



Frank Lasee

WISCONSIN STATE SENATOR
FIRST SENATE DISTRICT



Senator Lasee's Testimony Senate Bill 286—Homeowners' Insurance Parity

Wisconsin homeowners with pets are experiencing insurance marketplace problems because of a little known outlier in Wisconsin law.

Wisconsin is one of only two states which awards double damages (doubling of a court judgement) in pet bite cases. This arbitrary doubling of damages increases the cost of ALL homeowners' policies as it unnecessarily inflates the payouts above the actual damages for many dog-related insurance claims.

The average homeowners' insurance cost per claim for dog bites in our state ranks among the highest in the nation. As a result, Wisconsin families with dogs find themselves with higher homeowners' insurance costs and, in some cases, are unable to find coverage when they own a dog that has been documented as "causing injury" even if that "injury" was minor property damage.

This bill places additional responsibilities on owners of problem dogs while modifying the current double damage awards when the first injury is modest. The rights of individuals to be fully compensated for their dog bite injuries are not changed, reduced or compromised by this proposal.

Summary of the Bill: This reform makes the following changes to Wisconsin statutes:

1. Under current law the dog owner is liable for two times the amount of damages for the second injury caused by a dog. This bill still allows these "double damages" but only when the first injury was a bite to a person that caused permanent physical scarring or disfigurement and the second offense was a bite to a person.
2. Under current law the owner of a dog may be subject to forfeiture of \$50 - \$500 in the first instance of a dog causing injuries. This bill increased the maximum forfeiture to \$5,000.
3. Under current law the owner of a dog committing a second offense may be subject to forfeiture of \$20 - \$1,000 if the owner knew of a previous injury caused by the dog. This bill increases the maximum forfeiture to \$10,000.
4. This bill expands the scope of persons who may ask for a court order that a biting dog be euthanized.

STATE TREATMENT OF DOUBLE DAMAGES

States with Double Damage Statutes	
State	Statute
Wisconsin	Wis. Stat. § 174.02
Rhode Island	R.I. Gen. Laws § 4-13-16

States with No Dog Bite Statutes	
State	
Alaska	
Arkansas	
Kansas	
Maryland	
Mississippi	
New Mexico	
North Dakota	
Oregon	
South Dakota	
Vermont	
Virginia	
Wyoming	

States with No Double Damage Statutes	
State	Statute
Alabama	Ala. Code § 3-6-1
Arizona	Ariz. Rev. State. §§ 11-1020, 11-1025, 11-1026
California	Cal. Civ. Code § 3342
Colorado	Colo. Rev. Stat. §13-21-124
Connecticut	Conn. Gen. Stat. Ann. § 22-357
Delaware	Del. Code Ann. § 1711
District of Columbia	D.C. Code Ann. § 8-1808
Florida	Fla. Stat. § 767.04
Georgia	Ga. Code Ann. § 51-2-7
Hawaii	Haw. Rev. Stat. Ann. § 663-9
Idaho	Idaho Code § 25-2805
Illinois	510 I.L.C.S. 5/16 § 16
Indiana	Ind. Code § 15-5-12-1,2,3
Iowa	Iowa Code Ann. § 351.28
Kentucky	Ky. Rev. Stat. § 258.235
Louisiana	La. C.C. Art. § 2321
Maine	Me. Rev. Stat. Ann. § 3961
Massachusetts	Mass. Gen. Laws Ann. 140 § 155
Michigan	Mich. Comp. Laws Ann. § 287.351
Minnesota	Minn. Stat. Ann. § 347.22
Missouri	Mo. Rev. Stat. § 273.036
Montana	Mont. Code Ann. § 27-1-715
Nebraska	Neb. Rev. Stat. § 54-601
Nevada	Nev. Stat. Ann. § 202.500
New Hampshire	N.H. Rev. Stat. Ann. §466:19
New Jersey	N.J. Stat. Ann. § 4:19-16
New York	N.Y. Agriculture & Markets Law, § 121 (8)
North Carolina	N.C. Gen. Stat. Ann. § 67-12, 67-4,4, 67-4.1
Ohio	Ohio Rev. Code Ann. § 995.28
Oklahoma	Okla. Stat. Ann. § 4-42.1
Pennsylvania	Pa. Consol. Stat. § 502 A
South Carolina	S.C. Code Ann. § 47-3-110
Tennessee	Tenn. Code Ann. § 44-8-413
Texas	V.T.C.A., Health & Safety Code § 822.005
Utah	Utah Code Ann. § 18-1-1
Washington	Wash. Rev. Code § 16-08-040
West Virginia	W. Va. Code § 19-20-13



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TO: Senate Committee on Insurance, Trade and Housing

FROM: Wisconsin Civil Justice Council

RE: Senate Bill 286

DATE: October 6, 2015

The Wisconsin Civil Justice Council supports Senate Bill 286 relating to double damages for injury claims involving dogs.

Under current law, dog owners are liable for double damages for injury caused by a dog to a person, domestic animal or property. These double damages apply regardless of the culpability of the dog owner for the damage caused or the seriousness of the injury. Normally the imposition of punitive damages is appropriately left up to a judge and jury to decide in cases where the defendant's behavior was sufficiently egregious as to justify punishment. Arbitrary, statutorily imposed double damages often unjustly punish a defendant while unfairly enriching a plaintiff.

Senate Bill 286 will more appropriately tailor the remedies for damage claims involving dogs so that double damages are only available in cases involving a second actual dog bite. In other types of damage claims involving dogs it will be left to a judge and jury to decide if punitive damages are justified.

These changes will put Wisconsin law in line with the vast majority of states that do not impose automatic double damages for claims involving dogs. This will benefit Wisconsin consumers and homeowners who ultimately bear the cost of double damages in the form of higher homeowner's insurance costs. In part, because of the double damage statute Wisconsin has the third highest average cost of dog bite claims in the nation according to the Insurance Information Institute.

The Wisconsin Civil Justice Council supports Senate Bill 286 because it will appropriately put decisions about the imposition of punitive damages in the hands of judges and juries who are in the best position to determine if punishment is justified in a given case.

We respectfully urge members of the Senate Insurance, Trade and Housing Committee to support Senate Bill 286. Please contact R.J. Pirlot if you have any questions at 608-258-9506.

The Wisconsin Civil Justice Council, Inc. represents Wisconsin business interests on civil litigation legislation before the Wisconsin Legislature. WCJC's goal is to achieve fairness and equity within Wisconsin's judicial system, to reduce unnecessary litigation costs, and enhance state's image as a good place to live and work.

2015 Senate Bill 286

My name is Jim Viney and I manage Sugar Creek Mutual Insurance Company in Elkhorn, Wisconsin.

Our company writes property and casualty insurance for our policyholders in eight counties, Green, Rock, Dane, Jefferson, Walworth, Waukesha, Racine, and Kenosha. We currently have 1,636 policies providing security to home and farmowners in these communities.

I support Senate Bill 286. The changes to amend the current statute are reasonable and fair.

Part of my job has included working on claims where a family's pet has caused property damage, possibly by jumping up on a car causing scratches, or maybe chewing up a child's toy as a puppy. As the years have gone by the puppy becomes a well-trained grown dog and a member of the family.

Then, one day someone arrives at the home and a dog bite occurs. Under the current law, we now have a second occurrence.

Our options as a company are now limited to having the insured destroy their family dog, or lose their liability coverage. I do not believe that we have served the family or their pet fairly, but those are our choices.

Senate Bill 286 clearly refers to biting, defines provocation, and provides an increase in fines for dogs that bite with sufficient force to break the skin and cause permanent physical scarring or disfigurement.

This bill also provides the injured a remedy to commence civil action to obtain a judgement from a court ordering an officer to kill a dog.

I feel that Senate Bill 286 provides a much-needed improvement to the existing statute preventing minor property damage from becoming a first occurrence yet severe penalties and remedies are present to protect the public.

Thank you.

Jim Viney
Sugar Creek Mutual Insurance Company

WMC

WISCONSIN MANUFACTURERS
& COMMERCE

TO: Senate Committee on Insurance, Trade and Housing
FROM: Jason Culotta, Director, Civil Justice Reform
RE: Senate Bill 286
DATE: October 6, 2015

The Wisconsin Manufacturers and Commerce (WMC) supports Senate Bill 286 relating to the imposition of automatic double damages under Wisconsin statute.

In a claim for damages caused by injury to a person or property, the amount of the award is generally established by a judge or jury in an amount deemed appropriate to fully compensate the injured party for their losses. Generally the question of whether punitive damages should be awarded to punish the defendant is a matter for the judge and jury to decide based on the facts and circumstances of the case. Automatically doubling a damage award by operation of statute is a form of punitive damages that creates an unjustified windfall for a plaintiff regardless of whether the defendant's behavior justifies the imposition of punishment.

Senate Bill 286 eliminates automatic punitive damages in cases involving property damage and minor injury caused by dogs. It retains double or punitive damages for second offense dog bite claims that cause injury based on the fact that under these circumstances a dog owner should have taken steps to avoid a second injury based on the first offense.

WMC supports Senate Bill 286 because we believe that the decision to impose punitive damages should be left up to a judge and jury justified by the individual facts and circumstances of the case. Automatic double damages should be very narrowly tailored to avoid unjust outcomes.

We urge the committee to support Senate Bill 286.

MEMORANDUM

DATE: October 6, 2015

TO: Judiciary Committee

FROM: Attorney Charles E. Stern
General Counsel / Wisconsin Mutual Insurance Company

SUBJECT: SB-286

I appear today in support of SB-286.

I believe this Act will continue a long tradition in the development of the law regarding regulation of what damages can be recovered from the owners of dogs.

I have attached memorandum copies of various web sites run by plaintiff attorneys. Three are from Wisconsin. Please note the emphasis on how large a settlement or verdict most of these sites claim to be able to recover, if only the viewer will contact them. Dog-bite litigation is an important profit center for many firms.

The legal history of damages caused by dogs goes way back in history. These legal concepts developed concurrently with changing agriculture practices. Oliver Wendell Holmes, Jr., in his lectures on the common law, stated that in England as early as 1333, it was the law that "if my dog kills your sheep, and I, freshly after the fact, tender you the dog, you are without recovery against me."

Even earlier, Greek law provided that if a dog bit a person, the dog was to be delivered up to the victim bound to a log four cubits long. Basically, both Greek and English law provided for an eye-for-an-eye approach.

English common law evolved slowly with the urbanization of the country. By the early industrial revolution, the courts were holding dog owners liable only if the owner had knowledge of the dogs vice. As stated by Lord Chief Justice Sir John Holt in 1699, an owner of a dog could be liable for damages "if the defendant had known before that this dog was of such fierce nature he ought to have kept him at his peril." Mason v. Keeling, 1 *ld.* Raym. 606. Shortly after that case, the rule was stated to be that a dog was entitled to "one bite" before its owner could be held to know of its nature.

Location of the incident also became important. An early Wisconsin case, Chunot v. Larson, 43 Wis. 536 (1878), pointed out the differing liability rule depending on where the offending act occurred. "The owner of the dog is not, in general, liable for an injury committed by such animals, unless it be alleged and shown that such owner had knowledge of the vicious propensity of the dog." However, if the dog was in "the close" of another person, then "the defendant was bound to make full compensation... whether he had previous knowledge of the vicious propensity

of the dog or not.”

The dissent in Chunot pointed out that this holding was a change from the common law “and it may prove troublesome.”

Sometime shortly after the Chunot decision, the Wisconsin legislature passed the statute that has evolved into current 174.02. Our Supreme Court pointed to this statute in the case of Shaller v. Connors, 57 Wis. 321 (1883). There, the Court referenced then Section 1620 as follows:

The owner or keeper of any dog, which shall have injured or caused the injury of any person or property, or killed, wounded, or worried any horses, cattle, sheep, or lambs, shall be liable to the person so injured, and the owner of such animals, for all damages so done, without proving notice to the owner or keeper of such dog, or knowledge by him that his dog was mischievous or disposed to kill, wound or worry horses, cattle, sheet or lambs.

So, here the legislature is acting to abolish the common-law requirement of notice of the nature of his/her dog. (As an aside, the judgment appealed from in this case amounted to “1.50 in damages and cost.”)

A reference as to the purpose for the existence of Section 1620 appears in the case of Nelson v. Nugent, 106 Wisc. 477 (1900). Our Court explained, “...the statute has changed the common-law liability of the owners of dogs for injuries done by them. The object of the statute seems to have been to encourage the raising of sheep and to discourage the raising of dogs.”

Probably, the purpose of current Section 174.02 is not the same as the purpose of Section 1620 was in 1900. The purpose of any law of damages should be to make the plaintiff whole. It should not result in creating a small class of favored plaintiffs who obtain jackpots for themselves and their attorney that do not exist for all other plaintiffs with similar injuries. “Compensatory damages are those given in an attempt to ‘make whole’ the parties sustaining the loss and are not to be awarded to punish the wrongdoer.” *The Law of Damages in Wisconsin*, Chapter 1, Page 3. The present law does not fulfill this purpose.

What this statute creates, in its present form doubling damages for any prior “injury to a person, domestic animal or property,” is a mad scramble by plaintiff attorneys to find any prior scratch on the cabinet or torn drape or anyone who may have been scratched or nipped while playing with the dog. Entirely too much time and money is spent on the attempted discovery or any prior “injury” to the old basement chair. Plaintiff attorneys also use the threat of finding some neighbor or friend of the plaintiff who “remembers” an incident five or six years ago. It is almost impossible to defend against that type of “evidence.”

As this brief memo has shown, the law of damage caused by dogs has been anything but constant through the years. It is time to make it rational for the 21st century by passing SB-286

CES/ssc

Attachments



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"HOT TOPIC"

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Bye, Goff
& Rohde, Ltd.

SUPREME COURT INCREASES PROTECTIONS FOR DOG BITE VICTIMS

The Wisconsin Supreme Court recently made the negligent handling of a dangerous dog a felony if that dog bites someone. In State v. Bodoh, the Court ruled that the owner of two Rottweilers that attacked a 14 year old boy could be charged with negligent handling of a dangerous weapon.

The defendant's two dogs chased and pulled a 14 year old boy from his bike. The dogs bit the boy several times. The boy received severe injuries that resulted in three hundred stitches. The dog's owner was charged with and convicted of negligently handling a dangerous weapon.

The Supreme Court held that a dog can be a weapon if used or intended to be used in a manner likely to result in severe injury. There was evidence that the defendant considered his dogs watchdogs and that they had acted aggressively on several occasions. Under these circumstances, the dog could be considered a weapon. The court then concluded that the owner had negligently handled the dogs because he had permitted them to run loose.

This landmark decision offers further protection for victims of dog bites. Currently in Wisconsin, the law provides that a dog owner is strictly liable if his dog bites someone. This means that the dog owner or his insurer must pay for the damages caused by the dog regardless of whether the owner was negligent in his handling of the dog. The Supreme Court has now added an additional remedy that the state may pursue on a victim's behalf.

If you or someone you know has been injured by a dog, contact an attorney. The attorneys at Bye, Goff & Rohde can advise you as to your rights and help you to recover the damages that you are entitled to.

J&L Jastroch & LaBarge, S.C.

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Dog Bite Law

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Did you know that there are over 800,000 victims of dog bites that need medical attention each year in the United States?

Did you know that over 300,000 of those victims have injuries so severe that they need to be taken to hospital emergency rooms?

Did you know that children are the most likely victims of dog bites?

There are over 50 million dogs in the United States. Most of these dogs are well-trained and lovable pets. However, the above-statistics show that badly trained and poorly kept dogs have caused widespread damage. Over 30 million dollars are spent each year for medical care alone.

Insurance company officials say dog bites cost them about \$250 million dollars a year in claims payments. As a result, insurance companies are seeking to limit their losses on dog bite claims by eliminating coverage on certain types of breeds. The breeds most likely to be involved in dog bite cases are Pit Bulls, Rottweilers, German Shepherds, Huskies, Alaskan Malamutes, Doberman Pinschers, Chow Chows, Great Danes, Saint Bernards and Akitas.



It is estimated that 65% of the reported bites take place while the animal is being played with, fed, teased, abused or separated from another dog. Only 35% of the bites are classified as being unprovoked by the victim.

Parents should be aware that children less than 10 years of age are usually the most severely injured. Of those children, facial injuries occur frequently. Those types of injuries, unfortunately, can result in severe disfigurement and the need for future surgeries to remedy the injuries. Not to be minimized is the psychological trauma to the child with the potential of a lifetime fear of dogs.

How are victims compensated? Dog bite victims are compensated similar to other injury victims. The dog owner and their insurance

company may be responsible for the following:

1. Personal property loss, such as clothing, glasses, etc.;
2. Medical expenses for such things as emergency room, hospital stay, doctor visits, psychological counseling, past and future;
3. Medical expenses for corrective surgery, past and future;
4. Wage loss of a parent caring for an injured child and potential lost earning capacity of the child;
5. Pain and suffering;
6. Other damages incurred as a result of the dog bite, such as permanent scarring, disfigurement, or loss of function; and
7. Loss of society and companionship.

Dog bite cases vary from state to state. In Wisconsin, any contributory negligence of the victim will lessen the final award or settlement. **We not only work hard to minimize any contributory negligence of our clients, but under certain circumstances, damages for our client can be doubled. This is the legislature's way of stressing to dog owners that they are responsible for the actions of their animals.**

If you or someone you know has been a victim of a dog bite, you should review the details of the injury with an attorney experienced in handling dog bite claims to learn of your rights.

Please call us for a **no cost – no obligation** review of your specifics at **1-262-547-2611**.

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Wisconsin Dog Bites & Dog Bite Injuries

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Wisconsin Dog Bites & Dog Bite Injuries and V

Wisconsin dog bites and dog bite injuries are governed by Wisconsin law, w of dogs to be responsible for dog bites that cause injury. Dog bites are preven makes such owners and keepers of dogs strictly liable for the injuries and bi best friend bites more than 4,700,000 people a year causing someone in the attention for a dog bite-related injury every 40 seconds.

- During 1979–1998, dog attacks killed more than 300 Americans.
- Nearly 800,000 people sought medical care for dog bites in 1994.

In Wisconsin and elsewhere, Children are at greater risk of injury and death primarily because children do not know how to fend off an attack.

- In 1994, approximately 2.5% of U.S. children under 14 years old were adults over 18 years old.
- In 1997–1998, 27 people died from dog bites; 19 of them were children
- Children, especially boys ages 5 to 9, have the highest incidence rate fo resulting from dog bites.

Pit bull-type dogs and Rottweilers are involved in more than half of the deat known. Of the 227 fatal attacks for which data were available, more than tw single dog, and more than half involved dogs that were unrestrained on thei

These dog bites require plastic surgeons to repair devastating wounds from year. As a result, substantial medical expenses are often incurred and disfig on the person for the remainder of their life.

According to experts, most dog-bites can be prevented when dog owners tak and socialize their dogs. Dog owners need to keep their dogs healthy and fo dog owners should socialize their dogs to feel at ease around people and oth a largely preventable public health problem, Wisconsin law makes the owne liable for the injuries and bites caused by their dogs.

In Wisconsin, dog bite incidents are primarily governed by Wisconsin Statu Section 174.02, which states (Updated through November 30, 2002):



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Think You Have a Dog Bite Case?

FREE LEGAL CONSULTATION

At Edgar Snyder & Associates, we offer a free initial legal consultation. If we don't think you need attorney, we will tell you so. If you believe that you, or someone close to you, may have a claim, contact us in one of two ways:

- Complete and submit the **online form below** or
- call us toll free at **1-800-9-4EDGAR**. Our phones are answered 24 hours a day, 7 days a w

Remember: There is *no charge* for this consultation and *no obligation* to use our services. And, always, at Edgar Snyder & Associates, "there's never a fee unless we get money for you!"

* Questions marked in red are required

YOUR CONTACT INFORMATION

First Name:

Last Name:

Street Address:

City and State: state

Zip/Postal Code:

Phone Number: - -

Work Number: - -

E-mail Address:

INJURED PERSON INFORMATION

For whom are you inquiring?

Name of injured person (if different than above):

Age of injured person:

Does the injured person currently have an attorney? yes no

ACCIDENT DETAILS

City and state of attack: state

Date of attack:

Please briefly describe the incident.

What is the dog owner's first and last name?

- Has the dog bitten other people before? yes no
- Were there any witnesses to the attack? yes no
- Were photos taken? (if not, we strongly recommend that you take photos now) yes no
- Was the dog running loose? yes no
- Was Animal Control contacted following the attack? yes no
- Was a police report taken? yes no

Please describe your injuries. Did you lose consciousness following the attack?

- Have you received medical treatment for your injuries? yes no
- Were you admitted as an inpatient at a hospital? yes no
- Do you require physical therapy for your injuries? yes no
- Have you lost pay as a result of your injuries? yes no

Please describe any pre-existing injuries that you have, if any.

INSURANCE ISSUES

- Has the defendant's insurance company contacted you? yes no
- Has an offer been made to you by an insurance company? yes no

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