

The Family Standard of Care & Protection Act

*Legislation
to protect
animals and
defend the
relationship
with their
human families*

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THE NO KILL ADVOCACY CENTER

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Avery, a beloved family dog, escaped from his yard and was picked up by an animal control officer. His family went to animal control to retrieve him, but they did not have enough money to pay the fees and fines. Animal control would not release Avery on a payment plan but did agree to hold Avery and told his family to come back with the money. When the family returned to claim Avery, they could not. The shelter had killed him. The family sued but the Texas Supreme Court ruled that since Avery had little “market value,” he wasn’t worth much of anything.

Lola, a rescued family dog, was given medication meant for another dog while at a Georgia boarding kennel, causing her to go into kidney failure. Her family spent thousands of dollars at specialists trying to save her life, but Lola died. According to the boarding kennel, the American Veterinary Medical Association, and other industry groups, since her family paid nothing for Lola and she had no “market value,” her life was worth virtually nothing and the family should receive nothing. “Their position is that a dog is like a toaster...” said

Lola’s family, “When you break it, you throw it away and get a new one.”

What happened to Avery and Lola’s family isn’t unique. During the pet food recall of 2007, as many as 3,600 dogs and cats died as a result of eating tainted food from China. Pet food companies told the families that the animals were only worth their “market value” and that these families could simply replace their companion. Of course, these families can find another *dog* or *cat*. But try as they might, they will never find another *Avery* or *Lola* or any of the others who were deeply loved, irreplaceable members of a family.

Animals Are Family; Not Mere Property

Throughout history, art and literature have depicted humans in all walks of life and social strata with dogs, illustrating their widespread acceptance in everyday life. People of all ages, but particularly the elderly and the young, enjoy their companionship. For those who live alone, dogs provide a vital and loving source of companionship. For children, an animal in the home

contributes warmth and unconditional love, and teaches responsibility and consideration for the needs of another creature. Those who suffer from disease or injury experience a therapeutic, even emotional, benefit from their presence.

Animals do so much good for the community: they give us a sense of optimism, safeguard us from depression and loneliness, and break down the barriers that isolate us from one another. Their presence improves our health, protects us from danger, and teaches us about caring and responsibility. In 1869, when the late-Senator George Vest of Missouri was a young lawyer, he represented a client who was suing a neighbor for killing a pet dog. This is what he argued to the jury:

“The best friend a man has in the world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and good name, may become traitors to their faith.

“The money that a man has he may lose. It files away from him, perhaps when he needs it most. A man’s reputation may be sacrificed in a moment of ill considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its cloud upon our heads. The one absolutely unselfish friend that a man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog.

“When all other friends desert, he remains. When riches take wing and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens. If fortune

drives his master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying him to guard against danger, to fight his enemies, and when the last scene of all comes and death takes the master in its embrace and his body is laid away, there by his graveside will the noble dog be found, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even unto death.”

Today, seventy-three million American families share their homes with 165 million dogs and cats. We talk to them, keep their photos on our cell phones, celebrate their birthdays, vacation with them, take time off from work to care for them when they are sick, and when it is time to say good-bye, we grieve. For the vast majority of people, the bond they share with their animal companions is a familial one, born of love and mutual affection.

Indeed, in a national survey, 96% of Americans—*almost every single person surveyed*—said we have a moral duty to protect animals and should have strong laws to do so. Specialization and advancements in the field of veterinary medicine have been driven by a population of Americans willing to spend and do whatever it takes to save the lives of the animals they love. Spending on our animal companions is the seventh largest sector of the retail economy, showing steady annual increases even in the face of economic uncertainty. And giving to animal related causes continues to be one of the fastest growing segments in American philanthropy.

Rejecting Industry Fear Mongering

Thankfully, some courts have ignored the fear mongering of associated industries, awarding damages for sentimental value, mental anguish, and loss of companionship, holding correctly that when people fail to act with reasonable care, the persons whose animal companions are unnecessarily, improperly, and often illegally hurt or killed should be compensated. Despite these awards, the claims of the industries that have opposed such compensation have not come true. Contrary to their predictions of doom and gloom, veterinarians across the country, including those in states which do award these damages, are not facing particularly burdensome insurance premiums: for less than \$500 a year, a small-animal veterinary practitioner can purchase \$5,000,000 of coverage. Given that almost fifteen years ago “nearly three-quarters of all small animal practices in the United States gross[ed] \$300,000 to \$500,000 per year,” and “almost one-quarter gross[ed] more than \$750,000 per year,” a \$500 insurance premium is relatively insignificant. In addition, the veterinary industry itself determined that if emotional damages for companion-animal loss were allowed up to \$25,000, insurance premiums would rise by only \$212 per year, which amounts to—*on average*—a mere thirteen cents per customer. Even if rates “skyrocketed” by 100 times their current level,” the average increased cost per pet-owning household would be \$11.50. The sky is in no danger of falling.

Members of veterinary associations, and indeed all producers of goods and services for animal companions, owe their livelihoods to the animal loving public’s love of their companions. It is, therefore, the very sentimental attachment that people have for their animal companions that compels people to collectively spend \$60 billion annually on those animals.

As long as these groups are shielded from liability, they have little incentive to provide better care or safer products. If anything, the availability of sentimental-value damages would encourage veterinarians, shelter workers, animal-control officers, pet food manufacturers, and other animal-service providers to act with reasonable care and thereby reduce—*not increase*—the number of injuries to or deaths of companion animals that might give rise to additional litigation.

Given the profound nature of the relationships that exist between people and their companion animals—the love, the mutual affection and often, the emotional dependence—our legal system should recognize the importance of such relationships. When others who have been entrusted to responsibly care for our animal companions fail to do so, the loved ones negatively impacted or left behind as a result of that failure should be compensated in a manner that adequately reflects the depth of their suffering or loss.

Tragically, the very industries which benefit most from the love and concern people have for their four-legged

family members—veterinary medical associations, the pet food industry, pet product manufacturers, and others—have fought efforts to increase compensation for the victims of such harm by encouraging courts to rely on 19th century case law that held animals are mere property and by disingenuously claiming that failure to do so will lead to skyrocketing costs that would preclude anyone but the rich from being able to pay for boarding, veterinary care, and other services. But this is nothing more than fear mongering and is designed to obscure their true motivation: *profit*.

SOURCES:

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The Family Standard of Care & Protection Act

(a) For purposes of this section, an animal companion is a dog, cat, or any domesticated non-human animal who lives with and is kept by humans for company.

(b) Any person who, with no lawful authority, intentionally, knowingly, recklessly or negligently causes physical injury to, or the death of, an animal companion shall be liable to the animal's owner for the damages provided for in sub-section (c).

(c) The owner of the animal may bring a civil action to recover:

(1) The pecuniary value of the animal; veterinary expenses incurred on behalf of the animal; consequential damages; and any other expenses incurred by the owner in attempting to mollify the effects of the pain, suffering or physical injuries of the animal; any loss of companionship suffered by the owner; all court costs and reasonable attorney's fees incurred in the prosecution of any action under this

section; and any other economic or non-economic damages reasonably resulting from the physical injury or death.

(2) In addition to any damages that may be awarded under section (1), the owner is also entitled to punitive or exemplary damages of not less than \$10,000 for each and every intentional act in violation of section (b).

(d) Restraining orders and other injunctive relief may be issued by a court of competent jurisdiction as appropriate.

(e) The remedies provided in this section are in addition to, and do not replace or supplant, any other remedies allowed by law.

(f) Commencement of a cause of action under this section shall occur within three years from the date on which injuries were first identified by the owner.



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