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BILL ANALYSIS

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Senate Bill 741 (as reported without amendment)
Sponsor: Senator Dave Robertson
Committee: Judiciary

Date Completed: 3-9-18

RATIONALE

In order to prevent serious injury from dog bites, several hundred local units of government throughout the United States have enacted ordinances that prohibit a person from owning a specific breed of dog, or otherwise regulate ownership of those dogs. Reportedly, approximately 30 local governments in Michigan have adopted breed-specific legislation (BSL). Some contend that such restrictions infringe on the property rights of responsible dog owners, are ineffective at protecting the public, and are a drain on public resources. Thus, it has been suggested that the State should prohibit the enactment or enforcement of BSL.

CONTENT

The bill would enact a new statute to prohibit a local unit of government from enacting or enforcing an ordinance, policy, resolution, or rule that regulated a dog based on breed or perceived breed. The bill would not prohibit a local unit of government from enacting an ordinance, policy, resolution, or rule that placed restrictions or imposed additional requirements on dogs or dog owners.

"Local unit of government" would mean a county, city, village, or township.

The bill would take effect 90 days after its enactment.

BACKGROUND

Breed-specific legislation is an ordinance or statute that regulates or bans a breed or breeds of dog based on its perceived aggression or danger. The regulation of specific dog breeds began in the early 1980s after a number of deaths and serious injuries from certain breeds. Typically, BSL targets "pit bulls",¹ but some also bans or restricts Rottweilers, Cane Corsos, German Shepherds, and other dog breeds believed to be aggressive. Breed-specific legislation uses a variety of approaches. One often-used method is to issue an outright ban on the target breed or breeds within the enacting jurisdiction. Other ordinances apply restrictions or additional requirements for the target breed and its owner. These typically include compulsory neutering or spaying, requirements that owners secure additional liability insurance, more stringent registration requirements, specific signage requirements, or muzzle and leash requirements.

Throughout the United States, the status of BSL varies. At least 20 states prohibit BSL; however, some of those states, through legal challenges or the statute prohibiting BSL, have allowed certain jurisdictions to retain their ordinances through "grandfathering" or home rule provisions in the

¹ The term "pit bull" does not describe a particular breed of dog, as there is no such breed. "Pit bull", as used in many of the ordinances, usually means Staffordshire Bull Terrier, American Staffordshire Terrier, American Pit Bull Terrier, or a dog that substantially conforms to the American Kennel Club standards for those breeds.

state constitution. The remaining states either have not addressed BSL, or explicitly allow local governments to regulate or ban certain dog breeds. No state has adopted breed-specific legislation.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Breed-specific methods of dog bite prevention are problematic. The concept of breed-specific legislation relies on the belief that some breeds are inherently more aggressive or dangerous than others. A 2014 report published by the American Veterinary Medical Association (AVMA), however, stated that there was little evidence that any breed of dog should be considered more dangerous than other breeds. Other factors such as behavior, number of dogs, and owner behavior or training are more predictive of aggression than the breed of the dog. The AVMA publication noted that pit bulls are more frequently identified in cases of severe injury or death, but that those findings could relate to the popularity and prevalence of pit bull-type dogs and reporting biases. This point is illustrated by the fact that, in certain regions of Canada, fatal dog bites are attributed to sled dogs and Siberian Huskies, where those dogs are more prevalent than others.

Breed-specific legislation is also difficult to implement. The rules are expensive to enforce, and are typically enforced on a complaint-basis. Studies have shown that most people are incapable of correctly identifying a breed. The result is often a misidentified dog that must be proven not to be a prohibited breed, usually at significant expense to the owner, if that option is allowed by the ordinance. Therefore, many dogs that are not problematic are targeted and euthanized or relocated and separated from caring owners.

Furthermore, dog bites are not a serious public health issue; according to the National Canine Research Council, based on data from the Centers for Disease Control and Prevention, dog bite-related injuries are responsible for less than 0.5% of hospitalizations in the United States. A small proportion of dog bite injuries to humans are fatal. Using these attacks to shape public policy on dangerous dogs is misguided.

There are a number of viable alternatives to prevent serious dog bite injury or death that do not rely on discriminating against a particular breed or breeds. These include a ban on chaining a dog outside, requirements for neutering/spaying, and the imposition of escalating penalties for those who keep dogs that attack people. Local efforts should focus on teaching responsible pet selection, proper care, and bite prevention, as well as discouraging irresponsible ownership of dogs. Michigan already has statutory authority, e.g., MCL 287.351,² that could prove effective in preventing dog bite injuries and deter irresponsible dog ownership; these laws could be better enforced. The bill would allow local governments to adopt measures that applied equally to all breeds in order to protect the public, while preventing those entities from enacting or enforcing ordinances or policies that restricted or prohibited ownership of a breed.

Opposing Argument

Dangerous dogs, particularly pit bulls, account for the majority of dog bite fatalities. The justification for breed restrictions is based not on the claim that all pit bulls, or other breeds, have a higher propensity to attack humans, but on the nature of a breed to exhibit unique traits when a dog does attack. These traits were selected for by design, as the pit bull was bred for the sport of "bull-baiting" and later dog fighting. Specifically, pit bulls have been bred to be unusually strong for their size. Also, it is advantageous in the fighting sports for which the dog was bred to avoid signaling prior to an attack. As a result, while most dogs will display escalating signals before attacking (such as barking, growling, or posturing), the various pit bull breeds often give no advanced signal. In addition, successful fighting dogs are prized for their refusal to give up during

² MCL 287.351 specifies that a dog owner is liable for any damages suffered by a person bitten by the dog if the person is on public property or is on private property lawfully.

a fight or retreat. Evidence shows that pit bulls will continue an attack, even when considerable pain is inflicted upon them.

The constitutionality of BSL has been upheld repeatedly by a number of state and Federal courts, provided the applicable ordinance or law contains sufficient notice of which breeds are being regulated or prohibited.³ In Michigan, approximately 30 jurisdictions have implemented local ordinances or policies regulating certain breeds. These communities have adopted the restrictions in the belief that they are necessary to protect public health and safety. Decisions of this nature should be left to local leaders and voters to debate and address.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

³ For example, in *American Dog Owners Ass'n, Inc. v. City of Lynn*, 533 N.E.2d 642 (1989), the Massachusetts Supreme Judicial Court noted that if identification by breed name does not provide sufficient ascertainable standards for enforcement, then a local ordinance would not be sufficiently clear enough to meet due process requirements.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.