyoming does not have a dog bite statute and has maintained common law liability in dog bite cases.

Appendix 2

Maryland Court of Appeals 2012 Ruling on Liability for Injury by Dog

In order to hold a dog owner strictly liable under the common law for an attack by the dog (regardless of breed), the victim must prove that the owner knew or should have known that the dog had vicious or dangerous propensities.

- On April 26, 2012, the Maryland Court of Appeals modified the common law by holding that a dog owner, or landlord or other person having the right to control a dog's presence on the premises, is strictly liable on proof that (1) the dog that attacked the victim is a pit bull or a mixed-breed pit bull and (2) the owner, landlord, or other person knew or should have known that the dog is a pit bull or a mixed-breed pit bull. *Tracey v. Solesky*, 427 Md. 627 (2012).
- On August 21, 2012, the court reconsidered its decision and limited its application to purebred pit bulls.

The *Solesky* ruling drew criticism from dog owners, animal advocacy groups, landlords, and insurers as news reports emerged relating to landlords banning pit bulls and animal shelters preparing for an influx of pit bulls. In response, the General Assembly formed the Task Force to Study the Court Decision Regarding Pit Bulls which held hearings in June 2012. Common themes in the testimony at the hearings included:

- imposing strict liability on an owner of a dog regardless of breed in lieu of breed-specific standards;
- criticism of the lack of guidance as to what constitutes a pit bull or a mixed-breed pit bull; and
- the negative effects on the housing rental market, including higher rents and insurance premiums for landlords and potential bans on all dogs or specific breeds.

The task force did not propose its own bill, but legislators introduced several different bills during the Second Special Session of 2012. Some bills would have restored the common law, while others would have imposed strict liability for all breeds under specified circumstances. The General Assembly was unable to reach a consensus on legislation during the brief special session. During the 2013 session, legislators introduced bills that would have reversed the *Solesky* decision, but would have established a rebuttable presumption that a dog owner knew or should have known that the dog had vicious or dangerous propensities if the dog caused an injury or death. Once again, the General Assembly could not reach a consensus due in part to disagreement about the effect of proposed amendments, which would have expanded liability, on the availability and affordability of insurance for homeowners and renters.

Appendix 3

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