

ANIMAL HEALTH INSTITUTE
TESTIMONY IN OPPOSITION TO MD SENATE BILL 815
MARCH 2, 2022

Good afternoon, my name is Phil Goldberg and I am testifying on behalf of the Animal Health Institute (AHI) against S. 815. I am a member of the Maryland bar, a partner in Shook Hardy & Bacon, LLP, and reside in Montgomery County. I have worked extensively on animal law, including publishing in the Stanford Journal of Animal Law and filing an *amicus* brief in the Court of Appeals in *Anne Arundel County v. Reeves*.

AHI is a national trade association of manufacturers of animal health products, medicines, and vaccines. A primary objective of AHI is to ensure a safe and effective supply of medicines that keep pets healthy and help them live longer lives. AHI, its members and counsel—including me—deeply cherish our pets. We very much appreciate the hardship of losing a companion animal regardless of the circumstances.

AHI opposes S. 815, which allows for emotion-based damages for injuries to pets. Put simply, pets do not reap benefits when owners are awarded emotion-based liability for their injuries. Only owners benefit. But, pets in general will suffer the consequences when owners can no longer afford important pet care, products and services – including food, walkers, kenneling, veterinary care and medicine – because of the increased liability costs that these damages will impose on pet care providers and manufacturers.

The issue here is that average pet owners often have limited amounts of money they can spend on their pets. Most veterinarians have seen a pet suffer or put down because the owners cannot afford the few hundred dollars for a needed procedure. During economic downturns, there often are numerous stories of how owners around the country have to put pets to sleep rather than treat them.

When it comes to pet litigation, it is important to focus only on damages that advance pet welfare. That is why the General Assembly enacted CJP § 11-110; it was the first law in the nation to allow owners to be reimbursed for the reasonable and necessary costs of veterinary care for injuries caused by a tortious act. Paying pet owners for their emotional loss or distress does not. It may benefit a few owners, but it is not the pro pet position.

Allowing Emotion-Based Damages in Pet Litigation Is Out of the Legal Mainstream

Legislatures and courts around the country, with near uniformity, have found there is no legal or public policy basis for allowing emotion-based liability in pet litigation. Like Maryland, these states carefully limit when someone can be compensated for emotional loss or distress. Injuries to pets, just as to human best friends, many close relatives and most cherished possessions, do not fit within these restrictive categories.

People certainly experience emotion-based harm in all of these situations, but the hardship associated with them is not compensable in litigation. This is true regardless of the facts of a given case or how justified the emotional distress or loss. Maryland, as with almost all states, has long denied emotion-based recovery for injuries and deaths of many types of close relatives and friends. In fact, Maryland does not recognize the tort of negligent infliction of emotional distress at all.¹

Yet, over the past 30 years, there has been a concerted effort, often by animal rights groups, to include noneconomic damages in pet litigation, with cases filed in some thirty-five states and legislation introduced in more than a dozen legislatures.² In nearly every state, these courts and legislatures have wisely rejected these emotion-based damages.

The legal and public policy response has been remarkably consistent. Regardless of the facts or legal theories asserted, allowing emotion-based damages in pet litigation is not supported by American tort law and would have harmful impacts on pets.³

To be clear, no other state in the country allows the types of noneconomic damages sought in this legislation—under the common law or by statute.

No Other State Legislature Has Enacted Comparable Emotion-Based Legislation

About a dozen legislatures have seen bills, like the one here, that would authorize noneconomic damages in pet litigation. None of these statutes have been enacted into law. Indeed, Maryland is one of only a handful of states that even has a statute defining damages in cases involving harm to pets. The others include –

- Hawaii: In the 1980s, Hawaii courts briefly allowed emotion-based liability for harm to property, including pets. The Hawaii Legislature quickly stepped in and overturned that case, barring such damages going forward.⁴

¹ See, e.g., *Alban v. Fiels*, 210 Md. App. 1, 61 A.3d 867 (2013).

² See Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Value, and Animal Welfare*, 6 Stan. J. of Animal L. & Pol’y 30 (2013).

³ See *Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm* § 47 cmt. m (2012) (“Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines—arbitrary at times—that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable.”).

⁴ See *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981); Haw.Rev. Stat. § 663-8.9.

- Connecticut: Connecticut law allows reasonable and necessary veterinary care expenses and punitive damages only for intentional misconduct against a pet. The statute does not allow for any emotion-based damages.⁵
- Illinois: The Illinois Legislature enacted a law allowing for emotion-based damages, but only for intentional or malicious misconduct.⁶
- Oregon: Oregon law allows claims for economic and noneconomic damages for attacks against a service animal for a physically impaired person.⁷
- Nevada: Nevada enacted a law allowing for, but capping economic costs from a pet injury, and specifically barring all noneconomic damages.⁸
- Tennessee: Tennessee allows limited noneconomic damages and only when a pet is injured on the owner's property or under the owner's control, such as on a leash.⁹ The law does not allow noneconomic damages in any other circumstance.

The experience in Colorado is emblematic of the response of state legislatures when presented with legislation like this one. There, a bill allowing for broad noneconomic damages ended up being withdrawn by the sponsor himself.¹⁰ The more the sponsor learned about the unintended consequences of allowing such claims, the more uncomfortable he became. Even the *Denver Post* editorialized against the bill, saying the bill would do more harm to pets than good.¹¹

No Other State Court Has Allowed Comparable Emotion-Based Damages

Courts have also separated the emotional attachment between an owner and a pet from the need to create new liability law. This issue has been litigated in about 35 states over the past 30 years, and no appellate court in any state has created separate liability law for pets that would broadly allow for emotion-based damages for acts of negligence or gross negligence as in S. 815. Some states, including Delaware, still only allow market value damages, without exception for reasonable and necessary veterinary care.

⁵ CONN. GEN. STAT. ANN. § 22-351 to 22-351a (West 2013).

⁶ 510 ILL. COMP. STAT. 70/16.3 (2013)

⁷ ORS § 346.687(1) (2006).

⁸ NEV. REV. STAT. § 41.740 (2007).

⁹ TENN. CODE ANN. § 44-17-403

¹⁰ See Julia C. Martinez, *Pet Bill Killed by House Sponsor; Move Outrages Senate Backer*, DENVER POST, Feb. 16, 2003, at B1.

¹¹ Op-Ed., *Pet Law Barks Up Wrong Tree*, DENVER POST, Feb. 12, 2003, at B6.

Courts in only three states – Florida, Washington and California – have allowed any types of emotion-based damages and only for intentional, malicious acts against a pet. These cases are comparable to claims for intentional infliction of emotional distress.

In Washington, teenagers poured gasoline on and lit a neighbor's cat on fire, and the court held the maliciousness of the act was sufficient for an award of emotional harm.¹² In California, there was a case a few years ago involving a long running dispute between neighbors, and the court permitted a dog's owner to recover mental distress after the neighbor hit the dog with a baseball bat.¹³ In both states, appellate courts have rejected all types of emotion-based damages in cases alleging negligence and gross negligence.

Legislatures and courts around the country have found that expanding the litigation value of a pet through emotion-based liability has no foundation in the law. Further, monetary benefits to owners of allowing such awards are offset by their potential harm to pets.

The Maryland Legislature Should Not Endorse an Outlier Position

CJP § 11-110 tracks with national trends and was upheld by the Court of Appeals in *Anne Arundel County v. Reeves*. It allows a person to be compensated for their economic losses from the harm to a companion animal, even if the costs of treating the animal exceed the pet's market value. This law has given owners the expectation of recovery for giving the pet the veterinary care it needs as a result of the harm caused. Many other states now also allow reasonable and necessary veterinary care costs from the tortious injury to a pet.

By contrast, emotional harm caused by an injury to another person, the loss of a close human or pet relationship, or harm to property are generally not compensable.¹⁴ Many states, including Maryland have Wrongful Death Acts to provide a narrow list of exceptions to this rule. Maryland's Act strictly limits any emotion-based claims for the loss of a spouse, parent or child—not other close relations.

The Court of Appeals in *Reeves* explained that changing the law for pets would mean that “a pet owner could recover noneconomic damages for the death of a pet, while the same person could not receive such damages for the loss of a best friend, sibling, fiancé(e), or

¹² See *Womack v. Von Rardon*, 135 P.3d 542 (Wash. Ct. App. 2006).

¹³ See *Plotnik v. Meihaus*, 146 Cal. Rptr. 3d 585 (Cal. Ct. App. 2012).

¹⁴ *Dageforde v. Potomac Edison Co.*, 369 A.2d 93 (Md. Ct. Spec. App. 1977) (parents could not recover for shock and mental anguish from witnessing injury of their child who came in contact with high-voltage power line); *Resavage v. Davies*, 986 A.2d 879 (Md. 1952) (mother could not recover for nervous and mental injury caused by shock and fright from seeing her two children struck and killed by automobile which jumped curb, where mother herself had not been imperiled, since no duty to mother was violated).

grandparent.” Courts around the country have similarly made this observation and found no legal or cultural basis for putting pets above these other valued relationships.

The Court of Appeals also explained in *Reeves* that in all states, pets are considered the property interests of owners and “emotional damages [are] not recoverable where the tortious injury is only to property.”¹⁵ In Texas, which allows emotional loss for heirlooms and memorabilia, the state high court held that emotional harm for the loss of a pet has no foundation in the law because relationships are not compensable.

Indeed, in rejecting emotion-based damage claims for pets, many courts and legislatures have expressly appreciated the love and affection owners and pets give each other and the real sense of loss owners feel when a pet is wrongfully killed or injured. However, they have found that new emotion-based liability is not needed to honor the human-pet bond.¹⁶ This is true even in tragic situations, much like in *Reeves*, and when owners have documented that they viewed their pets “similarly” to the way parents view children.¹⁷

Finally, there is no reason in Maryland for creating exceptions to this longstanding rule of law for acts of intent or malice, as S. 815 seeks to do. Intentionally harming a pet to inflict emotional harm against the owner already is compensable. Further, as the Court said in *Reeves*, punitive damages—not expanding noneconomic damages—are designed to punish the wrongdoer for acts of intent or malice. To this end, courts in other states have applied punitive damages in appropriate pet injury cases.¹⁸

Damages in Pet Litigation Should Not Harm Pet Welfare

AHI appreciates the Legislature’s interest in advancing pet care and urges the Legislature to focus on laws that advance, not hinder, pet welfare. Maryland has hued to this line in the past. It has given pets greater protections than traditional property through animal cruelty statutes and allowing owners to set up trusts to provide for a pet’s care after the owner dies. In these situations, pet welfare can be advanced without negative consequences for other people’s pets.

The primary concern with allowing noneconomic damages for any reason, including when limited as in S. 815, is that pet care, products and services will start to resemble human healthcare, where the threat of litigation and emotion-based liability awards

¹⁵ *Hoffman v. Stamper*, 385 Md. 1, 867 A.2d 276 (2005) (discussing the history of noneconomic damage rulings in Maryland).

¹⁶ *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269 (Vt. 2009); *Rabideau v. City of Racine*, 627 N.W.2d 795 (Wis. 2001); *McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012); *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013).

¹⁷ *McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012); *Kondaurov v. Kerdasha*, 629 S.E.2d 181 (Va. 2006).

¹⁸ *Darcars Motors of Silver Springs, Inc. v. Borzym*, 379 Md. 249, 841 A.2d 828 (2004)

increase costs and dictate care. The impact of such a change in the law will be felt most by people who can least afford it. The unfortunate truth is that most people have limited funds to spend on their pets.

Studies have shown that many families avoid preventive care, do not treat an ill pet or are forced to euthanize a pet over finances. An increasing amount of households are choosing not to spend any money for veterinary services.¹⁹ About a quarter of owners spend no money on pet care, twenty percent postpone wellness visits and forty-five percent postpone care for sick pets.²⁰ S. 815, which encourages litigation and increases awards, will make providing services more expensive. This increased cost could cause more families to forego care for their pets.

The litigation threat caused by S. 815 will also impact other pet care-related services, including free clinics for spaying and neutering. Shelters, rescues and other services may no longer afford to take in dogs. Risks and costs for important pet services, such as walking and boarding, will also rise and make them less available. Less veterinary care also increases public health risks. Controlling rabies and zoonotic disease is a key function of veterinary services.

S. 815 Would Expand Liability in Many Circumstances for Many People

The targets of pet injury lawsuits can extend far beyond pet care providers and police, as in *Reeves*. As indicated above, claims over pet injuries often involve neighborhood pet scuffles, car accidents and actions of police officers. In many of these situations, it may not be appropriate or fair to saddle someone with ten thousand dollars of new liability. Home and auto insurance would surely rise to absorb such allegations. As the *Wall Street Journal* has reported, if emotion-based liability were allowed in pet litigation, “just about everyone would potentially bear more liability.”²¹

For example:

- **First Responders:** A paramedic or police officer responds to a call for help. The first responder runs into the house to help the person, but leaves the door open and a pet bird flies away or dog escapes and does not return. Litigation could be filed against the first responder for noneconomic damages.

¹⁹ Christopher A. Wolf, et al., *An Examination of U.S. Consumer Pet-Related & Veterinary Serv. Expenditures, 1980-2005*, 233 J. Am. Veterinary Med. Ass’n 404, 410 (2008).

²⁰ See American Veterinary Medical Association, 2007 US PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK (2007); John W. Albers & Michael T. Cavanaugh, 2010 AAHA STATE OF THE INDUS. REPORT; Nat’l Commission on Veterinary Econ. Issues, *Survey of Veterinarians*, Quick Poll Jan. 2010.

²¹ See Steve Malanga, Opinion, *Pet Plaintiffs*, WALL ST. J., May 9, 2007.

- **Neighbors:** A 13-year-old student makes \$10 a day feeding a neighbors' hamster, snake or dog. If something happens to the pet, the student's family could be sued for \$10,000 in noneconomic damages.
- **Auto/Home Insurance:** A dog or cat runs into a road and is struck by a car. Even if the driver could not have realistically avoided hitting the pet, litigation will be filed and insurance claims paid based on the potential for noneconomic damages. The result would increase premiums for auto liability.
- **Pet-on-Pet Incidents:** An owner leaves his dog outside on the property. Another dog comes onto the property, the two dogs get into a scuffle, and the visiting dog is injured or killed. The visiting dog's owner could sue for noneconomic damages, even if the act is out of character for the owner's dog.

Given these concerns, the public has opposed emotion-based damages in pet litigation.²²

Conclusion

New emotion-based liability is not needed to appreciate the human-pet bond. The current legal environment has long encouraged responsible pet ownership, protected animals from abuse, and promoted affordable and quality animal care.

Where courts and legislatures have expanded damages for pet injuries above market value in recent years is to reimburse owners for reasonable and necessary expenses from the misconduct. The goal of these changes in law is to advance pet welfare by allowing owners to get a pet treated after an incident with a reasonable expectation of recovery. Maryland was the first state in the nation to take this step.

However, allowing non-economic damages will financially benefit a few individuals and their lawyers, but will diminish pet health and welfare in general. Pets do not get the money, and the money is not for their care. These awards should remain barred.

In the interests of pet welfare, we urge you to oppose S. 815. This legislation will put cherished Maryland pets at risk, lead to a new wave of pet litigation, and isolate Maryland in American jurisprudence. Thank you.

²² See Joseph Carroll, *Pet Owners Not Worried That Their Pets Will Get Sick From Pet Food: Most Don't Agree With Pain and Suffering Damages for Pets*, Gallup News Service, Apr. 3, 2007.