



**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