

# BREED DISCRIMINATION IN THE HOMEOWNERS INSURANCE INDUSTRY

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# APPA Survey 2021-2022

- 70% U.S. households with pets
  - 90.5 million households
- \$103.6 billion spent on pets in 2020
  - \$109.6 billion estimate for 2021
- 69 million households with dogs
  - 98% consider dogs to be part of the family



# Insurer Breed Lists

- List of dog breeds deemed a greater risk than others by insurance companies
- Lists used by insurers to:
  - Refuse to underwrite an otherwise eligible homeowner
  - Exclude canine liability from or place monetary limits on coverage
  - Refuse to renew insurance

# 1989/1997 CDC Studies

## Methodology

- Newspaper articles relying on media identification of breed
- Focus solely on breed
- No consideration:
  - Function of dog
  - Sex of dog
  - Spay/neutered/intact
  - Victim behavior
  - Owner behavior

## CDC List 1989/1997

- Doberman Pinscher
- German shepherd/“shepherd”
- Great Dane
- Husky
- Malamute
- Pit bull (“purebred”)
- Rottweiler
- Saint Bernard
- Wolf hybrids
- -----
- Akita
- Chow chow

# 2000 CDC Study

- Dog bite fatalities *not* breed specific
- Recognized inadequacy of previous studies
  - Unable to determine dog's breed with certainty
  - Risk cannot be determined without numbers of each breed in U.S.
- Fatal attacks are small proportion of dog bites (0.00001% of all dog bites annually) and should not be basis for public policy

- “Although fatal attacks on humans appear to be a breed-specific problem . . . , other breeds may bite and cause fatalities at higher rates.”
- “[S]ince 1975, dogs belonging to more than 30 breeds have been responsible for fatal attacks on people, including Dachshunds, a **Yorkshire Terrier**, and a Labrador Retriever.”



# Insurer Lists Vary

## Common

- Akita
- Alaskan Malamute
- Mastiff/Bullmastiff
- Chow chow
- Doberman pinscher
- German Shepherd
- Pit bull\*
  - American Staffordshire Terrier
  - Staffordshire bull terrier
- Presa Canario
- Rottweiler\*
- Siberian husky
- Wolf hybrids
- Mixes of the above

## Others

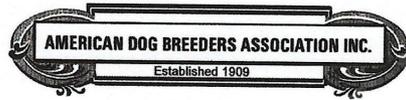
- American bulldog
- American Eskimo dog
- Beauceron
- Boxer
- Cane corso
- English bull terrier
- Giant schnauzer
- Great Dane
- Korean Jindo
- Ovcharka
- Rhodesian ridgeback
- Thai ridgeback

*Liberty Ins. Corp. v. QBE Ins. Corp.*, 2022 WL 16570213 (Conn. Super. Ct. 2022) (unpublished)

- “The court finds no support in law or logic for Liberty's argument that an unambiguous exclusion from coverage for injuries caused by pit bulls is unenforceable or inapplicable as against public policy. That the legislature has seen fit to prohibit municipalities from adopting ordinances that are dog breed specific demonstrates that it is aware of the issue addressed in the law review writings that Liberty cites and capable of legislating about it, but has chosen not to prohibit breed-specific exclusions in homeowners insurance policies. Similarly, law review articles arguing that such exclusions are ill-advised **does not make them unenforceable in the absence of legislative action.**”



# Move to Ban Breed Lists



# Movement Efforts

- National Association of Insurance Commissioners
- National Council of Insurance Legislators
- Individual states

# Consumer Impacts



- Uninformed consumers
- Low and moderate income consumers
- People of color
- People with disabilities

# Uninformed Consumers

- Insurance.com study
  - 48% did not understand liability coverage
  - 24% did not know coverage/had not read policies
  - 1/3 made no effort to compare rates
  - 52% did not inform insurer when acquired dog

# Low and Moderate Income Consumers

- If not covered
  - Purchase more costly coverage
  - Forego coverage
  - Surrender dog to shelter, costing tax dollars
- If exception offered
  - Unable to afford requirements (e.g., fencing)

# People of Color

- Racial discrimination
  - Overt
  - Implicit bias



# Fair Housing Act

- Prohibits discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of **race**, **color**, religion, sex, familial status, or national origin”
- Applies to homeowners insurance

# Overt Discrimination

- Bronwen Dickey, *PIT BULL: THE BATTLE OVER AN AMERICAN ICON* (2016).
- Nathan Winograd, *The Ugly Racist Underpinnings of Pit Bull Laws* (Sept. 2017):
  - Pit bull bans implemented because of changing demographics
  - Miami-Dade county – anxiety over Cuban immigration
  - Denver, CO – influx of Latinos into the community
  - Aurora, CO – commissioner stated she did not want “those sorts of people” moving in
  - New York City – then-Mayor Ed Koch sought ban not because of dangerousness but because “of who was thought to own them”
  - Sterling Heights, MI – ban was necessary because “We have inner-city people who bought homes here.”
  - Ellenville, NY – ban sought to address the increasing number “of Mexicans moving into the community.”



# Implicit Bias

- Based on perceptions of pit bull owners
  - Ann Linder, *The Black Man's Dog: The Social Context of Breed Specific Legislation*, 25 ANIMAL L. REV. 51, 59 – 60 (2018).
  - Ann L. Schiavone, *Real Bite: Legal Realism and Meaningful Rational Basis in Dog Law and Beyond*, 25 WM. & MARY BILL OF RIGHTS J. 65, 111 – 12 (2016).
  - Erin Tarver, *The Dangerous Individual('s) Dog: Race, Criminality and the 'Pit Bull,'* 55 CULTURE, THEORY & CRITIQUE 273, 281 (2013).

THE  
NEW YORKER

*Troublemakers: What Pit Bulls  
Can Teach Us about Profiling*  
Malcolm Gladwell, Jan. 2006



*Friend or Fiend? 'Pit Bull' Explores the  
History of America's Most Feared Dog*  
Fresh Air, Terry Gross, May 2016

CURRENT AFFAIRS  
*A Magazine of Politics & Culture*

*Racism and the American Pit Bull*  
Yasmin Nair, Sept. 2016

The Washington Post  
*Democracy Dies in Darkness*

Opinion: *The Dirty Secret Behind  
Banning Certain Breeds*  
Radley Balko, Oct. 2016

GPR  
GEORGIA POLITICAL REVIEW

*Black America's Dog: A Look at How the  
Pit Bull's Modern History Became  
Intertwined with Race and Discrimination*  
John Radford, Nov. 2019

**etc. Magazine**

*The Racism Behind Breed Specific  
Legislation*  
Keith Higgons, June 2020

# THE BALTIMORE SUN

## Opinion: *You Can't Separate Pit Bull Prejudice from Racial Prejudice*

- “In Baltimore, like many other places, pit bulls are associated with dog fighting and black, urban violence. To say otherwise is dishonest . . . . Over time, it seems that ‘pit bull’ has become a synonym for ‘black’ and thus a similar bias [as race in the legal system] seems to be at play here.”

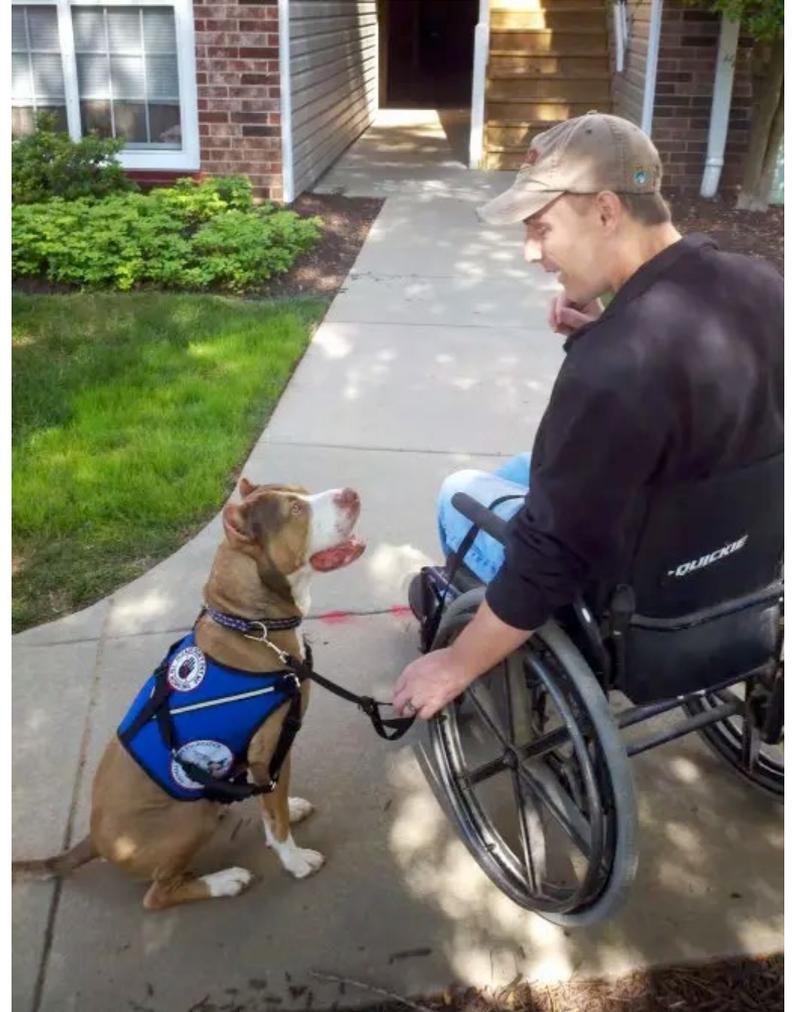
Lawrence Grandpre, May 2012

# People with Disabilities

- Fair Housing Act
  - Makes it unlawful to refuse “to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling”
  - Applies to homeowners insurance

# HUD Guidance

- Accommodations required for service animals
- “Pet rules do not apply to service animals and support animals. Thus, housing providers may not limit the breed or size of a dog used as a service animal or support animal just because of the size or breed but can, as noted, limit based on specific issues with the animal’s conduct because it poses a direct threat or a fundamental alteration.”



- *Fair Housing Council of Oregon v. Travelers Home & Marine Ins. Co.*, 2017 WL 90373 (D. Or. 2017).
- Challenge to insurer's refusal to accommodate a pit bull assistance animal
- Two calls to insurer
  - Agents were told the dog was a pit bull with no history of biting or injuring anyone
  - Both agents contacted underwriter
    - Refusal to make exception for assistance animal
    - Refusal to make exception and outright denial

# Breed List Problems

- Lack of actuarially supported data
  - Studies showing the contrary
  - Inability to gather reliable data
    - Breed popularity in flux
    - No control group
      - Requires total number of breed owners
      - Bites that have no claim filed
      - Claims filed for non-bite injuries
- Breed identification deficiencies
  - Overinclusive
  - Underinclusive

# Unfair Trade Practices Act

## NAIC Model Laws, Regulations, Guidelines and Other Resources, § 3.B

- Prohibits “making or permitting any unfair discrimination between individuals or *risks of the same class and of essentially the same hazard* by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk *solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.*”



# Insurance Regulation

## Statutes

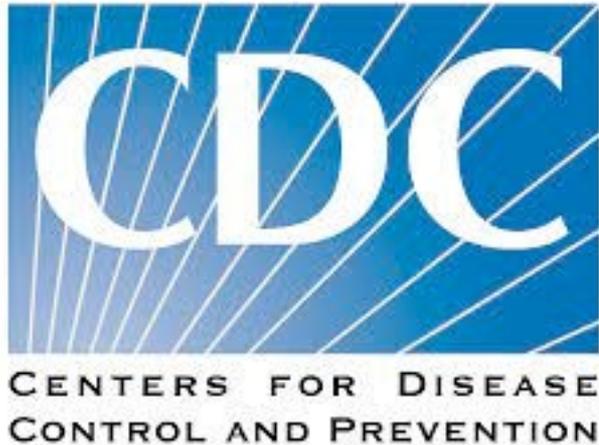
- Illinois\*
- Massachusetts
- Nevada\*
- New York\*
- Pennsylvania

\* Eff. 1/1/22

## Bulletins and Opinion Letters

- Connecticut
- Maryland
- Massachusetts
- Michigan
- Vermont

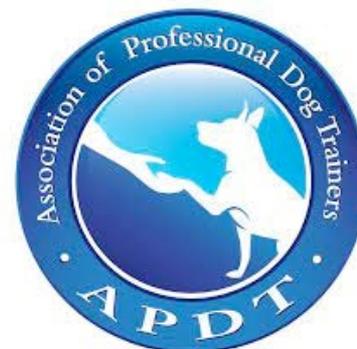
# Government Rejection of Breed Bias



# State Rejection of BSL

- 
- Arizona
  - California
  - Colorado
  - Connecticut
  - Delaware
  - Florida
  - Illinois
  - Maine
  - Massachusetts
  - Minnesota
  - Nevada
  - New Jersey
  - New York
  - Oklahoma
  - Pennsylvania
  - Rhode Island
  - South Carolina
  - South Dakota
  - Texas
  - Utah
  - Virginia
  - Washington

# NGO Anti-BSL Policy Statements



# Insurer Losses

Type	Loss
Annual Property/Casualty Insurance	\$400 billion
2020 Homeowners Insurance Total	\$63.8 billion
2020 Homeowners Liability Total	[unknown]
2020 Dog-Related Claims*	\$854 million**

- Includes both dog bites and other dog-related claims (e.g., falls)

\*\* Constitutes 1.3% of all homeowners insurance claims

# Homeowners Insurance Losses By Cause, 2015-2019

(Percent of losses incurred)

Cause of loss	2015	2016	2017	2018	2019
<b>Property damage (2)</b>	<b>96.1%</b>	<b>96.2%</b>	<b>97.6%</b>	<b>97.7%</b>	<b>97.2%</b>
Wind and hail	22.5	33.4	41.0	36.3	34.3
Water damage and freezing	42.4	29.0	18.7	23.7	29.4
Fire and lightning	23.7	26.2	32.2	30.2	25.1
Theft	1.9	1.9	1.1	1.0	1.0
All other property damage (3)	5.6	5.7	4.5	6.5	7.4
<b>Liability (4)</b>	<b>3.9%</b>	<b>3.8%</b>	<b>2.4%</b>	<b>2.3%</b>	<b>2.8%</b>
Bodily injury and property damage	3.7	3.5	2.2	2.1	2.4
Medical payments and other	0.2	0.2	0.2	0.2	0.4
<b>Credit card and other (5)</b>	<b>(6)</b>	<b>(6)</b>	<b>(6)</b>	<b>(6)</b>	<b>(6)</b>
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Insurance Information Institute, Homeowners and Renters Insurance

# Downward Trend in Claims

	2016	2017	2018	2019	2020
Dog-related claims*	18,123	18,522	17,297	17,802	16,991



\* A study of 7,456 cases from 2001 to 2006 found that there were 76,223 (average) falls caused by dogs each year.

# Not All Insurers Exclude

- Chubb
- USAA
- State Farm



# Movement Efforts

- NAIC – Action sought:
  - Data call on basis for and use of breed lists and data on dog bite claims
  - Interim measures
    - Moratorium during data call
    - Requirements to notify consumers of alternative insurance options if denied coverage
  - Independent review of data to determine validity of breed list use
- Result - under advisement

# NCOIL Dog Breed Insurance Underwriting Protection Model Act

- (A) With respect to homeowners' insurance policies and renter's insurance policies . . . , no insurer shall refuse to issue or renew, cancel, or charge or impose an increased premium or rate for such policy or contract, or exclude, limit, restrict, or reduce coverage under such policy or contract based solely upon harboring or owning any dog of a specific breed or mixture of breeds.
- (B) The provisions of this section shall not prohibit an insurer from refusing to issue or renew or from canceling any such contract or policy, nor from imposing a reasonably increased premium or rate for such a policy or contract based upon the designation of a dog of any breed or mixture of breeds as a dangerous dog . . . , based on sound underwriting and actuarial principles reasonably related to actual or anticipated loss experience . . . .

# Individual States

- [NY INS § 3421](#) – similar to NCOIL language
- [Nevada NRS § 687B.383](#) – similar to NCOIL, but also prohibits insurers from even asking about the specific breed or mixture of dog
- [Arizona ARS § 11-1025](#) – similar prohibitions, but also proscribes consideration of dog breed when deciding whether a dog is “aggressive” or “vicious” or “has created liability”
- [Massachusetts/Illinois](#) – statutory data calls
- [Illinois](#) – new bill adopting NCOIL language

# Questions?

