

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1270

INTRODUCER: Senator Young

SUBJECT: Compensatory Damages for Injury or Death of a Pet

DATE: March 13, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parks	Cibula	JU	<b>Pre-meeting</b>
2.			AG	
3.			RC	

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**I. Summary:**

SB 1270 specifies the damages available to the owner for the injury to or death of a pet dog or cat.

If the injury or death is caused by negligence, the damages may include the cost of veterinary care and the fair market value of the pet. If the injury or death is caused by gross negligence, damages may also include damages of up to \$5,000 for the loss of companionship, love, and affection of the pet. However, the bill does not limit liability of a defendant for noneconomic damages if he or she intentionally injures or kills a person's dog or cat to inflict emotional distress.

Lastly, the bill provides that it does not apply in cases involving veterinarians, government or nonprofit animal control or welfare entities, or a dog that is killing or worrying livestock.

**II. Present Situation:**

**Pets in Florida**

In Florida, a dog or cat falls under the definition of "domestic animal."<sup>1</sup> Domestic animals are considered personal property.<sup>2</sup> Like other kinds of property, this means that owners of domestic

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<sup>1</sup> A "domestic animal" is "any equine or bovine animal, goat, sheep, swine, domestic cat, dog, poultry, ostrich, emu, rhea, or other domesticated beast or bird." s. 585.01(10), F.S. This definition only applies within chapter 585, F.S., but it is referred to by s. 767.01, F.S., the dog bite statute, and courts have generally kept to this definition as well.

<sup>2</sup> *Kennedy v. Byas*, 867 So.2d 1195, 1197 (Fla. 1st Dist. App. 2004) (citations omitted).

animals are entitled to recover for damage to them; the proper measure of damages for loss of personal property generally is its market value on the date of the damage.<sup>3</sup>

The Florida Statutes lack a general standard for damages when a domestic animal is harmed.<sup>4</sup> The damages standard has been set by case law, and the courts are conflicted. Courts acknowledge that pets are like family members to many pet owners. However, courts do not uniformly allow a pet owner to recover noneconomic damages for the loss of a pet in the same circumstances in which those damages are allowed for the loss of a child.

### **Negligent Harm**

Florida follows a modified version of the “impact rule” regarding damages in negligence cases.<sup>5</sup> The basic impact rule states that a plaintiff in a negligence action cannot recover damages for noneconomic (emotional) harm, unless he or she proves that the harm arose from a “physical impact” he suffered in the negligent act.<sup>6</sup> Under the modified version of the rule used in Florida, the physical impact can occur during the act itself, or it can occur if the emotional harm “cause[s] a demonstrable physical injury such as death, paralysis, muscular impairment, or similar objectively discernible physical impairment.”<sup>7</sup>

The Florida Supreme Court has explained the purpose of the impact rule as follows:

The impact rule has been traditionally applied primarily as a limitation to assure a tangible validity of claims for emotional or psychological harm. . . . Florida jurisprudence has generally reasoned that such assurance is necessary because, unlike physical injury, emotional harm may not readily align with traditional tort law damage principles. Our courts have explained that the existence of emotional harm is difficult to prove, resultant damages are not easily quantified, and the precise cause of such injury can be elusive. . . . This Court has also theorized that without the impact rule, Florida courts may be inundated with litigation based solely on psychological injury.<sup>8</sup>

However, exceptions to the impact rule allow a plaintiff to recover damages for emotional harm when he or she has not suffered a physical impact. The impact rule, for example, does not bar a parent from recovering damages for emotional harm for the loss of a child due to medical malpractice.<sup>9</sup>

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<sup>3</sup> *Allied Van Lines, Inc. v. McKnab*, 331 So. 2d 319, 320 (Fla. 2d Dist. App. 1976), *aff'd sub nom. Allied Van Lines, Inc. v. Bratton*, 351 So. 2d 344 (Fla. 1977).

<sup>4</sup> See generally s. 767.01, F.S., which holds dog owners liable for damage their dogs do to people or domestic animals.

<sup>5</sup> See *Zell v. Meek*, 665 So. 2d 1048 (Fla. 1995).

<sup>6</sup> *Id.*

<sup>7</sup> *Brown v. Cadillac Motor Car Div.*, 468 So. 2d 903, 904 (Fla. 1985).

<sup>8</sup> *Welker v. Southern Baptist Hosp. of Fla. Inc.*, 864 So. 2d 1178, 87 (Fla. 1st DCA 2004), *rev'd on other grounds, Southern Baptist Hosp. of Fla., Inc. v. Welker*, 908 So. 2d 317 (Fla. 2005) (quoting *Rowell v. Holt*, 850 So. 2d 474, 477-78 (Fla. 2003); see also *Gracey v. Eaker*, 837 So. 2d 348, 355 (Fla. 2002) (explaining that “allowing recovery for injuries resulting from purely emotional distress would open the floodgates for fictitious or speculative claims.” (quoting *R.J. v. Humana of Fla. Inc.*, 652 So. 2d 360, 362 (Fla. 1995))).

<sup>9</sup> *Welker v. Southern Baptist Hosp. of Fla. Inc.*, 864 So. 2d 1178, 87 (Fla. 1st DCA 2004), *remanded, Southern Baptist Hosp. of Fla., Inc. v. Welker*, 908 So. 2d 317 (Fla. 2005).

In some cases, the courts have applied the impact rule to bar the recovery of damages for the negligent loss of a pet. In *Kennedy v. Byas*, the First District Court of Appeal ruled that if a person negligently harms a domestic animal, he is not liable for emotional damages to the animal's owner.<sup>10</sup> In *Kennedy*, the defendant was a veterinarian who was sued by the owner of a dog he had treated.<sup>11</sup> The court declined to create an exception to the "impact rule," stating that emotional harm was irrecoverable because the harm to the dog did not physically impact the plaintiff.<sup>12</sup> The *Kennedy* court refused to subject veterinarians and others whose negligence might harm an animal to liability for emotional harm absent a physical impact, citing concerns about over-burdening the court system with more negligence cases.<sup>13</sup>

The *Kennedy* court noted that its ruling conflicted with the rulings of the Third District Court of Appeal in two earlier veterinary malpractice cases.<sup>14</sup> The court asked the Supreme Court to rule on its conflict with the Third District, but the case was voluntarily dismissed before the Supreme Court could hear it.<sup>15</sup>

### **Malicious Harm**

While the Florida Supreme Court has thus not ruled on the viability of noneconomic damages when a domestic animal was harmed through negligence, it has ruled on their use in cases when the animal was harmed maliciously.<sup>16</sup>

In *La Porte v. Associated Independents*, the Court held that if someone intentionally or maliciously harms a domestic animal, that person is liable for any resulting emotional harm to the animal's owner, regardless of the physical impact of the act itself on the owner.<sup>17</sup> The dog owner in *La Porte* sued a garbage collector after its employee threw a garbage can at her dog and killed it in front of her.<sup>18</sup> The Court said that "the affection of the master for his dog is a very real thing" to be considered in awarding punitive damages, noting that the owner's value of her particular dog likely exceeded the market value of a similar dog.<sup>19</sup>

The Florida Statutes also provide for criminal punishment in the event of malicious harm to a domestic animal.<sup>20</sup>

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<sup>10</sup> *Kennedy v. Byas*, 867 So.2d 1195, 1197 (Fla. 1st Dist. App. 2004).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (citing *Johnson v. Wander*, 592 So.2d 1225 (Fla. 3d Dist. App. 1992) and *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37 (Fla. 3d DCA 1978)). In both Third District cases, the court allowed emotional harm to be considered by the jury when awarding damages.

<sup>15</sup> *Kennedy v. Byas*, Docket Information, Sup. Ct. of Fla. (2004).

<sup>16</sup> See *Kennedy*, 867 So. 2d at 1198 (distinguishing *La Porte*, *infra*, because it dealt with malicious harm to an animal rather than negligent harm).

<sup>17</sup> *La Porte v. Assoc. Indeps., Inc.*, 163 So. 2d 267, 269 (Fla. 1964).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Section 828.12, F.S.

## Veterinary Care and Noneconomic Damages

A requirement that a person who harms a domestic animal pay for “reasonable and necessary veterinary care” does not appear in the Florida Statutes or in any Florida court cases. However, several states have recently included the phrase in animal-harm statutes.<sup>21</sup>

Punitive damages are a kind of noneconomic damages which have been used in Florida to compensate victims for emotional harm.<sup>22</sup> The Florida Statutes provide for recovery of punitive damages in any civil action if the trier of fact finds by clear and convincing evidence that the defendant is guilty of either “intentional misconduct” or “gross negligence.”<sup>23</sup> A punitive damages award may not normally exceed the greater of \$500,000 or three times the compensatory (economic) damages award.<sup>24</sup>

Other states, including Nevada, have also adopted language barring noneconomic damages or otherwise limiting recoveries in domestic animal negligence cases.<sup>25</sup> Still others provide for punitive damages in negligence cases involving animals, but do not allow for emotional causes of action.<sup>26</sup>

A Tennessee statute provides for noneconomic damages of up to \$5,000, but only if the pet was negligently harmed on the owner’s property or while under his control.<sup>27</sup> The Tennessee statute also clearly states that the statute does not permit noneconomic damages in negligence actions against veterinarians.<sup>28</sup>

### III. Effect of Proposed Changes:

#### Liability for Pet Harmers

This bill defines liability in actions for damages arising from harm to a “pet,” which is “a domesticated dog or cat normally maintained in the household of its owner.”

In a simple negligence action, the person who harms a pet is liable for monetary losses suffered by the owner of the pet. This includes the cost of reasonable and necessary veterinary care due to the harm, plus any loss in the fair market value of the pet as measured just before the harm. “Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.”<sup>29</sup>

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<sup>21</sup> 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 Values, and Animal Welfare*, 6 STAN. J. ANIMAL L. & POL’Y 30, 61 (2013) (citations omitted).

<sup>22</sup> See, e.g. *LaPorte v. Assoc. Indeps., Inc.*, 163 So. 2d 267 (Fla. 1964) (using “punitive” language throughout).

<sup>23</sup> Section 768.72(2), F.S. Gross negligence uses the same definition proposed in the bill (*infra* Section III).

<sup>24</sup> Section 768.73(1), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Tenn. Code. 44-17-403 (2003).

<sup>28</sup> *Id.*

<sup>29</sup> Fla. Std. Jury Instr. 401.4.

The bill also provides for an award of up to \$5,000 in noneconomic damages for loss of the pet's companionship. This limit only applies in cases where the harm was caused by the gross negligence of the defendant and the action solely concerns the direct harm to the pet. "'Gross negligence' means that [the defendant's] conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct."<sup>30</sup>

Noneconomic damages do not have a limit if "for causes of action for intentional infliction of emotional distress." Intentional infliction of emotional distress has been described as conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."<sup>31</sup>

Under the *expressio unius* canon of statutory construction, courts interpret the mention of one thing in a statute as implying the exclusion of other unmentioned things.<sup>32</sup> As a result, courts will likely interpret the bill as eliminating the awards of punitive damages for the death of a pet by specifying the types of damages that are authorized. However, the availability of damages for emotional harm may offset the loss of the potential for punitive damages.<sup>33</sup>

### **Exceptions**

The bill does not apply in several situations.

First, the bill does not apply to actions taken against a licensed veterinarian for harm to a pet. As a result, the liability of veterinarians for malpractice will continue to be defined by appellate court opinions, which are in conflict.

The bill also does not apply to actions taken against a nonprofit entity or government agency if it negligently causes the death of a pet while acting on behalf of public health or animal welfare.

Finally, the bill does not cover any killing of a dog that is "killing or worrying livestock."

### **Effective Date**

The bill takes effect July 1, 2017.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>30</sup> Fla. Std. Jury Instr. 503.1b.(1).

<sup>31</sup> *Metropolitan Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278-79 (Fla. 1985) (quoting Section 46, Restatement (Second) of Torts (1965)).

<sup>32</sup> *Moonlit Waters Apts., Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996) (citation omitted).

<sup>33</sup> See *Siegle v. Lee Cty.*, 198 So. 3d 773, 775 (Fla. 2d DCA 2016) (holding that county's decision to list situations when code provision prohibited defenses showed county's intent to allow those defenses in all situations not listed).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill by authorizing larger amounts of damages than are currently authorized in some parts of the state may create a sufficient financial incentive for lawsuits in the death of a pet. However, the bill also creates a “cap” for those kinds of damages.

**C. Government Sector Impact:**

Judicial workloads will increase to the extent the bill results in more actions for damages for the death of a pet dog or cat.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an unnumbered section of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.