

MSBA.SB815.KLF.2022.pdf

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Position: FAV

MARYLAND STATE BAR ASSOCIATION ANIMAL LAW SECTION

March 1, 2022

Senator William C. Smith, Chair
Senator Susan C. Lee
Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Maryland State Bar Association Animal Law Section – Support SB 815

Dear Senator Smith, Senator Lee, and Senate Judiciary Committee Members,

The Animal Law Section of the Maryland State Bar Association supports the passing of SB 815, a bill which would permit recovery of noneconomic damages and establish exceptions to the current cap on damages for the tortious an injury or death of a pet.

The unique value of a companion animal is a challenging and fact specific inquiry. Current legislation does not adequately compensate for the scope of damages resulting from tortious injury or death of a pet, allowing recovery for only the fair market value of the pet and the cost of veterinary treatment. The maximum recovery is capped at \$10,000.00

Sentience and self-awareness are distinguishing characteristics of both companion animals and their owners, and these traits nurture relationships that transcend economic value. Suffering and death are uniquely painful to self-aware beings, particularly when the pet is capable of understanding that the damage is inflicted with negligence, intent, or malice.

We must empathize with the emotional toll paid when a cherished companion suffers at the hands of malice. Litigation will not bring back the dead, but it is well-established that non-economic damages are a way in which we make an injured plaintiff whole. It is quite reasonable that a pet owner would suffer non-economic damages if a tortfeasor acts to injure or kill a pet with gross negligence, intent, or malice. An award of damages should adequately consider the totality of the evidence, including the suffering and actual financial burden.

The need for this legislation is highlighted by the Court of Appeals of Maryland's recent ruling in *Anne Arundel Cnty. v. Reeves* (Md. App. 2021). In *Reeves*, the Court specifically stated that Md. CJ §11-110 did not permit recovery in excess of the statutory cap, and further stated that other forms of recovery, such as claims for non-economic damages, were not available to a Plaintiff seeking damages under said law. As a result, **only the legislature has the power to remedy the injustice of our current law.**

Thank you for the time and consideration that you have dedicated to this written testimony. The Maryland State Bar Association Animal Law Section is hopeful that you will vote in favor of SB 815.

Respectfully Submitted,

/s/

Kimberly Fullerton

Immediate Past Chair

Maryland State Bar Association Animal Law Section

SB815_FAV_Lee_2022.pdf

Uploaded by: Susan Lee

Position: FAV

SUSAN C. LEE
Legislative District 16
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair

Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 2, 2022

Senate Judicial Proceedings Committee

**Senate Bill 815 – FAVORABLE - Civil Actions – Tortious Injury to or Death of
Pet – Damages**

Senate Bill 815 establishes that noneconomic damages may be awarded in cases of tortious injury or death to a pet only when there is a proven element of malice, intent, gross negligence or a violation of state constitutional rights. Unlike other versions of this bill that have sought to raise the cap of economic damages, this bill merely removes the noneconomic damages prohibition if there is recklessness or general intent that is proven. Because of this higher burden, veterinarians' mere negligence cannot trigger noneconomic damages alone. Veterinarians do not get insurance coverage for intentional torts, or ones where there is gross negligence, so the insurance rates will not increase under this language. Again, this bill only allows courts to compensate a party for noneconomic damages when a defendant crosses the threshold of gross negligence, malice, intent, or a violation of the Maryland Declaration of Rights.

The Maryland Court of Appeals decision in Anne Arundel County and Rodney Price v Michael Reeves was decided last year and was an impetus for this legislation. In that matter, while conducting a neighborhood canvass related to burglaries, a County Officer Price knocked on the Reeves' door, received no answer, and moved to the driveway, at which time he was approached by the Reeves Chesapeake Bay Retriever, Vern. The pet barked at the officer once and placed both front paws on the officer. The officer shot Vern twice, killing him. The jury found in favor of Mr. Reeves, finding Officer Price committed trespass to chattel, acted in gross negligence, and violated Mr. Reeves' constitutional rights. The jury awarded Mr. Reeves \$1.25 million in damages- including \$750,000 in noneconomic damages related to gross negligence,

which was reduced by the court to \$200,000 in accordance with the Local Tort Claims Act (LTCA).

Upon appeal, while recognizing that a finding of gross negligence was appropriate, the Court of Appeals greatly reduced the Reeves award to \$7,500- at the time the cap under Courts and Judicial Proceedings § 11-110. The Court assessed the legislative history, plain language, and structure, and found silence on recovery of noneconomic damages. The Court refrained from creating new precedent, leaving the possibility of noneconomic damages for the legislature to address. The dissent argued that the elevated status of pets in modern society and rulings from other jurisdictions necessitate that owners receive the ability to recover increased damages when a pet is injured or killed by an act of gross negligence.

Our pets remain classified as property, about which we have balked and discussed numerous times in this committee. I do not seek to elevate their status but instead, recognize their importance in our lives and the emotions which we attach to our companions. Pets play numerous roles in our lives: that of a friend, a family protector, even a service provider. They have as much or more emotion attached as the most treasured of heirlooms. Unlike heirlooms, however, we have a cap of \$10,000 for the injury or loss of a pet. The Reeves court recognized that Officer Price's actions were grossly negligent. If it had been a \$200,000 statue destroyed by the officer, under the TCA, the Court likely would have agreed to the full value in damages. But because it was Vern, a beloved pet, § 11-110 simply would not allow damages beyond the cap.

An amendment is available for you to review as well, but it is simply a title for the bill to highlight this bill as "Buddy's Law" and ensure conformity to the cross-file's title. This bill is not aimed at any profession or type of tortfeasor, but it is specifically designed to avoid liability for veterinarians for mere negligence. My office has communicated with the American Veterinary Medical Association and Maryland Veterinary Medical Association representatives. This bill is not meant to open the floodgates for bringing suit against veterinarians and we believe that the gross negligence, intent, or malice language protects the veterinary community. I would be open to adding a specific carve-out for the veterinary community if the concerns are not alleviated by the language of the bill.

The Court of Appeals was clear that the judicial system's hands are tied in awarding anything more than allowed under § 11-110. Let us undo their restraint based on our lack of action over the past few years. We cannot bring back the pets who have been maimed so severely that their lives forever change nor the animals killed, but we can recognize that our pets mean more than a few months' rent. We should allow judges and juries the ability to award based upon noneconomic damages, when there is intent, malice or gross negligence. Finally, this bill does not change personal liability threshold for state or local employees, and other caps still apply.

For these reasons, I request a favorable report for SB815.

SB 815_MAMIC-UNF.pdf

Uploaded by: Bryson Popham

Position: UNF

Bryson F. Popham, P.A.

Bryson F. Popham, Esq.

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March 2, 2022

The Honorable William C. Smith, Jr.
Chairman, Senate Judiciary Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 815 - Civil Actions - Tortious Injury to or Death of Pet - Damages - Opposed

Dear Chairman Smith and Members of the Committee,

I am writing on behalf of the Maryland Association of Mutual Insurance Companies (MAMIC) in opposition to SB 815- Civil Actions -Tortious Injury to or Death of Pet - Compensatory Damages.

MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of MAMIC members are domiciled in Maryland. They are key contributors and employers in their local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens. Although some mutual insurance companies may be large organizations, MAMIC members tend to be small and medium-sized businesses.

This legislation is related to two other bills currently pending in the House Judiciary Committee – HB 1375 and HB 965. The subject matter is the same: the measure of damages available for the tortious injury to, or death of, a pet. The policy issue is also the same among these bills. While the death or injury of a pet can cause considerable anguish to its owner, it is not properly the subject for monetary damages, as set forth in all three of these bills.

Senate Bill 815 calls for a calculation of noneconomic damages and, in addition, pierces the cap under current law for actions committed with gross negligence, intent or malice.

The enactment of this legislation would be highly disruptive to the homeowners insurance market as it exists in Maryland today. It would likely result in restrictions on homeowners insurance coverage, and would certainly require considerable review by insurers, with the concomitant requirement of substantial information from applicants for coverage, all to address a potential risk that is quite small.

Finally, we note that this Committee has already considered similar legislation to use homeowners insurance as a tool to remedy injuries caused by animals – Senate Bill 52, which received an unfavorable report in this Committee during this session. We respectfully suggest that Senate Bill 815 would create similar problems, and is not an appropriate method of dealing with the factual underpinning of the bill.

We respectfully request an unfavorable report on SB 815.

Very truly yours,



Bryson F. Popham

SB 815 - Non-Economic Testimony - 3.2.22.pdf

Uploaded by: Charles Hall

Position: UNF



**AMERICAN
KENNEL CLUB®**

March 2, 2022

American Kennel Club Testimony on SB 815 – Tortious Injury to or Death of Pet - Damages

Chair Smith, Vice Chair Waldstreicher and Members of the Senate Judicial Proceedings Committee:

The American Kennel Club (AKC) provides this written testimony on behalf of our 78 Maryland dog clubs and thousands of constituent dog owners in Maryland.

SB 815 would establish non-economic damages for “mental anguish, emotional pain and suffering, loss of companionship, comfort, and protection” resulting from the injury or death of a pet. Although such concepts may sound benign, they represent a potential change in the legal status of animals and would increase the cost of care significantly; ultimately undermining the ability of pet owners to care for their pets.

The AKC understands the pain and trauma that can result when a beloved pet is injured or killed. However, AKC opposes the awarding of non-economic damages related to a pet because such damages are not typically available for personal property. Allowing non-economic damages for pets calls into question the legal status of pets as property. The legal concept that pets are personal property protects pet ownership and the rights of pet owners. A change in the legal status of animals could result in restricting the rights of owners, veterinarians, and government agencies to protect and care for dogs.

Additionally, allowing such damages and the resulting practitioner insurance necessary to cover for such damages will significantly increase the cost of pet care across the entire spectrum of animal care providers.

For more than two hundred years, laws governing animal ownership and animal care in Maryland and the United States have created a stable legal system that promotes responsible animal ownership, deters and criminalizes animal abuse, and promotes innovative, affordable, and quality animal care. Under this system, which includes criminal and civil liability laws, owners whose pets are negligently injured or killed can be fully and fairly compensated. However, noneconomic damages for injuries sustained by a pet, as proposed by SB 815, ignore tort and property law principles, and introduce new and vastly expanded liability for emotional loss should a pet be improperly injured or killed.

We believe any assumption that allowing noneconomic damages for the death of a pet as being “pro-animal” is patently wrong. While a few owners may momentarily benefit from these financial awards, their pets do not, and the cost of all pet care, veterinary or otherwise, will increase due to this new liability. This will result in many owners being unable or unwilling to provide their pets with necessary and proper treatments, supplies, and care.

The American Kennel Club is not alone in its stance opposing noneconomic damages for injuries to or loss of animals. The American Veterinary Medical Association and the Animal Health Institute, among other organizations, also oppose laws permitting such recovery.

For the reasons stated above, we respectfully urge an unfavorable report on SB 815.

For more information on the issue of non-economic damages and how it impacts animals, please read this [article](#) on this issue.

Thank you for reviewing and considering my testimony.

A handwritten signature in black ink that reads "Charley Hall". The signature is written in a cursive style with a loop at the end of the last name.

Charley Hall
Legislative Analyst/Community Outreach Coordinator
American Kennel Club
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SB 815 Testimony PIJAC.pdf

Uploaded by: James Fisher

Position: UNF

**TESTIMONY OF
PET INDUSTRY JOINT ADVISORY COUNCIL
ON SB 815, NON-ECONOMIC DAMAGES AWARDS
BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE**

February 28, 2022

Position: Opposed

As an organization that routinely supports legislative efforts to advance the welfare of animals the Pet Industry Joint Advisory Council (PIJAC) appreciates the opportunity to testify today on the proposed awarding of non-economic damages.

As the advocacy voice of the responsible pet care community, PIJAC represents the interests and expertise of retailers, companion animal suppliers, manufacturers, distributors, pet owners and others involved in the many aspects of pet care throughout the state of Maryland and across the United States. Our association works to promote animal well-being and responsible pet ownership, foster environmental stewardship, and ensure the availability of healthy pets through our work at the state and federal levels—including the United States Department of Agriculture, U.S. Fish and Wildlife Service, and the Centers for Disease Control and Prevention. PIJAC routinely advocates on legislative and regulatory proposals to advance the public interest of protecting public health and the safety, health and availability of companion animals. As such, we have an interest in legislation addressing animal abuse and efforts to prevent those who have harmed animals from doing so again.

Despite decades of pressure from animal rights activists, state legislatures and the courts have been highly consistent in recognizing that non-economic damages apply only to a very narrow group of people. We are concerned that, precisely because of this large body of legal opinion, proponents of this bill are offering Senate Bill 815 in order to create a new legal category for "Animal-companion". No such change is required in order to strengthen existing animal abuse penalties. We see this as a blatant attempt to circumvent historical legislative and judicial findings and ask the Maryland Legislature to oppose this effort.

These proposed damages for loss of companionship would be highly subjective, as the bill suggests that the "loss of comfort, protection, companionship, other special damages, services of the deceased animal to its owner" should be used to determine such an award. None of these is accompanied by any set of objective criteria or formula, leaving them to be determined on a case-by-case basis with the potential for inconsistent application. This being the case, it would only be a matter of time before certain courts and even individual judges became known for being especially friendly or unfriendly to loss of companionship claims, leading to the possibility of venue-shopping and other abuses of the system.

And where there is a new form of economic award, there follows a new legal specialization. These proposed damages wouldn't do anything to improve animal well-being or to protect pet owners – by their very nature, they could only come into effect after the fact – but they would certainly represent an attractive new opportunity for litigators to seek greatly increased awards and fees. With each new award of loss of companionship damages, the incentive to pursue such claims would increase.

This, in turn, will have an effect on the cost of many kinds of pet goods and services, as providers seek to protect themselves from claims. Insurance rates for veterinarians and other service providers will necessarily increase, leading to the same kind of “defensive medicine” that contributes to inflated health care costs for humans.

As costs increase, those who can least bear added expenses will find themselves facing a difficult choice as they consider whether or not to keep up routine veterinary care, grooming and other services. These providers represent the front line of protection for animal health; as use of their preventive services declines, so too will animal well-being.

We at PIJAC appreciate the efforts of the Maryland Senate Judicial Proceedings Committee to address and prevent animal cruelty. **However, we respectfully urge you to reject SB 815 as written.**

PIJAC and our members would welcome the opportunity to work with the Maryland Senate Judicial Proceedings Committee on meaningful solutions to prevent animal abuse in meaningful ways. We would be happy to discuss alternative ways to address this important issue at your convenience.

Thank you for your consideration of our concerns.

Respectfully Submitted,

Robert Likins
Vice President – Government Affairs
Pet Industry Joint Advisory Council

Kent McClure - SB 815 HB 1375 - Testimony in Oppo

Uploaded by: Kent McClure

Position: UNF



**TESTIMONY OF DR. KENT MCCLURE
ON BEHALF OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION
& THE MARYLAND VETERINARY MEDICAL ASSOCIATION
IN OPPOSITION TO SB 815 & HB 1375**

March 2, 2022

Good afternoon, my name is Kent McClure and I am a veterinarian with the American Veterinary Medical Association (AVMA), and I am also here on behalf of the Maryland Veterinary Medical Association (MDVMA). AVMA was founded in 1861 and strives to advance the science and practice of veterinary medicine to improve animal and human health, as well as to support veterinarians in their stewardship of animal health and welfare and their role in promoting public health. The MDVMA was founded in 1886 to support the advancement of the veterinary community and veterinary medicine throughout Maryland. We respectfully oppose **SB 815** and **HB 1375**.

We oppose the proposed expansion of noneconomic damages into litigation involving pets. We believe doing so will ultimately harm pets and the ability of Maryland veterinarians to provide affordable veterinary care.

The demand for veterinary care is elastic. Veterinary expenses are paid out of a person's discretionary disposable income, and there is very little (almost none) use of insurance for pet health care. For most people, there is a limit to what they can or will spend on pet care and it is often a few hundred dollars. Veterinarians work in partnership with their clients to spend available dollars wisely to best care for their animals. Higher prices will cause some to postpone or forego care.

Veterinary medicine is affordable under the current stable legal environment. Allowing noneconomic damages will cause veterinary costs to rise. Caps inevitably increase over time and may be removed. People love animals and are very sympathetic to pets – seemingly more so than to people at times. We assume that the *Reeves* Court of Appeals Opinion and the *Reeves* jury are the impetus for these bills, which awarded \$750,000 in noneconomic damages that was overturned on appeal. In a case in which the Iowa Supreme Court refused to allow noneconomic damages in an animal case, a plaintiff's expert testified that "[i]f a pet is thought of as a family member by its owners, its value is whatever the owners think it is." And on cross-examination, the expert said this value could be as high as the national debt. *Nichols* 555 NW2d 689 (1996). Every case will be worth whatever the cap becomes over time or unlimited.

Instead of using objective measures of subsequent veterinary care for an injury, the subjective aspect of noneconomic damages will always drive the value upwards. Additional costs for veterinary malpractice insurance, etc. will be passed along to pet owners.

The changes proposed by the bills will also lead to some discordant situations. The bills do not define who the "owner" of the pet is. Is it one person? Is it a family of five? Is there a limit? When damages are limited to economic measures it really doesn't matter as they can only be compensated once. With a family of five, is there one claim or five claims? This potential multiplication of claims is likely one of the reasons Maryland has drawn strict lines on the recovery of emotion-based noneconomic damages.

A domesticated animal is also not defined. Does it include a pet snake, an insect, a frog, or a goldfish? The Maryland Code addressing commercial feed includes goldfish among a non-exhaustive list of domesticated animals. When damages are limited to economic measures it really doesn't matter as they can only be compensated for once, and someone must have spent money on subsequent care. If noneconomic damages are allowed, then it matters a great deal. Could a family of five have five separate noneconomic damages claims over the loss of a goldfish or a snake?

What is the line between negligence and gross negligence? It seems to be whatever a jury says it is. The proposed bills would establish odd incentives and drive cases to be skewed to arguing for gross negligence. Under the bills, a plaintiff could potentially obtain a capped noneconomic damages award for negligence or an unlimited noneconomic damages award for gross negligence. Litigants would have a strong incentive to play the litigation lottery and avoid settling cases that could otherwise settle. At the same time, a defendant would have a strong incentive to try to settle any claim, even if they felt strongly that they did no wrong, when staring at the potential for an unlimited award of noneconomic damages that would most likely not be covered by insurance.

Potential recovery of noneconomic damages would be permissible for injury or loss of an animal when they are prohibited for many close human relationships. Maryland law does not allow recovery of noneconomic damages for injury or loss of a best friend, sibling, fiancé, grandparent, or many other close relatives. Claims for noneconomic damages over injury to a sibling or grandparent are not compensable, but a family of five could possibly have individual claims over the loss of a goldfish under these bills.

Does this mean that Maryland doesn't value siblings or grandparents? Of course not. Do we need noneconomic damages to demonstrate the value to us of our pets? Of course not. There are good reasons Maryland has drawn lines to tightly restrict the categories where awards of emotion-based damages are available. You should not expand such damages to include litigation involving pets.

As the *Reeves* opinion states: "Fair market value and veterinary expenses are much more easily susceptible to calculation in monetary terms than are seemingly unlimited damages for emotional pain and suffering." We support the current economic-based measures of damage and punitive damages in appropriate cases.

For these reasons, we ask that you oppose **SB 815** and **HB 1375**, and are happy to continue a conversation with you.

Thank you,

Kent McClure

Associate Executive Vice President &
Chief Advocacy Officer
American Veterinary Medical Association
202-289-3203 | kmcclure@avma.org

SB 815 MDVMA Opposition Letter.pdf

Uploaded by: Marisa Francis

Position: UNF



Maryland Veterinary Medical Association

Maryland State Senate
Judicial Proceedings Committee
2 East – Miller Senate Office Building
Annapolis, MD 21401

SB 815 – OPPOSE

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

The Maryland Veterinary Medical Association was established in 1886 and is the state association for veterinary professionals. Our mission is to support the advancement of the veterinary community and veterinary medicine throughout Maryland. Our members are passionate about veterinary medicine and improving the lives of those it touches. We respectfully oppose SB 815 which would provide for noneconomic damages in litigation involving injuries to pets.

Similar bills to address the very real costs of the traumatic deaths of pets by increasing the compensatory damages cap from \$10,000 to \$25,000 have been introduced in prior sessions. MDVMA would be supportive of such a change. With the support of The American Veterinary Medical Association (AVMA), MDVMA believes the interests of animals and their owners are best protected by the current legal framework that allows for potential recovery of economic damages in negligence litigation involving animals.

Veterinarians in Maryland work in partnership with their clients to provide the best possible care for the animals we have sworn to protect and understand the emotional attachment people have with their pets. Permitting noneconomic damages as an award will drive up the cost of care. It will hinder our ability to extend flexibility to our clients and may decrease access to life saving care.

Noneconomic damages are compensation for subjective, non-monetary losses such as pain, suffering, inconvenience, emotional distress, loss of companionship, and loss of enjoyment of life. The addition of this provision vastly changes the scale of what damages could be recovered. The award of these damages – such as the \$750,000 jury award for noneconomic damages in the recent *Reeves* case that was later overturned on appeal – would fundamentally and detrimentally impact the delivery of veterinary medicine to pets in Maryland.

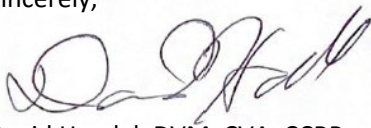
This legislation would create some strange circumstances and put Maryland on an island out of the legal mainstream. It would mean that someone in Maryland could collect damages for the loss of a pet but would not be able to for the loss of their friend, sibling, fiancé, grandparent, or many other close relatives. The inability to recover for these relationships does not mean Maryland doesn't value them. Rather, the legislature has drawn appropriate lines. With pets, the legislature has allowed for the recovery of economic measures of subsequent care for injuries. We support this latter approach as the appropriate policy choice. **For good reason, no other state has enacted such emotion-based liability legislation for pets.**

Veterinary care in Maryland is affordable, orders of magnitude less expensive than human health care, and tailored to each client's unique situation. We are very concerned that upending the stable legal framework in this area will ultimately lead to the inability for many people to afford veterinary care as these costs will be passed down to pet owners. Unlike human health care, veterinary medicine is almost entirely covered by a pet owner's

discretionary, out-of-pocket dollars. Every additional dollar of added cost means it is more likely that someone will no longer be able to afford it.

MDVMA understands that it was the tragic death of a beloved Maryland pet which has served as the inspiration for the legislation introduced in 2020 and 2022 to increase the compensatory cap which is an appropriate change we would support. Noneconomic damages are a nonstarter and would vastly drive up the cost of veterinary care in Maryland. For these reasons, MDVMA asks for an **unfavorable report on SB 815**.

Sincerely,



David Handel, DVM, CVA, CCRP
MDVMA President

On behalf of the Board of Directors and membership of the MDVMA:

Matthew Keats, DVM, DACVS-SA
President-Elect

Carolyn Cornett, DVM
Region 1 Delegate

Elizabeth Hepner, DVM, MPH
Vice President

Carvel G. Tiekert, DVM
Region 2 Delegate

Elizabeth Cottrell, DVM
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Nathaniel L. Tablante, DVM, MPVM, MD, DACPV
Poultry/Avian Practice Representative

Matthew Weeman, DVM, MD
Food Animal Practice Representative

Santiago Jimenez Gonzalez, DMV, PhD
Small Animal Practice Representative

Senate Bill 815 Oppose APCIA 03022022 .pdf

Uploaded by: Nancy Egan

Position: UNF

Testimony of American Property Casualty Insurance Association (APCIA)

House Judiciary Committee

Senate Bill 815 Civil Actions - Tortious Injury to or Death of Pet - Damages

March 2, 2022

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) represents more than 1200 insurers and reinsurers that provide critically important insurance protection throughout the U.S. and world. In combination, our members write 60% of the U.S. property casualty market. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. Senate Bill 815 would mark a major departure for Maryland law by allowing non-economic damages for the pain and suffering of the pet owner related to the injury or loss of a pet due to the negligence of a tortfeasor. In addition, The bill would remove the \$10,000 cap on cap of \$10,000 for damages when APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 815.

When a pet is injured or killed and someone is liable for that event, it understandable for the pet owner to be upset or angry. While many of us treat our pets like members of the family and have animals in our homes that we find beloved, the law for very good reasons treats them as personal property and compensation is appropriately limited to economic loss. Maryland law is in accord with other states in limiting recoveries to compensatory damages for the injury or death of a pet and that law should not change now. This bill would take Maryland out of the mainstream of the law, as most states now bar such non-economic losses for sentimental value or lost companionship.

Most states do not allow claims for emotional distress related to the injury or death of a pet because it is considered “evanescent, intangible ... and entirely idiosyncratic.”¹ It has also been barred because of concern about the related question of how to separate legitimate emotional distress from fraudulent or frivolous claims.² And once the courts start to award pain and suffering awards to the owner, we can very easily start down the path of increasing the amount of damages and expanding the universe of those who suffered from the loss of the pet.

The universe of types of pets owned by people is enormous and the human ability to form bonds with non-human animals is virtually limitless. While we automatically think of an injury to, or the loss of a pet dog or cat, there is nothing in this law to limit the range of animals which humans view as companions. Is the legislature prepared to award unlimited damages for emotional distress related to the death of a bird resulting from an accidental release? An injury to a snake because it was accidentally improperly fed? The passing of a fish because the water temperature wasn't maintained correctly? The list goes on and on.

¹ “Overview of Damages for Injury to Animals – Pet Losses,” Michigan State University Animal Legal and Historical Center, <https://www.animallaw.info/article/overview-damages-injury-animals-pet-losses> (2003)

² Id.

Will pet owners need to be compensated for emotional anguish when their pet is injured by a car, even if they didn't see the accident? Will injuries sustained by a pet from improper grooming result in a claim by its owner for pain and suffering by the owner? Under this proposal, just about any negligence claim involving pets will also result in automatic mental or emotional anguish claims and the accidental death of any pet will almost automatically result in a \$10,000 claim for emotional distress or loss of companionship or comfort. And the proposed law goes even farther by opening a defendant to unlimited pain and suffering damages if a pet owner were to assert gross negligence. And we can expect they will.

While surely the intent of the sponsors of Buddy's Law is noble, there is a reason that the vast majority of states have not recognized non-economic damages related to pet injuries. For these reasons, the APCIA urges the Committee to provide an unfavorable report on Senate Bill 815.

Nancy J. Egan, State Government Relations Counsel
Nancy.egan@APCI.org
Cell: 443-841-4174

SB 815 Phil Goldberg for Animal Health Institute U

Uploaded by: Philip Goldberg

Position: UNF

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.

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Position: UNF



March 01, 2022

Maryland General Assembly
Senate Judiciary Proceedings Committee

RE: SB815 – Non-Economic Damages

Chairman Smith, Jr. and Committee Members,

Animal Policy Group works with clients across the entire animal welfare community, including veterinary, animal health products, and pet care service providers, such as groomers and boarders. We represent over 70,000 professionals dedicated to the well-being of our pets.

We all appreciate the sentiment behind bills like SB815. Pets are an important part of our lives. However, setting a new legal precedent by allowing for the recovery of noneconomic damages would have a detrimental effect on animal welfare that would ripple across the country for decades to come. Mainly, increased financial risks will result in skyrocketing insurance premiums, as we have seen in human medicine with premiums often exceeding \$200,000, per year. Those that cannot afford insurance will face financial ruin if there is an accident. Veterinary clinics, animal rescues, grooming salons, boarding facilities, pet trainers, dog walkers, etc. will be put out of business, at a time when they are in more demand than ever before.

All of this will come at the expense of providing additional damages for very few incidents, each year. And it will not erase those events. Maryland already has laws against animal cruelty. We encourage strengthening these laws and focusing on other areas that can improve animal welfare and prevent these events from ever happening.

We thank you for your time and please do not hesitate to contact us with any questions.

Sincerely,

Scott Young
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