

The Arizona Dog Bite Guide

INTRODUCTION

There are approximately 53 million dogs in the United States. While most dogs are friendly, some are not. Every year in the United States, approximately 4.5 million people are victims of dog bites. More than 300,000 people are admitted to hospitals annually for treatment for dog-bite wounds. Almost one half of all dog-bite victims are children under age 12. The insurance industry estimates that homeowner's insurance policy claims for dog bites result in insurance payments of more than \$1 billion a year.

ARIZONA STATUTES

In Arizona the law regarding dog bites is controlled by statutes. These statutes are found at Arizona Revised Statutes Section 11-1001 through 11-1029. Section 11-1001 contains definitions. The following terms are defined:

1. "Animal" means any animal of a species that is susceptible to rabies, except man.
2. "At large" means being neither confined by an enclosure nor physically restrained by a leash.
3. "County board of health" means the duly constituted board of health of each county.
4. "County enforcement agent" means that person in each county who is responsible for the enforcement of this article and the rules adopted under this article.
5. "County pound" means any establishment authorized by the county board of supervisors for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the county enforcement agent in the performance of his official duties.
6. "Department" means the department of health services.
7. "Impound" means the act of taking or receiving into custody by the county enforcement agent any dog or other animal for the purpose of confinement in a county pound in accordance with the provisions of this article.
8. "Kennel" means an enclosed, controlled area, inaccessible to other animals, in which a person keeps, harbors or maintains five or more dogs under controlled conditions.
9. "Livestock" means neat animals, horses, sheep, goats, swine, mules and asses.
10. "Owner" means any person keeping an animal other than livestock for more than six consecutive days.

11. "Rabies quarantine area" means any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area.
12. "Stray dog" means any dog three months of age or older running at large that is not wearing a valid license tag.
13. "Vaccination" means the administration of an anti-rabies vaccine to animals by a veterinarian.
14. "Veterinarian", unless otherwise indicated, means any veterinarian licensed to practice in this state or any veterinarian employed in this state by a governmental agency.
15. "Veterinary hospital" means any establishment operated by a veterinarian licensed to practice in this state that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it or as an integral part of it pens, stalls, cages or kennels for quarantine, observation or boarding.
16. "Vicious animal" means any animal of the order carnivora that has a propensity to attack, to cause injury to or to otherwise endanger the safety of human beings without provocation, or that has been so declared after a hearing before a justice of the peace or a city magistrate.

NO FREE BITE

Many states have dog bite laws that give the dog one free bite. In a one free bite state, the owner of the dog is not liable for damages caused the first time the dog bites a victim unless the owner knew or should have known that the dog had a propensity for violence. Arizona, however, is not a one free bite state. The Arizona Statutes impose strict liability on the owner of a dog that bites a victim.

ARS Section 11-1025 provides:

A. The owner of a dog which bites a person when the person is in or on a public place or lawfully in or on a private place, including the property of the owner of the dog, is liable for damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of its viciousness.

Note, however, Arizona courts have decided that when a dog bite victim was bit by a stolen dog the owner was not liable. Johnson v. Svidergol 157 Ariz. 333, 757 P.2d 609 (App. 1988).

WHAT MUST BE SHOWN TO WIN A DOG BITE CASE

First, the victim of the dog bite must show that they are in or on a public place or lawfully in or on a private place, including the property of the owner of the dog. This element is easily met unless the victim of the bite is trespassing in a public place or trespassing on the property of the owner. In general, a trespasser is someone who wasn't invited on the property. Unless you warn people off of your property with signs or locked gates, you may be considered to have given "implied invitation to members of the public to approach your door on common errands", for example to speak with you or try to sell you someone.

Some examples of what constitutes trespass or a public place are found in the Arizona decisions. A child who entered a neighbor's yard to retrieve a soccer ball was deemed a trespasser and could not recover under the statute when he was bit. Hartsock v. Bandhauer 158 Ariz. 591, 593, 764 P.2d 352, 354 (App. 1988). A dog groomer bitten by a dog at a pet hospital was determined to be lawfully present and was allowed to sue the dog owners. Mulcahy v. Damron 169 Ariz. 11, 13, 816 P.2d 270, 272 (App. 1991).

WHAT ARE THE DEFENSES TO A DOG BITE CASE

The only defenses to a dog bite claim brought under Sections 11-1020 and 11-1025 are: (i) that the victim provoked the attack, or (ii) the owner is a governmental agency using a dog in military or police work and the bite occurred while the dog was defending itself from a harassing or provoking act, or assisting an employee of the agency in connection with certain specified tasks. Even though Arizona does not allow one free bite for the dog, evidence of the previous behavior and nature of the dog is admissible on the issue of provocation because it tends to show the likelihood that the dog would attack without provocation. James v. Cops 130 Ariz. 152, 634 P.2d 964, (App. 1981).

Examples of provocation are hitting or teasing of the dog, pulling its tail or ears. Provocation may be innocent or unintentional. Unintentional provocation is seen as a valid defense. For example if a person accidentally steps on the dog's tail it may provoke the dog to bite, or if a small child tries to hug a strange dog, the hug may constitute provocation. There are many ways a person who is unfamiliar with dogs can unknowingly provoke a dog. Petting even an otherwise friendly dog when its eating, going near its special territory or intervening in a dog fight can provoke a hostile response. A dog who is out of its normal surroundings may be nervous and may bite out of fear if approached.

However, conduct can be considered provocation only if a reasonable person would expect that it would be likely to provoke a dog. The issue of provocation is usually left for a jury to decide based upon the specific facts of each case. Provocation is also a defense to the dog at large statute Arizona Revised Section 11-1020.

CAN ANYONE OTHER THAN THE OWNER BE RESPONSIBLE TO A DOG BITE VICTIM

In addition to the owner Arizona Revised Statutes Section 11-1020 provides:

Injury to any person or damage to any property by a dog while at large shall be the full responsibility of the dog owner or person or persons responsible for the dog when such damages were inflicted.

Temporary ownership may give rise to liability. Under the definition section of Arizona Revised Statutes Section 11-1001 (10) owner is defined as “any person keeping an animal other than livestock for more than six consecutive days”. Generally, landlords can not be held liable for the damages caused by a tenants vicious dog unless the landlord knew that the dog was present and the landlord was aware of its dangerous propensities. If the lease of the tenant provides provisions against having dogs, dogs of a certain breed, or large dogs and the landlord is knowledgeable that those provisions are being breached, then the landlord may also be responsible. Indeed, this author recovered a substantial amount for a young boy that was bit by a large breed dog when the lease of the landlord contained prohibition against dogs over 40 pounds.

CRIMINAL LIABILITY

Arizona does recognize criminal liability against certain dog owners. Pursuant to Arizona Statutes a person commits a class 6 felony in Arizona if:

1. The person owns a dog that the owner knows or has reason to know has a propensity to attack, to cause injury or otherwise endanger the safety of human beings without provocation or which has been found to be a vicious animal by a court of competent authority, and
2. The dog bites, inflicts physical injury on or attacks a human being while at large.

Arizona Revised Statutes Section 11-1011 (16) defines a vicious animal to mean any animal of the order of carnivora that has a propensity to attack, to cause injury to or otherwise endanger the safety of human beings without provocation, or has been so declared after a hearing before a justice of the peace or a city magistrate. Arizona law allows a police officer or county enforcement agent to request a hearing before a justice of the peace or city magistrate to determine the viciousness of a dog. The hearing requires a showing of probable cause that the animal is vicious or may be a danger to the safety of any person or other animal.

WHAT DAMAGES MAY BE RECOVERED BY A DOG BITE VICTIM

If a dog bite victim proves liability then the victim is entitled to be compensated for the following items.

1. The pain, discomfort, suffering, disability, disfigurement and anxiety already experienced and reasonably probable to be experienced in the future as a result of the injury.
2. Reasonable expenses of necessary medical care, treatment and services rendered and reasonably probable to be incurred in the future. This would include the charges of all medical care including ambulance, emergency room and hospital costs, doctors fees, medication fees, medical supplies such as bandages or prescriptions.

This would also include the estimated cost of future medical care to treat any scars or wounds that are permanent, surgical revision to reduce the appearance of the scars or disfigurement, or any necessary future medical procedures. The cost for counseling up to the date of the trial and any counseling that would be incurred post trial may also be considered.

3. Lost earnings to date and any decrease in earning power or capacity in the future.
4. The cost to replace damaged or destroyed personal property such as clothes or jewelry.
5. Loss of enjoyment of life. Thus, if the injuries from the dog bite are severe and prevent a person from participating in activities that they did prior to the time of the bite such as sporting or recreational activities the law allows compensation.

DOES INSURANCE COVER DOG BITE DAMAGES?

Generally, homeowners insurance, renters insurance, landlords insurance or dog owners insurance or business insurance will provide for coverage from a dog bite or if a dog is at large. Unfortunately many renters do not carry renters insurance. There has also been a recent trend to limit homeowners insurance policies for certain breeds of dogs such as Pitbulls, German Shepards, Rottweilers or

Dobermans. In addition to complete limitation for certain breeds, there has also been a movement by the insurance companies to put a cap or a limit on the amount of insurance that is afforded to the homeowner. This author has seen complete exclusions for several breeds and has seen insurance policies contain a cap on damages of \$10,000.00.

HOW MUCH TIME DO I HAVE TO MAKE A DOG BITE CLAIM?

Because the Arizona Statutes impose strict liability on the owner of the dog, the period of time to bring a claim under the strict liability statutes is shorter than a claim for negligence. In Arizona pursuant to Section ARS Section 12-541 a claim brought pursuant to Section Arizona Revised Statutes Sections 11-1020 and 11-1025A must be brought within one year. If the claim is not settled or a lawsuit is not filed within one year then the statute of limitations will expire. This does not mean that the dog bite victim will be completely precluded from recovery. However, the dog bite victim will then need to prove a claim under negligence. Proof of a claim under negligence is more difficult than the strict liability statutes. Under a negligence claim, the dog bite victim must show that the owner acted unreasonably or that the owner knew or had reason to know that the dog would bite or injure the victim.

WHAT SHOULD I DO IF BIT BY A DOG

It is important for anyone bitten by a dog to immediately take steps to preserve evidence that will be needed to prove the case and to maximize the recovery of damages. All of the following should be done.

1. Get medical attention.
2. Identify the dog owner or person responsible for the dog at the time of the bite. Get the name address and phone number of the dog owner or person responsible for the dog at the time of the bite.
3. Call the police and local animal control office to make a report of the incident.
4. Obtain homeowner or renters insurance information from the owner or person responsible for the dog. Try to obtain the name of the insurance company and the policy number if possible.

5. Ask the owner or person responsible for the dog, the name of the dog and take appropriate steps to identify the dog. Ask the owner or person responsible if the dog is licensed and obtain the license number for the dog.

6. Identify any witnesses to the incident. Obtain names, addresses and phone numbers.

7. Photograph all scratches bruises and wounds before and after medical treatment. Continue to take photographs of the wounds during the healing process.

8. While the events are still fresh, make a written account of the details of the incident from the beginning to the end.

RESOURCES

National K9 Research Counsel

www.doggonesafe.com