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Recent Developments in Animal Law

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RECENT DEVELOPMENTS IN ANIMAL LAW

Rebecca J. Huss

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I. INTRODUCTION

The Animal Law Committee is the newest committee of the Tort Trial & Insurance Practice Section. Although the scope of the Animal Law Committee will somewhat overlap with existing committees in TIPS, one of the goals of the Animal Law Committee is to consolidate and focus on issues that involve animal law components in order to assist attorneys who either concentrate their practice on animal law issues or periodically deal with these issues.

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This article focuses on recent developments in litigation and legislation involving the injury or death of animals.¹ In future years the committee, which has a broad mandate in animal law subjects, will provide a more global picture of the developments in tort issues involving animals. For example, an area of tort law with significant activity is liability relating to injuries caused by animals.² Transactional tort topics involving animals include issues such as insurance coverage for households that contain particular breeds of dogs or other types of animals.³

This article will first discuss recent veterinary malpractice cases where the central issue was not related to damages. Next, the article will analyze recent cases that have focused on the appropriate way to value animals that have been injured or killed due to the tortious acts of another. Finally, this article will highlight recent legislative efforts that allow for civil suits based on the injury or death of an animal.

II. VETERINARY MALPRACTICE ISSUES

Veterinary malpractice cases are similar in many ways to medical malpractice lawsuits. Recent cases can be divided into procedural and evidentiary issues.

A. Procedural Issues

Some of the most advanced veterinary care is performed by state veterinary teaching hospitals associated with colleges of veterinary medicine. Claims

1. In order to provide some needed background on these cases, some useful older cases will be referenced in the footnotes. Please note that, since this is an emerging area of the law, unpublished decisions and lower court decisions will be discussed. Although many of the decisions may not have precedential value, they are useful as a guide to the way courts are approaching these issues.

2. This includes cases involving attacks by animals as well as cases relating to fencing issues or livestock on roadways. *See, e.g.*, *Galloway v. Kuhl*, 806 N.E.2d 251 (Ill. App. Ct. 2004) (analyzing issues in case where cattle had strayed onto a highway); *Andrus v. L.A.D. Corp.*, 875 So. 2d 124 (La. Ct. App. 2004) (discussing liability in dog attack); *McCoy v. Lucius*, 839 So. 2d 1050 (La. Ct. App. 2003) (reversing a grant of damages for injuries caused by a dog attacking another dog, because the attacking dog had been provoked); *Savory v. Hensick*, 143 S.W.3d 712 (Mo. Ct. App. 2004) (affirming jury verdict against homeowner for damages incurred when a contractor stepped on homeowner's dog and fell); *Buettner v. Beasley*, No. 83271, 2004 WL 813515 (Ohio Ct. App. Apr. 15, 2004) (discussing Ohio strict liability statute relating to dog bites); *Rothenbusch-Rhodes v. Mason*, No. 02AP-1028, 2003 WL 22056565 (Ohio Ct. App. Sept. 4, 2003) (affirming judgment of lower court and discussing variety of damages available in dog bite case); *Jackson v. Mateus*, 70 P.3d 78 (Utah 2003) (discussing liability relating to a cat bite); *Fandrey v. Amer. Fam. Mut. Ins. Co.*, 680 N.W.2d 345 (Wis. 2004) (allowing for courts to preclude liability under the Wisconsin dog bite statute based on public policy factors); *Borns v. Voss*, 70 P.3d 262 (Wyo. 2003) (considering Wyoming's dog bite law and reversing award of summary judgment).

3. In Michigan, for example, the state agency regulating insurance has stated that homeowners insurance companies can no longer deny, cancel, or refuse to renew a policy solely on the basis of what type of dog a homeowner owns. *See Michigan Office. of Ins. & Fin. Servs., Specific Breed of Dog Exclusions*, Bulletin No. 2003-07-INS (Sept. 3, 2003, updated Feb. 11, 2004), available at www.michigan.gov/cis/0,1607,7-154-10555_12900_13376-86214--,00.html.

against these entities may be limited by state tort claims acts. *Jovanovic v. Iowa State University Veterinary Teaching Hospital College of Veterinary Medicine: Equine Section*⁴ provides a recent example. Jovanovic's horse died while being treated at the veterinary hospital. Although Jovanovic argued that his complaint referred to the negligence of veterinary hospital employees as well as the entity, the trial court dismissed the claim, citing to the Iowa Tort Claims Act⁵ provision that specifies that claims against state agencies are not authorized.⁶

Determining the appropriate statute of limitations for a veterinary malpractice action was at issue in a few recent cases. Some states have specific statutory provisions designating the relevant statute of limitations. In other states there has been confusion over the applicable statute of limitations and the interpretation of such restriction. In the New York case of *Ratusch v. Attas*,⁷ the court was asked to determine whether a one-year discovery rule pertaining to "foreign objects" left inside a patient would apply to a veterinary malpractice action.⁸ The veterinarian allegedly left a gauze sponge inside a dog during a spaying procedure in 1997. In 2003, the sponge was discovered by a different veterinarian during another procedure. Without the application of the one-year discovery rule, the plaintiff's claim would be time barred. The *Ratusch* court was unable to find any case law or legislative history to support the argument that veterinary practice was intended to be included within the phrase "medical" in the statutory provision and granted the veterinarian's motion for summary judgment to dismiss the action.⁹

A California case illustrates a different approach. In *Haverstock v. Hoge*,¹⁰ the appellate court analyzed the relevant statute of limitations in a case where horses suffered from permanent injuries after receiving a vaccination. In California, veterinarians are considered health care providers.¹¹ The California code allows for actions against health care providers to be

4. 674 N.W.2d 683 (table), 2003 WL 22807529 (Iowa Ct. App. 2003).

5. IOWA CODE § 669.16 (2001), cited in *Jovanovic*, 2003 WL 22807529, at *1.

6. *Jovanovic*, 2003 WL 22807529, at *1. The Iowa Court of Appeals found that Jovanovic's motion to reconsider the issue was substantially similar to his response to the veterinary hospital's motion to dismiss and therefore did not toll the time for appeal. *Id.* at *1-2. Since Jovanovic's appeal was not timely the court found that it was without jurisdiction to address the merits of the appeal. *Id.*

7. 777 N.Y.S.2d 880 (Civ. Ct. 2004). The plaintiff in this case brought a small claims action against the veterinarian alleging breach of warranty. Although a breach of warranty claim against a professional is not a cognizable claim in New York, the court found that the gravamen of the plaintiff's action is that the veterinarian engaged in professional malpractice. *Id.* at 882.

8. *Id.* at 882 & n.3 (citing and construing N.Y.C.P.L.R. § 214-a (McKinney 2003)).

9. *Id.* at 882-83. The court considered the amendment of the provision to include dentists and podiatrists, professions that are licensed to treat only human beings. *Id.*

10. No. E031862, 2003 WL 1788787 (Cal. Ct. App. Apr. 4, 2003).

11. *Id.* at *2 & n.12.

taken one year from the date of discovery.¹² In this case, the appellate court determined that the plaintiff's action was untimely because the horses showed visible manifestations of injury immediately after the vaccine was administered.¹³

B. *Evidentiary Issues*

Several recent cases have dealt with expert testimony in veterinary malpractice actions. The standard of care that is often applied to veterinary malpractice claims is that the injury complained of must be caused by the doing of a particular thing that a veterinarian of ordinary skill, care, and diligence would not have done under similar circumstances, or by the failure or omission to do some particular thing that such veterinarian would have done under similar circumstances. Expert testimony is generally required to determine whether a veterinarian has complied with this professional standard.

The Texas case of *McGee v. Smith*¹⁴ demonstrates this requirement. In *McGee*, a trial court had awarded a veterinarian's client \$45,000 in connection with the death of the client's mare and a foal, finding that the deaths were caused by the veterinarian's negligence. The Texas court emphasized that veterinary negligence cases would utilize the same standard as other medical malpractice cases.¹⁵ The court continued by stating that in a "medical malpractice action, expert testimony is required to prove negligence unless the form or mode of treatment is a matter of common knowledge, or the matter is within the experience of a layperson."¹⁶ In the *McGee* case the client provided no expert testimony, and the court rendered a take-nothing judgment for the veterinarian.¹⁷

In the California veterinary malpractice case of *Petrosian v. Connor*,¹⁸ a plaintiff unsuccessfully argued that the defendant veterinarian's testimony was sufficient expert testimony to support a finding that the veterinarian breached the applicable standard of care and caused the damage.¹⁹ The alleged negligence involved giving an injection to a horse immediately before the horse was to be transported. After reviewing the testimony of the

12. CAL. CIV. PROC. CODE §§ 340, 340.5 (West 2003).

13. *Haverstock*, 2003 WL 1788787, at *4.

14. 107 S.W.3d 725 (Tex. App. 2003).

15. *Id.* at 727 (citing *Downing v. Gully*, 915 S.W.2d 181, 183 (Tex. App. 1996)).

16. *Id.*

17. *Id.* at 727-28. The dissenting opinion argued that the alleged actions in this case (i.e., the plaintiff alleged that the horses died because the veterinarian failed to provide food and water for them) would support an ordinary negligence cause of action and thus should not require expert testimony. *Id.* at 728 (Dauphinot, J., dissenting).

18. No. D042510, 2004 Cal. App. Unpub. LEXIS 3861 (Cal. Ct. App. Apr. 20, 2004) (unpublished).

19. *Id.* at *9. The client had initially designated an expert witness but that witness was unavailable for trial. *Id.* at *4-5.

defendant veterinarian, the court concluded that the statements of the defendant did not support a holding that his actions fell below the standard of care or were the cause-in-fact of the horse's injury.²⁰

It is important to note that many veterinary malpractice cases are at least initially brought in small claims court. An example of why this is important is the Ohio appellate court case of *Lewis v. Hendrickson*.²¹ The plaintiffs' allegations related to the misdiagnosis of a tumor in a dog's ear as an infection. The evidence in the small claims court consisted of the plaintiffs' testimony about statements made by other veterinarians and a summary prepared by the clients and provided to the magistrate. The appellate court found that, although this testimony would not have been admissible under the rules of evidence, it could be considered by a trial court when it reviewed a magistrate's decision. Consequently, the appellate court upheld the judgment against the veterinarian.²²

III. DAMAGES ISSUES

Several state trial and appellate courts have recently considered how to value an animal in tort actions.

A. Market Value and Intrinsic Value

One case that has received a significant amount of attention is the Texas appellate court case of *Petco Animal Supplies, Inc. v. Schuster*.²³ In that case, Schuster brought her dog to a Petco store to be groomed. While the dog was under the control of Petco employees, it slipped its leash and ran away.²⁴ The dog was found dead four days later, apparently run over by a car. Schuster sued for breach of contract, gross negligence, and conversion. Petco did not answer and Schuster took a default judgment. The only issue on appeal was the type of damages awarded to Schuster by the district court.²⁵ Based on a breach of contract theory, the court allowed damages for the replacement value of the dog, reimbursement for the expenses for training and microchip implantation,²⁶ and attorney fees and court costs, but rejected additional damages awarded by the trial court for mental an-

20. *Id.* at *10–11.

21. No. 02CA18, 2003 WL 21652177 (Ohio Ct. App. June 27, 2003).

22. *Id.* at *4. The trial court held that the magistrate's decision was based on a breach of contract theory. The appellate court disagreed, viewing it as a veterinary malpractice action. Regardless, the plaintiffs' burden was the same under both theories: they needed to prove that the veterinarian should have discovered the tumor. *Id.* at *3.

23. 144 S.W.3d 554 (Tex. App. 2004).

24. *Id.* at 557. Schuster actually saw the dog running away from the store through the surrounding high-traffic area when she was returning to pick up the dog.

25. *Id.* at 558.

26. *Id.* Petco did not appeal the award of damages for replacement value or reimbursement for training and microchip implantation.

guish, the expense of counseling, the “intrinsic value” loss of companionship, lost wages, and exemplary damages.²⁷ Of these damages, the analysis of the “intrinsic value” loss of companionship claim is the most relevant to the tort claims.

The appellate court began its analysis with the traditional classification of dogs as personal property for damage purposes. Under existing Texas law, damages for the loss of a dog would be limited as follows: “It may be either a market value, if the dog has any, or some special or pecuniary value to the owner, that may be ascertained by reference to the usefulness and services of the dog.”²⁸ This special or pecuniary value refers “solely to economic value derived from the dog’s usefulness and services, not value attributed to companionship or other sentimental considerations.”²⁹ In cer-

27. The court stated that it was unclear whether the claims for mental anguish damages were attributed to the tort or contract claims. Focusing on the contract claims, the court rejected the mental anguish damages. *Id.* at 562–63. The award for counseling expenses was reversed, because the court held that Schuster could not recover for emotional harm. *Id.* at 563. The court also held that lost wages were not properly recoverable under Schuster’s tort theory, and insufficiently connected to Petco’s conduct to be recoverable under a contract theory. *Id.* at 565–66.

28. *Id.* at 561 (quoting *Heiligmann v. Rose*, 16 S.W. 931, 932 (Tex. 1891)). In determining an animal’s “market value” for the purpose of establishing the amount of damages, courts historically have looked to the value before and after the loss. For example, in *Collins v. Ubanoski*, No. B14–88–00461–CV, 1989 Tex. App. LEXIS 2739 (Tex. App. 1989), the issue was the market value of a steer that died after a dehorning procedure. The court in that case defined “market value” as “the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.” *Id.* at *4. The court also noted that “market value” can include consideration of “the highest and best use to which the animal may have been used.” *Id.* See also *Schrubbe v. Peninsula Veterinary Serv. Inc.*, 552 N.W.2d 634, 636 (Wis. Ct. App. 1996) (quoting *Rosche v. Wayne Feed Div., Cont’l Grain Co.*, 447 N.W.2d 94, 96 (Wis. Ct. App. 1989)) (“The basic measure of damages for the destruction of livestock is the animal’s market value, determined by replacement cost, with an appropriate reduction for any salvage value.”). Other courts have utilized more flexible standards in determining value, while continuing to reference market value as the usual standard. In *McDonald v. Ohio State Univ. Veterinary Hosp.*, 644 N.E.2d 750 (Ohio Ct. Cl. 1994), a highly trained and pedigreed German shepherd suffered paralysis after surgery. Although the court began its analysis with market value, it considered several factors in determining the value of the dog, including specialized training, awards, and titles, as well as the stud services of the dog, and the plaintiff’s efforts to rehabilitate the paralyzed animal. In the end, the court awarded \$5,000 in damages for the dog’s loss. Damages for “future conditions where they are reasonably certain to occur or exist in the future,” such as potential earnings, can be awarded. *Id.* at 752. In this context, a common type of future earnings would be the breeding services to be provided by such animals.

29. *Petco*, 144 S.W.3d at 561. In some states, if there is no market value, the value to the owner for property may be awarded. In *Impala v. Pet’s Choice, Inc.*, No. 04–2–04–04710–8, slip op. (Wash. Sup. Ct., Pierce Co., Oct. 19, 2004), an arbitrator awarded \$900 to the plaintiff in a case where a veterinary clinic mistakenly cremated a dog’s remains along with other animals. The plaintiff had specifically requested an individual cremation and sued the veterinary clinic under a variety of theories. Although the trial court ruled that damages were not recoverable under plaintiff’s negligence theories, the defense stipulated to negligence. The final settlement in this case was for \$2,700. E-Mail from Adam Karp, Attorney for the Plaintiff, to Rebecca Huss, Professor of Law, Valparaiso University (Nov. 9, 2004, 3:25 PM CST) (on file with author).

tain instances, Texas law permits the recovery of “intrinsic value” as the measure of property damages; however, the Petco court rejected the application of intrinsic value here, declining to expand this type of damage to include “the subjective value that a dog’s owner places on its companionship.”³⁰ The court held that intrinsic value damages are only available if the property is shown to have neither market value nor replacement value, while in this case Schuster testified that the dog’s replacement value was \$500.³¹

However, the “unique value” of a dog was awarded in the recent California superior court case of *Bluestone v. Bergstrom*.³² The *Bluestone* case involved several claims but was essentially a veterinary malpractice case relating to the treatment of a dog for seizures.³³ The jury instructions asked the jury to first consider whether the dog had any market value, then whether the dog had special or unique value to his owner.³⁴ The jury instruction was based on California Civil Code Provision Section 3355, which provides that if an item had some market value but had unique value to the plaintiff and the defendant either had notice of the unique value before the harm or knew that the conduct was intentional and wrongful, the unique value could be the measure of damages. After finding that the dog had a market value of \$10 but had special or unique value to the owner, the jury found that the veterinarian had notice of such special and unique value. Using these jury instructions, the jury found a special value for the dog of \$30,000.³⁵

B. Veterinary Costs

Plaintiffs may successfully obtain damages consisting of the veterinary expenses incurred because of tortious conduct. An example is the 2003 New

30. *Petco*, 144 S.W.3d at 565. The Iowa Supreme Court rejected the intrinsic value approach in *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 690–92 (Iowa 1996). The injured dog in *Nichols* was a toy poodle that had had her left front leg and shoulder blade torn off by the kennel owner’s dog. The Iowa Supreme Court held that the intrinsic value of the dog would not be considered in awarding damages for injuries to the dog. The court stated that there was no evidence that the dog had a special purpose. The court also noted that the *Nichols* still enjoyed the companionship of their pet because a three-legged dog and a four-legged dog had the same market value.

31. *Petco*, 144 S.W.3d at 565.

32. No. 00CC00796 (Cal. Sup. Ct., Orange Co., 2003). See R. Scott Nolen, *California Dog Owner Awarded \$39,000 in Veterinary Malpractice Suit*, J. AMER. VETERINARY MED. ASS’N, Apr. 15, 2004, available at <http://www.avma.org/onlnews/javma/apr04/040415e.asp>.

33. The complaint included claims of negligence, trespass to chattel, conversion, deceit, and a breach of the California Unfair Business Practice statute. The client spent over \$20,000 on the treatment for the dog. Fourth Amended Complaint, *Bluestone*, No. 00CC00796 (copy on file with author).

34. Jury Instruction, Special Verdict No. 2, *Bluestone*, No. 00CC00796 (copy on file with author).

35. *Id.* Damages for unreasonable amounts paid to the veterinary clinic were also awarded to the plaintiff.

York case of *Mercurio v. Weber*.³⁶ In *Mercurio*, a dog groomer did not contest liability for negligently injuring one dog and killing another. The only question was the appropriate measure of damages, which the court held included veterinary costs incurred for the care of both dogs and the replacement value for the deceased dog.³⁷

C. Loss of Companionship

Courts have declined to allow recovery for loss of companionship for the death or injury of a pet.³⁸ The recent Washington case of *Pickford v. Mason*³⁹ is illustrative. The Pickfords' small dog suffered permanent injuries after being attacked at his home by two large dogs that had escaped from a neighbor's yard. The court declined to allow for loss of companionship damages, finding that such an extension would be more appropriately made by the legislature.⁴⁰

A few courts, however, have allowed loss of companionship to be considered as an element in determining the value of an animal. A recent example is the *Mercurio* case discussed above, where the court found that the replacement cost of the dog encompassed the loss of companionship.⁴¹

36. Index No. SC1113/03, 2003 WL 21497325 (N.Y. Dist. Ct. June 20, 2003) (unpublished).

37. *Id.* at *2-3.

38. See, e.g., *Ammon v. Welty*, 113 S.W.3d 185, 187-88 (Ky. Ct. App. 2002) (declining to allow damages for loss of consortium and pointing to the lack of a familial relationship in case where a dog was destroyed by a dog warden prior to the expiration of a statutory seven-day waiting period); *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1289 (Mass. App. Ct. 2002), *rev. denied*, 782 N.E.2d 516 (Mass. 2003) (holding that plaintiff could not seek loss of consortium damages where seven sheep that were considered companion animals were allegedly killed by the defendants' dogs); *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000) (declining to create an independent cause of action for loss of companionship); *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 158 (S.D.N.Y. 1994) (dismissing a loss of companionship claim and distinguishing *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. Civ. Ct. 1980), which had allowed a pet's companionship to be used as a factor to assess a dog's actual value to an owner); *Oberschlake v. Veterinary Assocs. Animal Hosp.*, 785 N.E.2d 811 (Ohio Ct. App. 2003) (finding no authority in Ohio that would allow recovery for loss of companionship of animals); *Daughen v. Fox*, 539 A.2d 858, 865 (Pa. Super. Ct. 1988) ("Under no circumstances, under the law of Pennsylvania, may there be recovery for loss of companionship due to the death of an animal.").

39. 98 P.3d 1232 (Wash. Ct. App. 2004).

40. *Id.* at 1235. The court found that "damages are recoverable for the actual or intrinsic value of lost property but not for sentimental value." *Id.* The *Pickford* court also rejected the claim for emotional distress damages. *Id.* at 1234-35.

41. *Mercurio*, 2003 WL 21497325, at *2. In this area, *Mercurio* followed the reasoning of *Brousseau*, 443 N.Y.S.2d at 285, discussed *supra* at note 38, which has been distinguished by other New York courts. *Mercurio*, 2003 WL 21497325, at *2. See also *Jankoski v. Preiser Animal Hosp.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987) (affirming that the loss of companionship could be used as an element in determining damages in a property damage case, similar to the treatment of other items of sentimental value, such as heirlooms and photographs, but refusing to extend an independent cause of action for loss of companionship).

D. Emotional Distress

Several recent cases analyzed the availability of emotional distress damages in connection with the injury to or death of an animal.⁴² These cases can be divided into negligent and intentional claims.

1. Negligent

Some recent cases have relied upon prior case law to hold that emotional distress damages are unavailable in cases involving the negligent death of an animal. For example, in *Mercurio*, discussed above, the court noted, "It is well established that a pet owner in New York cannot recover damages for emotional distress caused by the negligent destruction of a dog."⁴³

The Ohio case of *Oberschlake v. Veterinary Associates Animal Hospital*⁴⁴ is another example of how many states treat claims of negligent infliction of emotional distress relating to the injury to or death of an animal. In that case, a veterinarian began a spaying procedure on a dog that was at the clinic for a teeth cleaning and that had been previously spayed. The Ober-

42. The ability to recover damages for emotional distress depends on widely varying state laws. Some states have allowed claims based on damage to property, while others have held that the destruction of property will not support claims of emotional distress. Compare *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1060-71 (Haw. 1981) (allowing distress claims based on harm to property) with *Fackler v. Genetzky*, 595 N.W.2d 884, 891-92 (Neb. 1999) (finding that Nebraska law did not allow recovery for emotional damages resulting from the negligent destruction of property and, more specifically, holding that "damages for mental suffering or emotional distress may not be recovered for the negligently inflicted death of an animal"). One argument that has been raised to attempt to circumvent the restrictions on recovering damages for the loss of personal property is the theory of "constitutive property," which provides that "ownership or possession of certain personal property, like a pet, can become a central aspect of the owner's sense of identity." *Lockett v. Hill*, 51 P.3d 5, 7 (Or. Ct. App. 2002). See, e.g., *Paprocki v. Nolet*, No. 01AS02905 (Cal. Super. Ct., Sacramento Co., 2002) (constitutive property argument unsuccessful); *Krasnecky*, 777 N.E.2d at 1289 (utilizing existing temporal and spatial proximity requirements in Massachusetts law to disallow claims of emotional distress, and declining to consider the expansion of the class of persons allowed to recover for emotional distress to companion animals); *Harabes v. Barkery, Inc.*, 791 A.2d 1142, 1143-46 (N.J. Super. Ct. Law Div. 2001) (setting forth arguments for and against allowing emotional distress damages for the loss of pets in a negligence action against a groomer and finding that allowing such damages would "proceed upon a course that had no just stopping point"); *Zeid v. Pearce*, 953 S.W.2d 368, 370 (Tex. App. 1997) (holding that the rule forbidding damages for bystander recovery for mental anguish in medical malpractice cases should likewise apply to veterinary malpractice cases); *Rabideau v. Racine*, 627 N.W.2d 795, 802, 806 (Wis. 2001) (holding that negligent damage to property cannot be used to maintain a claim for emotional distress, although recognizing that the argument was made in good faith for an extension of existing law and was not frivolous).

43. *Mercurio*, 2003 WL 21497325, at *2 (quoting *Jason v. Parks*, 638 N.Y.S.2d 170, 171 (App. Div. 1996)). The court continued: "If plaintiff could recover for the emotional distress of losing her dog, such logic could be extended to allow recovery for emotional distress caused by the destruction of other sentimental items like family heirlooms, class rings or old pictures." *Id.*

44. 785 N.E.2d 811 (Ohio Ct. App. 2003) (stating that Ohio does not recognize non-economic damages for injuries to companion animals in a veterinary malpractice case).

schlakes were not satisfied with the award of the arbitration panel that heard the veterinary malpractice action and filed suit, requesting compensation for their own emotional distress, among other claims.⁴⁵ The Oberschlakes conceded that “dogs are currently classified as personal property under Ohio law and that the law does not recognize non-economic damages for personal property.”⁴⁶ The *Oberschlake* court reiterated that Ohio “does not recognize noneconomic damages for injury to companion animals.”⁴⁷ Furthermore, even if such damages were allowed, Ohio law limits recovery for negligent infliction of emotional distress using a bystander rule, which requires that a plaintiff must actually observe an accident and suffer a severe and debilitating emotional injury.⁴⁸

The Ohio appellate court reaffirmed its holding regarding noneconomic damages in *Oberschlake* in the case of *Pacher v. Invisible Fence of Dayton*,⁴⁹ where the plaintiffs claimed that the defendant’s negligence in the installation of an invisible fence injured their dog.⁵⁰ The Pachers acknowledged that *Oberschlake* was controlling law, but asked the court to consider what was in the best interests of companion animals and asserted that an award of noneconomic damages would deter future misconduct.⁵¹ The *Pacher* court reiterated the restrictions of the bystander rule, and continued to reject recovery for noneconomic damages for the loss of or injury to animals.⁵²

The Florida veterinary malpractice case of *Kennedy v. Byas*⁵³ also utilized the general limits on negligent infliction of emotional distress damages to uphold a partial summary judgment motion and found that, even if all of the allegations were proven, emotional distress damages would not be recoverable. *Kennedy* held that the “impact rule,” which requires that the plaintiff suffered a physical impact as a predicate to the recovery of emo-

45. *Id.* at 812. The veterinary malpractice claim was referred to an arbitration panel, which awarded compensatory damages of \$104.28, the costs of the action, and the arbitration fee of \$250. The plaintiffs had also claimed that the veterinary malpractice had caused the dog pain and suffering and emotional distress. The appellate court affirmed the trial court’s dismissal of the claims for the dog’s emotional distress, finding that “a dog cannot recover for emotional distress—or indeed for any other direct claims of which we are aware.” *Id.* at 814.

46. *Id.* at 812.

47. *Id.* at 814.

48. *Id.*

49. 798 N.E.2d 1121 (Ohio Ct. App. 2003).

50. The dog suffered from burns and sores from the collar. *Id.* at 1125. The lower court had awarded a judgment of \$1,714 against the fence company for negligence and breach of contract.

51. *Id.* at 1123, 1126.

52. *Id.* at 1125.

53. 867 So. 2d 1195, 1196 (Fla. Dist. Ct. App. 2004). There are no facts in the appellate opinion describing the alleged malpractice other than that the treatment was for a basset hound.

tional distress damages,⁵⁴ precluded the recovery by a dog owner for emotional distress damages in a veterinary malpractice case.⁵⁵ Although the court acknowledged a split of authority on the question of emotional distress damages for veterinary malpractice, it concluded that under Florida law animals are considered personal property and so cannot serve as an exception to the impact rule.⁵⁶

The extent of the injury necessary to support a negligent infliction of emotional distress claim was at issue in the Connecticut case of *Rees v. Flaherty*,⁵⁷ where a kennel lost a dog and the plaintiff-owner claimed negligent infliction of emotional distress.⁵⁸ Because Connecticut has a bystander rule that would preclude recovery if the injury was to property, the plaintiff-owner claimed that her allegation of emotional distress did not relate to the injury of losing the dog, but to the actions of the defendant after the loss of the dog. Among other allegations, the plaintiff claimed that the defendant did not search for the dog, treated the plaintiff rudely and callously, and did not contact the plaintiff until eight days after the loss of the dog. The court reiterated that the conduct must be “extreme and outrageous”⁵⁹ and involve an unreasonable risk of causing emotional distress that might result in illness or bodily harm. The court found that the allegations made by the plaintiff-owner merely fell within a “field of bad

54. *Id.* at 1197.

55. *Id.* at 1197–98 (distinguishing *La Porte v. Associated Indeps. Inc.*, 163 So. 2d 267 (Fla. 1964)). The *Kennedy* court drew the example of injury to a child caused by malpractice.

56. *Id.* at 1198. See Jay M. Zitter, Annotation, *Recovery of Damages for Emotional Distress Due to Treatment of Pets*, 91 A.L.R. 5th 545, §§ 3 and 4 (2001). See also *McAdams v. Faulk*, No. CA01–1350, 2002 Ark. App. LEXIS 258, at *13–14 (Ark. Ct. App. 2002) (reversing a trial court’s dismissal of a complaint against a veterinarian for negligence and malpractice and stating that “damages on a negligence claim are not limited [to] economic loss damages, and include compensation for mental anguish”); *Johnson v. Wander*, 592 So. 2d 1225, 1226 (Fla. Dist. Ct. App. 1992) (providing that a dog owner’s claim for mental pain and suffering presented a question for the jury in a case where a veterinarian allegedly left a dog on a heating pad for a long period of time, resulting in serious burns to the animal). *But see Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000) (expressing sympathy for the plaintiff’s position regarding emotional distress but deferring to the legislature to create such a remedy); *Soto v. United States*, 63 Fed. Appx. 197 (6th Cir. 2003) (emotional distress claim affirmed; remanded for further proceedings on the value of personal property); *Lamare v. N. Country Animal League*, 743 A.2d 598, 605 (Vt. 1999) (stating that “this is not to say that a future case seeking recovery for the emotional distress or other damages resulting from the negligent handling of an impounded animal—a claim not alleged here—would be unsuccessful”). The *Lamare* case can be distinguished from many of the other cases discussed in this section because no injury was inflicted on the animal. *Id.* at 599–600. In *Lamare*, a dog was allowed to be adopted even though an owner had been identified and had taken measures to reclaim the dog. *Id.*

57. No. CV010077316, 2003 WL 462868 (Conn. Super. Ct. Feb. 6, 2003) (unpublished).

58. *Id.* at *1.

59. *Id.* (quoting *Muniz v. Kravis*, 757 A.2d 1207, 1211 (Conn. App. Ct. 2000)).

manners,⁶⁰ and thus would not support a cause of action for negligent infliction of emotional distress.⁶¹

A recent Connecticut case analyzed whether there could be circumstances under which emotional distress damages could ever be assessed in a pet case. In *Liotta v. Segar*,⁶² the plaintiff alleged that a groomer's negligent handling of her dog injured it so severely that the dog ultimately had to be euthanized. The court granted summary judgment against the plaintiff on her claim for mental anguish and severe emotional distress. The court listed various ways that an animal could be involved in a case alleging emotional distress, including the possibility that an animal was harmed "for the sole reason of visiting misery upon one who loves an animal."⁶³ In dictum, the court considered Connecticut cases that allowed for emotional distress claims when "defendant should have realized that its conduct involved an unreasonable risk of causing the distress, and . . . should have realized that [such] distress . . . might result in illness or bodily harm."⁶⁴ Notwithstanding the possible opening for a plaintiff, the court recognized that there were significant hurdles for any such cause of action, including the fact that the plaintiff might still be seen as a bystander and the "inhospitable" response in Connecticut courts to emotional distress claims emanating from property damage.⁶⁵

2. Intentional

There have been several recent cases where plaintiffs have made claims for intentional infliction of emotional distress due to the death of or injury to animals.⁶⁶ The California case of *Harasymiv v. Veterinary Surgical Associ-*

60. *Id.* (quoting *Scanlon v. Conn. Light & Power*, 782 A.2d 87, 94 n.15 (Conn. 2001)).

61. *Id.* at *1-2.

62. No. CV020347756S, 2004 WL 728829 (Conn. Super. Ct. Mar. 15, 2004) (unpublished).

63. *Id.* at *1.

64. *Id.* at *2 (quoting *Montinieri v. S. New England Tel. Co.*, 398 A.2d 1180, 1183 (Conn. 1978)).

65. *Id.*

66. A Kentucky court of appeals found that punitive damages for claims based on intentional infliction of emotional distress would not be precluded simply because the underlying facts involved an animal. *Burgess v. Taylor*, 44 S.W.3d 806, 812-13 (Ky. Ct. App. 2001). The facts supporting this claim included repeated lying on the part of the defendants as to the status of the animals. *Id.* at 810. In *Kautzman v. McDonald*, 621 N.W.2d 871 (N.D. 2001), the North Dakota Supreme Court found that the conduct of police officers who shot and killed five dogs was not within the parameters of the tort of intentional infliction of emotional distress, but reinstated the negligence claim. *Id.* at 877-80. Similarly, in *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454, 456 (Alaska 1985), the Alaska Supreme Court stated that it was "willing to recognize a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal in an appropriate case." That court recently reaffirmed its willingness to support a claim of emotional distress for the loss of a pet, in *Mitchell v. Heinrichs*, 27 P.3d 309, 311-12 (Alaska 2001), although it held that the particular facts of that case did not support such a claim. For an Idaho court decision addressing claims

ates⁶⁷ provides an example of the relatively rare veterinary malpractice case in which intentional infliction of emotional distress was also claimed. In this case, a veterinarian allegedly yelled at a client for walking a dog after it had surgery to repair a ruptured disc in its neck. As a result of being walked, the dog required a second surgery to repair the damage, developed an infection, and died.⁶⁸ The court discussed the factors necessary to support a cause of action for intentional infliction of emotional distress: “(1) defendant engaged in outrageous conduct; (2) defendant intended to cause emotional distress or acted in reckless disregard of the probability of causing emotional distress; (3) plaintiff suffered severe emotional distress; and (4) defendant’s outrageous conduct was the actual and proximate cause of the plaintiff’s injury.”⁶⁹ Distinguishing between the conduct toward the dog and the conduct toward the owner, the court found that the plaintiff’s allegations did not meet the standard of outrageous conduct.⁷⁰

There have been a few recent successful claims for emotional distress damages. In the Washington Superior Court case of *Cox v. Guptil*,⁷¹ the defendant obtained possession of a horse and three goats under false pretences. The agreement was a “free lease,” transferring possession of the animals but expressly providing that the animals would never be sold or given away, and if the animals were no longer wanted by the defendant

of emotional distress stemming from animal loss, see *Gill v. Brown*, 695 P.2d 1276, 1277–78 (Idaho Ct. App. 1985), which held that a lower court erred in striking a claim for damages caused by mental anguish for the alleged killing of a pet donkey. Conduct usually must be extreme and outrageous in order to support claims of intentional infliction of emotional distress. See *Carroll v. Rock*, 469 S.E.2d 391, 394 (Ga. Ct. App. 1996) (discussing the level of conduct necessary to support a claim of intentional infliction of emotional distress against a veterinarian when a client’s cat escaped while under the veterinarian’s care); see also *Katsaris v. Cook*, 225 Cal. Rptr. 531, 536–38 (Ct. App. 1986) (discussing the test of extreme and outrageous conduct in a case in which two dogs were shot and remanding to determine if post-shooting conduct supported the claim). The *Katsaris* case had a strong dissenting opinion interpreting the statute that provided immunity from the killing of animals harassing livestock. *Id.* at 538 (Sabraw, J., dissenting) (“Not only is [the dog] more than property today, he is the subject of sonnets, the object of song, the symbol of loyalty. Indeed, he is man’s best friend.”).

67. No. A100269, 2003 WL 22183946 (Cal. Ct. App. Sept. 23, 2003) (unpublished). See also *Miller v. Peraino*, 626 A.2d 637, 641 (Pa. Super. Ct. 1993) (distinguishing conduct toward the animal and other conduct that would support a claim of intentional infliction of emotional distress and finding that statement by the veterinarian did not support a claim for intentional infliction of emotional distress in this case). A more recent Pennsylvania case dismissed claims for intentional infliction of emotional distress when a police officer shot a dog because the plaintiffs were not present at the time of the incident. *Copenhaver v. Borough of Bernville*, No. 02–8398, 2003 U.S. Dist. LEXIS 1315 (E.D. Pa. Jan. 9, 2003).

68. *Harasymiv*, 2003 WL 22183946, at *1.

69. *Id.* at *2.

70. *Id.* at *3.

71. No. 01–2–08863–5, Default Judgment (Wash. Super. Ct., Snohomish Co., May 19, 2003). See also Valerie Bittner, *Local Case Update: Cox v. Guptil*, ANIMAL LAW SECTION NEWSLTR. (Wash. St. Bar Ass’n Animal Law Section), Fall 2003, at 8, available at <http://www.wsba.org/lawyers/groups/animallaw/animallawnewsletter3vol1.pdf>.

they would be returned to the plaintiffs. The court found that the defendant's conduct of selling the animals for slaughter was intentional and willful, exceeding all bounds of decency, where the defendant knew of the plaintiffs' emotional bonds with the animals.⁷² The court awarded general emotional damages totaling \$25,000 between the two plaintiffs, in addition to damages for loss of business and for the value of the animals.⁷³

A second Washington case also related to the killing of a horse. In *Roe v. Bartels*,⁷⁴ the defendant had pleaded guilty to first-degree animal cruelty and first-degree burglary arising from intentionally killing a horse. In addition to other damages, the court awarded \$5,000 in emotional distress damages based on a negligent infliction of emotional distress claim.⁷⁵

E. Punitive Damages

In a few recent cases, courts have awarded punitive damages for the injury to or death of an animal when a tortfeasor has acted with gross negligence, maliciously, willfully, or with a wanton disregard of the rights of others.⁷⁶ In the *Petco* case, the lower court awarded \$10,000 in exemplary damages.⁷⁷ The appellate court stated that Schuster would need to show by "clear and convincing evidence that the harm that she suffered was caused by fraud or malice on the part of Petco" and reversed the lower court's award of exemplary damages.⁷⁸

72. *Cox*, No. 01-2-08863-5, slip op. at 2.

73. The loss of business damages were \$8,328; the value of the animals was \$876. *Cox*, No. 01-2-08863-5, slip op. at 4.

74. No. 03-2-06204-4, Findings of Fact, Conclusions of Law & Summary of Judgment (Wash. Super. Ct., Pierce Co., June 11, 2004).

75. *Id.*, No. 03-2-06204-4, slip op. at 3-4. The other damages included the fair market value of the horse, medical special damages, transportation fee, lost stud fees, and attorney fees and costs. *Id.* In a similar case, an Oregon trial court allowed a jury to consider claims for intentional infliction of emotional distress and conversion in a case against the estate of a man who was accused of poisoning four dogs. *Ingerwerson v. Estate of Jerry Whitman*, No. 02CV0140, Special Jury Verdict (Or. Cir. Ct., Curry Co., Sept. 12, 2002). In that case, the jury awarded \$135,000 in noneconomic damages to the plaintiffs. *Id.*

76. See, e.g., *Mitchell v. Henrichs*, 27 P.3d 309, 311 (Alaska 2001) (discussing the type of offensive conduct that would support punitive damages); *McAdams v. Faulk*, No. CA01-1350, 2002 Ark. App. LEXIS 258, at *13-14 (Ark. Ct. App. Apr. 24, 2002) (reversing a trial court's dismissal of a complaint against a veterinarian for negligence and malpractice and noting that "punitive damages are recoverable on a malpractice claim"); *Wilson v. City of Eagan*, 297 N.W.2d 146, 150-51 (Minn. 1980) (finding that punitive damages were appropriate in a case against an animal warden who had intentionally killed a cat in violation of an ordinance and statute, although the jury verdict of \$2,000 in punitive damages was reduced to \$500); *Molenaar v. United Cattle Co.*, 553 N.W.2d 424, 426, 428-30 (Minn. Ct. App. 1996) (discussing the availability of punitive damages in a personal property action in which sixty-five heifers were converted and punitive damages in the amount of \$400,000 were awarded by the jury); *Propes v. Griffith*, 25 S.W.3d 544, 547, 550-51 (Mo. Ct. App. 2000) (upholding an award of \$2,000 in actual damages and \$4,000 in punitive damages for the euthanization of two dogs by a person who was untruthful about her ownership of the dogs and committed other malicious, willful, and intentional conduct).

77. *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554 (Tex. App. 2004).

78. *Id.* at 566.

IV. LEGISLATIVE ACTIVITY

A. Maryland

Some states by statute permit recovery of veterinary expenses. Often these statutes are limited to service animals, with the stated purpose of providing restitution to the disabled persons being assisted by such animals.⁷⁹ One example of a statute with a broader general applicability is the Maryland statute, which provides that the measure of damages in the tortious injury to or death of pets is “the market value of the pet before the injury or death or the reasonable cost of veterinary care, but not more than \$5,000 if such charge is greater.”⁸⁰ An attempt to increase the damage limit to \$10,000 failed in 2004.⁸¹

B. Tennessee

Recently, there have been proposals for statutory provisions that would establish a right to sue for damages, including noneconomic damages, for the death of or injury to animals. Such statutes generally focus on domesticated companion animals. The proposals for these statutes commonly occur after widely publicized cases involving the intentional killing of companion animals. Tennessee adopted such a statute in 2000.⁸² The statute permits noneconomic damages of up to \$4,000 if a person’s pet is killed or sustains injuries that result in the death of the animal while the animal was within the direct control or supervision of its owner or on the owner’s

79. See, e.g., CAL. PENAL CODE §§ 600.2, 600.5 (West 2003) (providing restitution in the amount of the veterinary bills and replacement cost of the assistance dog if the dog is disabled or killed either by a person or by another dog); 740 ILL. COMP. STAT. 13/10 (2004) (allowing economic and noneconomic recovery where economic damages include, but are not limited to, veterinary, retraining, and replacement costs); MASS. GEN. LAWS ch. 272, § 85B (2004) (allowing a physically impaired person to bring an action for economic or noneconomic damages against a person who steals or attacks an assistance animal, effective Aug. 18, 2004); NEV. REV. STAT. § 426.810 (2004) (allowing for restitution for service animal if the service animal is killed or disabled by another animal, effective Oct. 1, 2003); N.Y. GEN. OBLIG. LAW § 11-107 (McKinney 2003) (providing for damages consisting of veterinary costs, retraining or replacement costs, and lost wages or damages due to the loss of mobility incurred while retraining or replacement takes place); OR. REV. STAT. §§ 30.822 & 346.687 (2003) (allowing economic damages including temporary replacement services, veterinary expenses, and any other cost and expense incurred as a result of the theft of or injury to designated animals); TEX. PENAL CODE § 42.091 (allowing for restitution for veterinary and other costs if a defendant is convicted of attacking an assistance animal); UTAH CODE ANN. §§ 76-9-307 & 78-20-102 (2004) (providing for damages that included veterinary expenses, replacement services, and costs incurred due to the injury to or theft of an assistance animal).

80. MD. CODE ANN., CTS. & JUD. PROC. § 11-110(b) (2002).

81. H.B. 1145, 418th Sess. of the Gen. Assembly (Md. 2004). Earlier versions of the legislation allowed for punitive damages and expanded the scope of the provision to include persons who negligently injure or cause the death of a pet. *Id.* This bill is expected to be reintroduced in the 2004-2005 legislative session.

82. TENN. CODE ANN. § 44-17-403(e) (2004). A pet is defined as “any domesticated dog or cat normally maintained in or near the household of its owner.” *Id.*, § 44-17-403(b).

premises.⁸³ The noneconomic damages awarded pursuant to the section are limited to “compensation for the loss of the reasonably expected society, companionship, love and affection of the pet.”⁸⁴ The Tennessee statute is particularly notable because it allows for such damages for intentional or negligent acts—so long as such act was unlawful.⁸⁵

C. Connecticut

Connecticut recently followed the Tennessee model and enacted a similar statute, permitting recovery of specified damages if a companion animal is intentionally killed or injured. An owner of the companion animal can collect economic damages consisting of veterinary expenses, the fair monetary value of the animal, and burial expenses. The court may assess punitive damages under the Connecticut provision (limited to the monetary limit for small claims—currently \$3,500) as well as reasonable attorney fees.⁸⁶

D. Illinois

Illinois also has a specific provision allowing for civil actions for the injury to or death of an animal, but it applies only if the animal is injured or killed under certain circumstances.⁸⁷ Specifically, the animal must have been subject to an act of aggravated cruelty or torture or have been impounded in bad faith. If the act is applicable, allowable damages include, but are not limited to, “the monetary value of the animal, veterinary expenses incurred on behalf of the animal, any other expenses incurred by the owner in rectifying the effects of the cruelty, pain and suffering of the animal, and emotional distress suffered by the owner.”⁸⁸ Punitive damages of not less than \$500 or more than \$25,000 are available for each act of abuse or neglect.

83. *Id.* § 44-17-403(a). Among other exclusions, the section does not apply to counties with a population of less than 75,000 or to professional negligence actions against licensed veterinarians. *Id.*, § 44-17-403(e) & (f).

84. *Id.* § 44-17-403(d). The limits for noneconomic damages “shall not apply to causes of action for the intentional infliction of emotional distress or any other civil action other than the direct and sole loss of a pet.” *Id.* § 44-17-403(c).

85. *Id.* § 44-17-403(a).

86. 2004 Conn. Legis. Serv. Public Act 04-239 (H.B. 5606) (West), *amending* CONN. GEN. STAT. § 22-351 (2004), *available at* <http://www.cga.ct.gov/2004/act/Pa/2004PA-00239-R00HB-05606-PA.htm>. The definition of companion animal in the Connecticut act is similar to Tennessee’s provision, with additional clarifying language that the definition of companion animal does not include a dog or cat kept for farming or biomedical research practices.

87. 510 ILL. COMP. STAT. ANN. 70/16.3 (2004) (providing for damages in civil actions against persons who have acted in bad faith in seizing or impounding animals or who have been convicted of certain felony animal welfare provisions).

88. *Id.*

E. Proposed Legislation

Several other states have considered similar legislation in this area. Proposed legislation in New Jersey that was reported out of committee conditions availability of the civil remedy on the animal having been subjected to an act of cruelty.⁸⁹ Pecuniary damages are available, but language providing for emotional distress and loss of companionship damages was deleted during the legislative process.⁹⁰

Two bills were introduced in New York and are expected to be active in this year's session of the state legislature. One is quite similar to the existing law in Tennessee, allowing for noneconomic damages if an animal is killed or seriously injured while it is on the owner's premises or under the direct control of the owner, and if the tortfeasor's act was unlawful and intentional, reckless, or negligent.⁹¹ Another New York bill allows for extensive damages for the intentional, reckless, or negligent injury to or death of a companion animal.⁹² Allowable damages include unlimited damages for the loss of reasonably expected society and companionship, emotional distress, and reasonable burial costs. The bill also allows for minimal punitive damages of \$2,500 for intentional or reckless conduct.⁹³

Other states with recent legislative activity include California, Colorado, Mississippi, and Rhode Island,⁹⁴ although it should be noted that some of the proposed provisions have made very little progress in the legislature. For example, legislation in Colorado was killed by its own sponsor after negative publicity and a rapid response by the state veterinary medical association.⁹⁵

89. S.B. 2012, A.B. 2411, 211th Legislature (N.J. 2004), available at http://www.njleg.state.nj.us/2004/Bills/S2500/2012_I1.HTM. The bill remains active.

90. *Id.* Pecuniary damages include "the monetary value of the animal, replacement value of the animal, breeding potential of the animal, veterinary expenses incurred by the owner in treating the animal, reasonable burial or cremation expenses, reimbursement of animal training expenses, any unique or special value of the animal such as a guide or service animal, and lost wages incurred by the owner due to the loss or disability of the animal. *Id.* Earlier versions of the provision allowed for loss of companionship damages up to \$20,000. *Id.*

91. A.B. 4545, § 1, 2003–2004 Reg. Sess., 226 Annual Leg. Sess. (N.Y. 2004). The non-economic damages are limited to "compensation for the loss of the reasonably expected society, companionship, love and affection of the companion animal." *Id.*

92. A.B. 6340, 2003–2004 Reg. Sess., 226 Annual Leg. Sess. (N.Y. 2004).

93. *Id.*

94. S.B. 225, 2003–2004 Reg. Sess. (Cal. 2004) (proposing language similar to the Tennessee act, with noneconomic damages capped at \$4,000); H.R. 1260, 64th Gen. Assembly, 7th Sess. (Colo. 2003) (proposing loss of companionship damages not to exceed \$100,000 for harm resulting from cruelty to companion dogs and cats or from negligent veterinary practices); H.B. 109, 2004 Reg. Sess. (Miss. 2004) (proposing language similar to the Tennessee act with loss of companionship damages limited to \$5,000), S.B. 2593, 2003–2004 Leg. Sess. (R.I. 2004) (proposing language similar to the Tennessee act, with noneconomic damages capped at \$10,000).

95. David Haupe, *Lost in the Tall Grass: GOP Wants Pet Owners to Go Fetch in the Courts*, THE COURIER-JOURNAL (Louisville, Ky.), Apr. 23, 2003, at 10A.