Man's Best Friend: Property or Family Member - An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury

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"MAN'S BEST FRIEND": PROPERTY OR FAMILY MEMBER? AN EXAMINATION OF THE LEGAL CLASSIFICATION OF COMPANION ANIMALS AND ITS IMPACT ON DAMAGES RECOVERABLE FOR THEIR WRONGFUL DEATH OR INJURY

I. INTRODUCTION

In the United States, there is nearly one pet for every two Americans.\(^1\) Further, approximately 124 million dogs and cats live in American households.\(^2\) In one study, forty-five percent of dog owners reported that they take their pets on vacation.\(^3\) Another recent survey revealed that more than half of companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island.\(^4\) Another poll revealed that fifty percent of pet owners would be "very likely" to risk their lives to save their pets, and another thirty-three percent indicated they would be "somewhat likely" to put their own lives in danger.\(^5\) These statistics indicate that companion animal owners view their pets as family members, rather than as personal property.\(^6\)

According to the law, however, companion animals are considered to be merely personal property or chattel.\(^7\) In most jurisdictions, this classification has limited the damages that pet owners can recover when their animals are injured or killed as a result of intentional or negligent conduct.\(^8\) Traditionally, damages have been limited to the market value of

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1. See Richard Willing, Under Law, Pets Are Becoming Almost Human, USA Today, Sept. 13, 2000, at 1A (describing increase in pet population in United States).
4. See Willing, supra note 1, at 1A (revealing results of 1995 survey of pet owners).
5. See Cindy Hall & Bob Laird, Risking It All for Fido, USA Today, June 24, 1999, at 1D (illustrating importance of companion animals in lives of humans).
6. For further discussion of how humans value their animal companions, see infra notes 99-122 and accompanying text.
8. See Kane v. County of San Diego, 83 Cal. Rptr. 19, 21-22 (Cal. Ct. App. 1969) (holding that dog owner entitled to market value of animal on day killed plus any interest from that date); Alteiri v. Nanavati, 573 A.2d 359, 361 (Conn. Super. Ct. 1989) (noting that damages in veterinary malpractice actions are normally limited to market value of animal); Columbus R.R. Co. v. Woolfolk, 58 S.E. 152, 154 (Ga. 1907) (holding that market value of dog is proper measure of dam-
the animal. Some courts, however, have awarded damages based on the animal’s actual value to the owner instead of using the market value approach. Other jurisdictions have awarded punitive damages in cases where willful or wanton conduct caused a companion animal’s injury or death. Most importantly, an overwhelming majority of jurisdictions have not allowed pet owners to recover damages for their emotional suffering resulting from the wrongful injury to or death of their companion animal. Specifically, most courts have refused to permit pet owners to recover damages for emotional distress or loss of companionship.

In recent years, a debate has developed concerning whether companion animal owners should be able to recover more than the market value of their pets when their animals are injured or killed through tortious conduct. At the forefront of this debate is whether pet owners should be

ages; Nichols v. Sukaro Kennels, 555 N.W.2d 689, 692 (Iowa 1996) (measuring market value of dog according to purchase price, average life of breed, training and particular traits); Miller v. Econ. Hog & Cattle Powder Co., 293 N.W. 4, 11 (Iowa 1940) (noting that damages for injury to animal are ordinarily calculated by comparing value of animal before and after injury); Kling v. U.S. Fire Ins. Co., 146 So. 2d 635, 641-42 (La. Ct. App. 1962) (finding that damages for loss of fox terrier is fair market value of animal and that no sentimental value can be considered); Soucek v. Banham, 524 N.W.2d 478, 481 (Minn. Ct. App. 1997) (limiting compensatory damages for intentional killing of dog to fair market value of animal); Greenwald v. Yazoo & Miss. Valley R.R. Co., 76 So. 557, 557 (Miss. 1917) (fixing value of deceased hunting dog at market value); Daughen v. Fox, 539 A.2d 858, 864 (Pa. Super. Ct. 1988) (“Under Pennsylvania law, a dog is personal property. The fundamental purpose of damages for injury to or destruction of property by tortious conduct of another is to compensate the injured party for actual loss suffered. As in this case, where the property has been destroyed, the measure of damages would be the value of the property prior to its destruction.”) (footnote and citation omitted); Zeid v. Pearce, 953 S.W.2d 368, 369 (Tex. Ct. App. 1997) (recognizing that in Texas, typical recovery for death of dog is animal’s market value); see also David Favre & Peter L. Borchelt, ANIMAL LAW AND DOG BEHAVIOR 53 (1999) (“In all personal property injuries, the measure of damages is the amount that will return the owner to his financial status prior to the injury. With animals the primary focus is on fair market value . . . .”).

9. See Favre & Borchelt, supra note 8, at 53-56 (explaining calculation of damages based on fair market value of animal).

10. For further discussion of actual value approach, see infra notes 33-43 and accompanying text.

11. For further discussion of punitive damage awards, see infra notes 44-47 and accompanying text.


13. See id. at 662-66 (noting unique cases in which courts have permitted dog owners to recover for their emotional injuries).

14. See P. Kennedy Page, The Potential Cost of Losing Fido’s Company; Aggrieved Pet Owners are Seeking Compensation for the Loss of their Loved Ones, Nat’l L.J., Jan. 8, 2001, at A15 (discussing whether pet owners should be compensated for loss of society or emotional suffering when their animals are injured or killed due to negligence). Some courts have started to reconsider the manner in which they classify companion animals. See No Need to Change the Status of Pets, News Trin. (Tacoma, Wash.), Apr. 8, 2001, at B6 (discussing tendency of some courts to characterize
able to recover damages for genuine mental suffering. Proponents within this context, courts have had to consider whether companion animals should be valued more as a family member, and less as property. Proponents of the movement to expand damages argue that it is necessary because of the unique and special role companion animals play in our society. Critics, however, contend that increased damages would lead to massive litigation.

This Note discusses the damages recoverable for the wrongful injury to or death of a companion animal and argues for an expansion of damages. Part II outlines the damages courts have awarded when compensating pet owners for intentional or negligent harm to their animals. Part III analyzes the landmark cases and a recently enacted Tennessee statute that have permitted companion animal owners to recover for their emo-
II. BACKGROUND

A. Valuation of Companion Animals Based on Fair Market Value

In most jurisdictions, pet owners can only recover the fair market value of their animals when they are injured or killed as a result of wrongful conduct. Courts have used the market value approach because companion animals, like all animals, are considered personal property. According to the market value approach, the pet owner is awarded the amount his pet was worth before the injury or death.

The market value approach involves a calculation of damages based upon the animal’s pedigree, purchase price, general health and unique traits. Ultimately, any factor that affects a pet’s commercial value will be...
considered in the damage award.\textsuperscript{28} Under the market value approach, pet owners must present evidence proving the fair market value of their companion animal.\textsuperscript{29}

The market value approach does not consider the special value a companion animal may have to its individual owner.\textsuperscript{30} In fact, this approach does not recognize any attachment between a human and his or her pet.\textsuperscript{31} The valuation method "relies instead on what amount the animal would be worth to a stranger acting as a willing buyer in an arm's length transaction for fungible goods."\textsuperscript{32}

B. Valuation of Companion Animals Based on Actual Value of Pet to Owner

Courts that do not use the market value system calculate damages based on the actual value of the companion animal to its owner.\textsuperscript{33} This owner's heart as it is the dog's worth"). See also Favor & Borchelt, supra note 8, at 54 (explaining elements that comprise market value).

\textsuperscript{28} See Favor & Borchelt, supra note 8, at 54 (noting that any factor that affects commercial value changes valuation computation).

\textsuperscript{29} See Burgreen Contracting Co. v. Goodman, 314 So. 2d 284, 294-95 (Ala. Civ. App. 1975) (finding that information relating to value of animal can be given by expert with sufficient knowledge of animal); Wells v. Brown, 217 P.2d 995, 997-98 (Cal. Ct. App. 1950) (affirming jury verdict of $1,500 in negligent killing of dog even though purchase price was only $300 because of expert testimony by third party familiar with particular breed); Demco v. Manville, 886 N.E.2d 917, 918 (Ill. App. Ct. 1979) (discussing evidence that pet owner may introduce to prove value of his or her companion animal); Ponder v. Angel Animal Hosp., Inc., 762 S.W.2d 846, 847 (Mo. Ct. App. 1988) (finding that dog owner failed to prove any loss in dog's value where veterinarian mistakenly neutered animal brought to veterinary hospital); see also Favor & Borchelt, supra note 8, at 54 (describing presentation of evidence). Expert testimony is normally needed to prove the market value of the animal to the court. See id. (describing use of expert testimony). The market value calculations are done on a case by case basis and are ultimately a jury decision. See id. (noting role of jury in damage assessment). In many cases, it is difficult to find an accurate method to determine the market value. See Barton & Hill, supra note 24, at 413-15 (discussing problems with market value approach).

\textsuperscript{30} See Barton & Hill, supra note 24, at 415 (assessing flaws of market value approach).

\textsuperscript{31} See Gary L. Francione, Animals, Property, and the Law 55 (1995) (describing limitations of market value approach). Francione argues that the market value approach fails to satisfactorily compensate many pet owners. See id. (recognizing that many pet owners would never contemplate selling their pets because of emotional attachment they have with their animals). The same scholar suggests that the main reason the market value approach is still widely used is because it is most capable of proof. See id. at 61 (stating that awards usually depend on market value of animal).

\textsuperscript{32} Id. at 55.

\textsuperscript{33} See Zeiner v. Spokane Int'l R.R., 300 P.2d 494, 499 (Idaho 1956) (explaining that value of personal property to individual owner is proper measure of damages when possession has no market value); Wilcox v. Butt's Drug Stores, Inc., 35 P.2d 978, 979 (N.M. 1934) (declaring that dog's market value is not proper measure of damages when animal possesses no true market value); McDonald v. Ohio State Univ. Veterinary Hosp., 844 N.E.2d 750, 752 (Ohio Ct. Cl. 1994) (deciding actual value of dog based on animal's age, training and accomplishments).
approach is primarily used in cases where the animal has no market value or where market value is not a true indication of its worth.\textsuperscript{34} This valuation system goes beyond simple market value analysis and recognizes the special value of pets to their owners.\textsuperscript{35} In most cases, under this valuation approach, an animal's actual value increases as the animal ages.\textsuperscript{36}

In theory, this method of calculation appears beneficial to pet owners because it recognizes the unique relationship between companion animals and their owners.\textsuperscript{37} In practice, however, the damage awards have typically been as minimal as they are under the market value approach.\textsuperscript{38} The sparse damage awards are primarily due to the fact that courts still view companion animals as property, and damage awards reflect this classification.\textsuperscript{39}

\textit{Donald}, an owner of a show dog brought a negligence suit against a veterinary hospital after the animal suffered irreversible paraplegia and paralysis of the hind limbs after receiving negligent surgery. \textit{See id.} at 751 (describing factual basis of lawsuit). After a trial was conducted on the sole issue of damages, the court awarded $5,000 to the owner for the injury to the show dog. \textit{See id.} at 752 (noting specifics of damage award). In calculating damages, the court considered the time and effort involved in training the dog, its unique pedigree and loss of stud fees. \textit{See id.} (explaining elements of damage award). Courts have considered how far they should extend the actual value approach. \textit{See Jankoski v. Preiser Animal Hosp., Ltd., 510 N.E.2d 1084, 1086-87 (Ill. App. Ct. 1987)} (determining that dog's value to its owner is proper measure of damages when market value cannot be determined). \textit{In Jankoski}, the court found that the actual value to the owner can include some element of sentimental value, but emphasized that there was no independent cause of action for loss of companionship for the death of a pet. \textit{See id.} at 1087 ("The concept of actual value to the owner may include some element of sentimental value in order to avoid limiting the plaintiff to merely nominal damages.").

\textsuperscript{34} \textit{See McDonald, 644 N.E.2d at 752} (recognizing that actual value of property to owner is sometimes better standard than market value). The \textit{McDonald} court emphasized that the market value standard is not a "shackle" and promoted the use of the actual value approach in appropriate circumstances. \textit{See id.} (citing Bishop v. East Ohio Gas Co., 56 N.E.2d 164, 166 (Ohio 1944)) (noting use of actual value standard when market value cannot be ascertained).

\textsuperscript{35} \textit{See Favor & Borchelt, supra note 8, at 58} (discussing alternative to market value approach). Courts and commentators have alternatively termed this category of damages as the 'intrinsic value' formula. \textit{See Barton & Hill, supra note 24, at 416-21} (analyzing intrinsic value approach). "The term 'intrinsic' focuses on the animals as an [sic] individuals as well as their relationships to human possessors/owners." \textit{Favor & Borchelt, supra note 8, at 58.}

\textsuperscript{36} \textit{See Barton & Hill, supra note 24, at 416} (analyzing damages based on actual or intrinsic value of pet).

\textsuperscript{37} \textit{See Francione, supra note 31, at 58} (noting that intrinsic value recognizes attachment between companion animal and its owner). Some scholars claim that valuation based on actual value is too subjective and difficult to measure. \textit{See Barton & Hill, supra note 24, at 419} (analyzing whether sentimental value should be component of damages).

\textsuperscript{38} \textit{See Francione, supra note 31, at 58} (recognizing low damage awards based on actual value of animal).

\textsuperscript{39} \textit{See Barton & Hill, supra note 24, at 421} ("[T]he damages have been as low as the damages awarded using the market value method and are therefore inadequate."
A long-term feeling of loss of the animal's companionship frequently follows the death of a pet. For this reason, one court expanded recoverable damages under the actual value approach by allowing loss of companionship to be included as a component of value. Justification for loss of companionship rests on the theory that it "would be wrong not to acknowledge the companionship" that is lost when an animal is wrongfully killed or injured. Nevertheless, most courts have not permitted loss of companionship to be included in damage awards for the wrongful injury to or death of a companion animal.

C. Punitive Damage Awards for the Wrongful Injury to or Death of Companion Animals

Some courts have allowed the recovery of punitive damages in cases where the person causing harm to the companion animal engaged in conduct that was malicious, willful or in reckless disregard of the rights of the animal and the pet owner. "Punitive damages are not meant to compen-

40. See, e.g., Favre & Borchelt, supra note 8, at 64 (describing emotional injuries suffered when pet dies). For a further discussion of the emotional effects on a pet owner from the death of his or her companion animal, see infra notes 123-35 and accompanying text.

41. See Brousseau v. Rosenthal, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980) (recognizing loss of companionship as element of dog's actual value). In Brousseau, a woman boarded her eight-year-old dog at a kennel. See id. at 285 (describing factual basis of negligence suit). When she returned to the kennel two weeks later she was told that her dog had died. See id. (establishing facts). The court found that the defendant's failure to return the bailed dog, combined with the defendant's lack of an explanation for the dog's death, established negligence. See id. at 286 (describing general law applying to bailees of animals). The court concluded that loss of companionship should be included as an element of the dog's actual value and awarded the woman $550 plus costs and disbursements. See id. at 287 (awarding judgment for pet owner). The Brousseau case clearly stands in the minority because most courts do not allow loss of companionship to be a component of a damage award for a property loss. See Klein v. St. Louis Transit Co., 93 S.W. 281, 282-83 (Mo. Ct. App. 1906) (finding that loss of dog's companionship and deprivation of pleasure should not be considered in damage award for wrongful death of animal).

42. See Brousseau, 443 N.Y.S.2d at 286-87 (describing reasons for allowing loss of companionship as element of damages).

43. See Gluckman v. Am. Airlines, Inc., 844 F. Supp. 151, 158 (S.D.N.Y. 1994) (finding no independent cause of action for loss of companionship of pet); see also Daughen v. Fox, 539 A.2d 858, 864-65 (Pa. Super. Ct. 1988) (holding that dog owner not entitled to damages for loss of companionship upon death of animal). The Daughen court noted that companionship is included in the idea of consortium, the right growing out of a marriage giving each spouse "the right to the companionship, society and affection of each other in their life together." See id. at 865 (defining consortium). The court concluded that under no circumstances would it be valid to allow recovery for loss of companionship for the death of an animal. See id. (finding no claim for loss of companionship).

44. See Levine v. Knowles, 197 So. 2d 329, 332 (Fla. Dist. Ct. App. 1967) (allowing claim for punitive damages based on defendant's conduct); Wilson v. City of Eagan, 297 N.W.2d 146, 151 (Minn. 1980) (permitting award of punitive damages based on dog warden's killing of cat because such killing displayed willful
sate an owner for injury to his or her property, but to punish the person causing the injury for his or her unacceptable conduct." In determining the proper punitive damage award the court will consider the following: (1) degree of malice, (2) amount needed to deter such conduct, (3) wealth of the perpetrator, (4) sentimental value of the animal and (5) degree of pain and suffering of the pet owner. Some courts are reluctant to allow the recovery of punitive damages because of the absence of a physical injury to the human owner and because of the law's classification of companion animals as property.

D. Emotional Distress Damages for Wrongful Injury to or Death of Companion Animals

Most courts have refused to compensate companion animal owners for their mental distress when their pets are injured or killed. The primary reason is that companion animals are considered property, and damages for mental distress for injury to or loss of property are not disregard for law and property rights of citizens). In Knowles, the court allowed a claim for punitive damages when the defendant cremated a dog that died while in his possession, even though the plaintiffs specifically requested that the dog's body be kept intact for an autopsy. See Knowles, 197 So. 2d at 331-32 (allowing claim for punitive damages). In permitting the punitive damages award the court stated that the "doctrine of punitive damages makes the desired admonitory function of certain tort actions more effective than it would if money judgments were always limited to reparation." Id. at 331. The court further found, "[t]hat the conduct which gives rise to punitive damages need be willful, wanton, reckless, malicious or oppressive to guard against allowance of punitive damages in cases where there is no admonitory function . . . ." Id.

45. Favre & Borchelt, supra note 8, at 58.


48. See Jason v. Parks, 638 N.Y.S.2d 170, 171 (N.Y. App. Div. 1996) (holding that dog owner cannot recover damages for emotional distress caused by wrongful death of animal as result of veterinary malpractice); Strawser v. Wright, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992) ("We sympathize with one who must endure the sense of loss which may accompany the death of a pet; however, we cannot ignore the law . . . . Ohio law simply does not permit recovery for serious emotional distress which is caused when one witnesses the negligent injury to or destruction of one's property."); Rowbotham v. Maher, 658 A.2d 912, 913 (R.I. 1995) (holding that claim for recovery under negligent infliction of emotional distress was unavailable to companion animal owner whose dog was wrongfully killed); Zeid v. Pearce, 953 S.W.2d 368, 369-70 (Tex. Ct. App. 1997) (holding that pet owner cannot recover damages for pain and suffering or mental anguish in veterinary malpractice lawsuit); Julian v. DeVicent, 184 S.E.2d 535, 536 (W. Va. 1971) (explaining general rule that damages for sentimental value or mental suffering are not recoverable for loss of animal).
recoverable. The majority view does not recognize any emotional bond between companion animals and their owners. Although some courts have recognized a unique bond between humans and animals, they still have not allowed damages for pain and suffering.

Most courts, following the majority rule, have not allowed emotional distress damages for harm to companion animals when the harm was intentional or negligent. They have been reluctant to award emotional distress damages for fear that such precedent would result in massive litigation or would lead to emotional damage claims for other forms of property. Courts have compared the attachment to a pet as that to a family heirloom or prized school ring. As one New York court recognized, the fear is that "[s]uch an expansion of the law would place an unnecessary burden on the ever burgeoning caseloads of the court in resolving serious tort claims for injuries to individuals." The majority approach, however, fails to recognize any unique bond that may exist between companion animals and their owners. The courts must determine how to acknowledge the profound emotional attachment between humans and companion ani-

49. See Squires-Lee, supra note 7, at 1060-64 (noting courts' reasoning for refusing to allow recovery for emotional suffering); see also Strawser, 610 N.E.2d at 612 (explaining limitations on recoverable damages).

50. See Squires-Lee, supra note 7, at 1061-62 (arguing that courts have not adequately compensated pet owners for loss of their animal). Squires-Lee's fundamental argument is that companion animal owners should be compensated for their emotional losses because the primary goal of tort law is to require the tortfeasor to pay all damages proximately caused by his or her conduct. See id. at 1062 (outlining argument for recovery of damages for emotional injuries resulting from death of pet). Furthermore, Squires-Lee contends that "[a]s long as mental anguish is compensable in tort, the anguish resulting from the death of a companion animal should also be compensable." Id.

51. See Nichols v. Sukaro Kennels, 555 N.W.2d 689, 690-91 (Iowa 1996) (recognizing unique bond between humans and their companion animals, but yielding to majority rule that pet owners cannot recover for their emotional suffering resulting from harm to their pets); Fackler v. Genetzky, 595 N.W.2d 884, 892 (Neb. 1999) ("People may develop an emotional attachment to personal property, whether animals or inanimate objects with sentimental value, but the law does not recognize a right to money damages for emotional distress resulting from the negligent destruction of such property.").

52. See Favre & Borchelt, supra note 8, at 60 (explaining judicial reluctance to award damages for mental pain and suffering for loss of pet).


54. See id. (expressing concern for future recoveries for mental stress caused by intentional or negligent destruction of other forms of personal property).

55. Id.

56. See Carol L. Gatz, Animal "Rights" and Emotional Distress for Loss of Pet, 43 Orange County Law 16, 22 (2001) (noting that California law still views family pets as property and does not allow for monetary compensation for any emotional suffering that may result from loss of pet).
mals while keeping lawsuits and recoverable damages within manageable limits.\textsuperscript{57}

III. LANDMARK CASES AND STATUTES

A. Cases Allowing Recovery for Emotional Injuries

1. LaPorte v. Associated Independents, Inc.

In LaPorte v. Associated Independents, Inc.,\textsuperscript{58} a dog owner filed suit against a trash collection corporation for maliciously killing her dog.\textsuperscript{59} An employee for the company threw a garbage can at the miniature dachshund while it was tethered outside the dog owner’s house.\textsuperscript{60} The dog owner went outside to find her dog injured and dying while the trash collector laughed.\textsuperscript{61}

A jury awarded the dog owner $2,000 in compensatory damages and $1,000 in punitive damages for the malicious killing of her dog.\textsuperscript{62} The trial judge instructed the jury that the dog owner also could recover for her alleged mental distress.\textsuperscript{63} The appellate court reversed the damages award because of this jury charge.\textsuperscript{64} The Florida Supreme Court granted the dog owner’s writ of certiorari and quashed the appellate court’s judgment with directions that the jury award be reinstated.\textsuperscript{65}

The court found that the dog owner was entitled to both compensatory and punitive damages for her pain and suffering.\textsuperscript{66} The court explicitly stated that “the affection of a master for his dog is a very real thing and that the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal. . . .”\textsuperscript{67}

The LaPorte case is influential because it expanded the damages available to companion animal owners.\textsuperscript{68} First, the Florida Supreme Court in LaPorte held that a dog owner was entitled to recover for her mental suffer-

\textsuperscript{57} For further discussion of suggested proposals for the courts, see infra notes 179-91 and accompanying text.
\textsuperscript{58} 163 So. 2d 267 (Fla. 1964).
\textsuperscript{59} See LaPorte, 163 So. 2d at 267-68 (describing factual basis of lawsuit).
\textsuperscript{60} See id. at 268 (illustrating events that led to death of dog).
\textsuperscript{61} See id. (describing dog owner’s discovery of her deceased companion animal).
\textsuperscript{62} See id. at 267 (setting forth damage award).
\textsuperscript{63} See id. (explaining jury instructions as stated by trial court).
\textsuperscript{64} See id. (remanding for new trial on issue of damages).
\textsuperscript{65} See id. at 269 (determining that finding of appellate court was erroneous).
\textsuperscript{66} See id. at 268-69 ("It is to us obvious from the facts we have related that the act performed by the representative of the [trash collection corporation] was malicious and demonstrated an extreme indifference to the rights of the [dog owner].").
\textsuperscript{67} Id. at 269 (noting that recovery was irrespective of value).
\textsuperscript{68} See LaPorte, 163 So. 2d at 269 (expanding damages to include mental suffering and punitive damages for death of plaintiff’s companion animal).
ing as an element of damages for the malicious killing of her dog, a miniature dachshund.69 Second, the court found that punitive damages were warranted because the wrongful conduct was malicious and demonstrated an extreme indifference to the dog owner’s rights.70 This case therefore paved the way for other courts to allow recovery for emotional suffering resulting from intentional or malicious killing of a companion animal.71

2. Campbell v. Animal Quarantine Station

Hawaii has gone further than any other jurisdiction in allowing companion animal owners to recover for emotional suffering.72 In Campbell v. Animal Quarantine Station,73 the court upheld a damages award for the emotional distress a family suffered when its dog was killed by the negligent conduct of a state agency.74 Campbell is a landmark case because the Hawaii Supreme Court permitted the family to recover for its emotional suffering even though the family members were not present when the dog died, did not witness the wrongful conduct and were never in danger.75

In Campbell, the family dog died while being transported to a private hospital by a state agency.76 The dog, a nine-year-old female boxer, was one of seven animals transported in the agency’s van to a veterinary hospital.77 The van did not have proper ventilation devices and the boxer died of heat prostration after arriving at the hospital.78

The trial court awarded $1,000 to the family for negligent infliction of emotional distress.79 The state agency appealed, claiming that the family could not recover for emotional injuries because the family did not witness

69. See id. (allowing jury instruction regarding award of damages for mental suffering).
70. See id. at 268 (finding punitive damages warranted because of nature of wrongdoer’s conduct).
71. See Richardson v. Fairbanks N. Star Borough, 705 P.2d 454, 456 (Alaska 1985) (recognizing cause of action for intentional infliction of emotional distress for intentional or reckless killing of companion animal); Gill v. Brown, 695 P.2d 1276, 1277 (Idaho Ct. App. 1985) (allowing recovery for intentional infliction of emotional distress for killing of plaintiff’s donkey). The Second Restatement on Torts states that “[o]ne who by extreme and outrageous conduct intentionally or recklessly causes some emotional distress” is liable for intentional infliction of emotional distress. Restatement (Second) of Torts § 46 (1964).
72. For further discussion of Hawaii’s allowance of emotional suffering to be included in a damage award for an injury to or death of a companion animal, see infra notes 73-89 and accompanying text.
74. See Campbell, 632 P.2d at 1067 (allowing family to recover emotional distress damages resulting from negligent killing of its dog).
75. See Squires-Lee, supra note 7, at 1079-80 (explaining state modifications of legal theories to compensate pet owner for loss of animal).
76. See Campbell, 632 P.2d at 1067 (reciting facts of case).
77. See id. (noting that dog was in van for at least one hour).
78. See id. (observing that plaintiffs were notified by phone).
79. See id. (describing lower court’s order).
the tortious event.\textsuperscript{80} Furthermore, the agency claimed that the family could not recover because the family had not presented medical testimony to substantiate the emotional distress claims and because damages for mental injuries suffered from the loss of personal property were not recoverable.\textsuperscript{81}

The court upheld the damages award and rejected the view that the family had to witness the negligent conduct to recover.\textsuperscript{82} In addition, the court found that medical testimony should be used to indicate the degree of mental distress suffered, but should not act as a bar to recovery.\textsuperscript{83} The court concluded that "[m]edical proof can be offered to assist in proving the 'seriousness' of the claim . . . but should not be a requirement allowing or barring the cause of action. . . . [T]he duration and symptoms of the distress affect the amount of recovery."\textsuperscript{84} Finally, the court acknowledged that it was in the minority in allowing recovery for mental distress suffered as a result of the negligent destruction of property.\textsuperscript{85} In support of its position, the court emphasized that even though it had allowed the claim for the past ten years in other contexts, "the fears of unlimited liability had not prov[en] true."\textsuperscript{86}

The \textit{Campbell} court evidently was sympathetic to the bond between pets and their owners.\textsuperscript{87} While still classifying a companion animal as property, the court expanded its legal theories to compensate the dog's family for its full loss.\textsuperscript{88} This case might be used as a springboard for other courts to adopt the same or similar legal reasoning to expand the damages recoverable for the wrongful injury to or death of a companion animal.\textsuperscript{89}

\begin{itemize}
\item \textsuperscript{80} See \textit{id.} (describing procedural facts of case).
\item \textsuperscript{81} See \textit{id.} at 1069-71 (stating that family did not see dead animals' body).
\item \textsuperscript{82} See \textit{id.} at 1069 (finding no geographical limitation placed on recovery).
\item \textsuperscript{83} See \textit{id.} at 1070-71 (discussing utilization of medical testimony).
\item \textsuperscript{84} \textit{Id.} at 1071.
\item \textsuperscript{85} See \textit{id.} (acknowledging that by allowing recovery for emotional distress it was taking unique approach).
\item \textsuperscript{86} See \textit{id.} (offering support for damage award).
\item \textsuperscript{87} For further discussion of \textit{Campbell}, see \textit{supra} notes 72-86 and accompanying text and \textit{infra} notes 88-89 and accompanying text.
\item \textsuperscript{88} See Squires-Lee, \textit{supra} note 7, at 1080 (examining legal reasoning of \textit{Campbell} court).
\item \textsuperscript{89} See Knowles Animal Hosp. v. Wills, 360 So. 2d 37, 38 (Fla. Dist. Ct. App. 1978) (upholding jury award that included consideration of dog owners' mental pain and suffering). In \textit{Knowles}, dog owners filed suit against an animal hospital and a veterinarian on the ground that the defendants were grossly negligent in their treatment of the plaintiffs' dog. See \textit{id.} (describing facts). The dog suffered severe burns and disfigurement after being placed on a heating pad and left there for two hours. See \textit{id.} (observing that dog eventually had to be put down). A jury trial found a verdict and judgment in favor of the dog owners and against the veterinary hospital for $13,000. See \textit{id.} (noting jury award). The court upheld the award stating that "the jury could . . . view the negligent conduct which resulted in the burn injury suffered by the dog to have been of a character amounting to great indifference to the property of the plaintiffs, such as to justify the jury award." \textit{Id.}
B. Statute Allowing Recovery for Emotional Injuries

1. Tennessee’s T-Bo Act

In 2000, Tennessee became the first state to enact legislation that allows companion animal owners to recover for emotional injuries when their pets are wrongfully killed.90 The measure allows pet owners to recover up to $4,000 in non-economic damages “[i]f a person’s pet is killed or sustains injuries which result in death caused by the unlawful and intentional, or negligent, act of another . . . .”91 The statute narrowly defines “pet” as any “domesticated dog or cat normally maintained in or near the household of its owner.”92 In addition, the statute only compensates for loss of expected society, companionship and love and affection of the companion animal.93 Moreover, the T-Bo Act includes a provision that excludes veterinarians from liability for professional negligence.94 Finally, it includes a geographic limitation that declares that the statute “shall apply only in incorporated areas of any county having a population in excess of seventy-five thousand. . . .”95

The T-Bo Act is a positive development for companion animal owners because it expands available damages.96 The statute, however, is extremely narrow in scope because of the statutory cap it places on damages, its coverage of only dogs and cats and its exclusion of veterinarians.97 Nevertheless, the statute provides a starting point for other states to adopt similar statutes that expand damages in this area of the law.98

IV. Policy and Psychological Justifications for Valuing Companion Animals As More Than Property

A. Companion Animals Viewed As Family Members

Courts are reluctant to expand damages in cases involving companion animals because of the companion animals’ classification as property.99 Nevertheless, there are numerous psychological and policy justifications demonstrating that courts should value pets more like family members,

92. Tenn. Code Ann. § 44-17-403(b).
93. See id. (noting limits on types of damages recoverable pursuant to statute).
94. See Tenn. Code Ann. § 44-17-403(e) (emphasizing that statute should not be “construed to authorize any award of non-economic damages in an action for professional negligence against a licensed veterinarian”).
96. For further discussion of the T-Bo Act’s expansion of damages, see supra notes 90-95 and accompanying text.
97. See Waisman & Newell, supra note 17, at 70-71 (describing limitations of Tennessee statute).
98. See id. at 68-71 (describing potential impact of statute).
99. See Squires-Lee, supra note 7, at 1060 (“[T]he legal and ethical consequences of that definition are tremendous.”).
giving the courts the flexibility to expand damages.\textsuperscript{100} Psychological studies examining the relationship between humans and their companion animals reveal that more than seventy percent of pet owners consider their pets to be a member of the family.\textsuperscript{101}

Pets are viewed as members of the family to the extent that they can be anthropomorphized or assigned human thoughts and feelings.\textsuperscript{102} Dogs and cats are most commonly humanized and therefore are most frequently regarded as family members.\textsuperscript{103} Pet owners report that a wide variety of human traits and emotions such as loyalty, trustworthiness, happiness, fear or jealousy can be evidenced in their pets.\textsuperscript{104} In addition, many pet owners agree that their companion animal is able to reciprocate their love.\textsuperscript{105} In fact, some contend that a pet's love is unconditional and uncritical, resulting in a love superior to that which is sometimes shared between humans.\textsuperscript{106}

\textsuperscript{100} For further discussion of psychological and policy justifications for valuing companion animals as a family member, see supra note 99 and accompanying text and infra notes 101-22 and accompanying text.

\textsuperscript{101} See Debra Lynn Stephens & Ronald Paul Hill, \textit{The Loss of Animal Companions: A Humanistic and Consumption Perspective}, 4 Soc'y & Animals 189, 190 (1996) (exploring psychological studies that ask pet owners to describe how they view their pets). These studies, which involve asking pet owners to explain how they view their pets, were designed to understand the function companion animals play in their owners' lives. See id. (observing that between seventy and ninety percent of pet owners view their pets as family members). Results from one investigation found that as many as ninety-three percent of the respondents viewed their pet as a member of the family. See id. (reporting statistics from study designed to examine relationship between humans and their companion animals).

\textsuperscript{102} See id. at 191 (proposing cultural hierarchy among pet species).

\textsuperscript{103} See id. (naming species that are considered most easily anthropomorphized).

\textsuperscript{104} See Russell W. Belk, \textit{Metaphoric Relationships with Pets}, 4 Soc'y & Animals 121, 126, 132, 135 (1996) (identifying human traits often assigned to pets). Traditionally, humans "attribute . . . characteristics of 'mindedness' [to their animals] and view them as sharing our emotions. From fables of old to contemporary comics and advertisements, animals have been portrayed with human characteristics of thought, character and morality." Id. at 123. In a recent investigation, data was collected through interviews and observations in a veterinary clinic to determine how companion animal owners conceptualize their pets. See Clinton Sanders, \textit{Understanding Dogs: Caretakers' Attributes of Mindedness in Canine-Human Relationships}, 22 J. Contemp. Ethnography 205, 206-08 (1993) (explaining purpose of study). Findings revealed that pet owners view their companion animal as "an authentic, reciprocating, and empathetic social actor. . . . " See id. at 221 (summarizing results of investigation).

\textsuperscript{105} See Belk, supra note 104, at 126 (concluding that pet owners believe that their companion animals feel love for them).

\textsuperscript{106} See id. (suggesting that many pet owners perceive their pet's love to be unconditional). During an interview with a female cat owner, the cat owner stated that "[c]ats don't care if [their owner] grows fat, thin, short, etc. . . ." Id. This belief that pets share love unconditionally with humans makes some people actually prefer their relationship with their pet to relationships with other human beings. See, e.g., John Archer, \textit{Why Do People Love Their Pets?}, 18 Evolution & Hum. Behavior 237, 253 (1997) (noting that one individual designated his dog as best man at his wedding). Because relationships with pets are "largely based on attrib-
While the tendency to see a companion animal as a member of the family is pervasive, the role each pet plays in the unique family structure differs. Frequently, companion animal owners view their pets as children and engage in activities that parents often share with their human children such as playing and speaking in motherese. Similar to raising human children, caring for and training pets requires a tremendous investment of time, energy and money. In a recent anecdotal study, a female pet owner described her experience after her dog got an ear infection: "Last summer, [my husband] and I stayed up all night. He took the first six hours and then I took the rest. . . . I think we've sort of learned how to take care of her, just like you do a toddler. . . ." Given such investments, it is easy to understand how pet owners become highly attached to their companion animals.

In a cross-cultural survey of pet owners, findings revealed that in addition to being viewed as surrogate children, pets also take on a parental role, providing security and protection. Some respondents also responded that their pet fulfills the role of partner, offering comfort and emotional support. A pet's status as "family member" is often evi-
denced through its inclusion in family rituals. One scholar's interviews with pet owners revealed that companion animals often eat at the same time as their owners, are assigned their own furnishings or rooms and often engage in the same activities as human family members. In addition, results demonstrated that it is extremely common for pets to be included in family photographs, and many pet owners admit to carrying pictures of their companion animals in their wallets. Pets are also given special consideration during holidays and birthdays. Approximately seventy percent of companion animal owners celebrate their pet's birthday, and pets often are given holiday presents and treats like other members of the family.

Companion animals also have been included in their owners' lives beyond the home. A recent Florida newspaper report described the second annual "National Take Your Dog to Work Day" as a new holiday designed to "celebrate the human-animal bond and to acknowledge the frustration of millions of working people who reluctantly leave their pets home alone every day." Moreover, currently more than two hundred companies are offering a pet-friendly environment on a regular basis to improve employee morale. Pet owners who do not have the opportu-

113. See Belk, supra note 104, at 134 (illustrating how frequently pets participate in family rituals).
114. See id. (providing specific examples of companion animals' involvement in family activities). One pet owner explained during an interview, "I like to treat her like one of the members of the family . . . . I don't mind sharing anything with her . . . . if we have steak, I always like to make sure I get enough for her." Id.
115. See id. at 135 (discussing importance people place on including pets in family photographs). Pet owners seem to agree that without their companion animal, a family photograph is not complete. See id. (observing that one pet owner would change photographers if companion animal was not permitted in picture).
116. See id. (illustrating situations in which pets are included in special celebrations).
117. See Peggy Noonan, New Tricks for Old Cats and Dogs, Too. Amazing Advances Prolonging Your Life Now Also Help Your Beloved Pet, USA WEEKEND, May 13, 2001, at 6 (citing statistics regarding number of pet owners who celebrate their animal's birthday); see also Belk, supra note 104, at 135 (emphasizing pet involvement in special events). One cat owner was described as "the parent who wants their children to have everything. She gives her cats Christmas presents, and celebrates their birthdays with a cake, candles, and the whole works." Id.
118. See Jeanne Malmgren, Wagging While They Work, ST. PETERSBURG TIMES, June 21, 2000, at 1D (discussing trend of allowing companion animals to accompany their owners outside home).
119. Id. Although some criticize this "holiday" as being a publicity ploy to make money off the multi-million dollar pet industry, others believe that allowing pets to come to work increases employee efficiency and productivity. See id. (discussing reactions to "National Take Your Dog to Work Day").
120. See id. (providing information on companies that allow pet owners to take their animals to work regularly). An Internet website has been designed to track the companies that allow pets to accompany their owners to work on a daily basis. See id. (describing website that tracks "pet-friendly" companies). Approximately twenty-seven percent of these companies fall into the "high-tech" category.
nity to share the workday with their companion animals can now take advantage of a fast growing industry, pet day care centers. A recent report disclosed that the demand for pet day care is high, and pet “parents” are paying between twenty and thirty dollars a day to ensure that their pets have a safe and enjoyable day while they are at work.

B. Grief Reactions Reflecting Human-Animal Bond

Companion animal owners’ reactions to the death of their pet highlights the depth of the human-animal bond and demonstrates that pets should be viewed by the law as more than property. The degree of grief experienced over the loss of a pet is an indirect measure of the emotional connection between humans and their companion animals. In a study designed to examine the parallels between grief following the loss of a pet and the loss of a human loved-one, researchers found that eighteen percent of a large, representative sample of adults were unable to carry out their daily life activities during the time following the death of their pet.

See id. (categorizing survey results by type of business). Thirteen percent are pet-related and an another thirteen percent are health care companies. See id. (categorizing survey results by type of business). Additional categories of businesses include: retail, manufacturing, construction, home repair and government agencies. See id. (categorizing survey results).

121. See Helen Graves, Doggone-To Day Care, BOSTON GLOBE, Nov. 5, 2000, at 1. (exploring recent phenomenon of pet day care). Many of the dog day care centers are run much like nursery schools for human children. See id. (describing typical dog’s day at center). Some day care centers even offer transportation for its clients. See, e.g., id. (listing specific day care center that provides transportation for their clients’ dogs). Once at day care, dogs can engage in a variety of activities including playing fetch, digging and playing in sprinklers and pools. See id. (detailing day care activities).

122. See id. (describing demand for pet day care services). Most of the clients at dog day care are “only children” whose parents work all day outside the home. See id. (discussing reasons for choosing dog day care). Married couples with adult children at home spend the most money on their pets and are the most frequent users of this service. See id. (reporting demographics for pet day care clients).

123. See Archer, supra note 106, at 239 (proposing that pet owners’ reactions to death of companion animal can be used to measure attachment).

124. See id. (stating that grief can be used to assess strength of human-pet attachment).

125. See Mary Stewart, Loss of a Pet—Loss of a Person, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS 390, 390-404 (Aaron Honori Katcher & Alan M. Beck eds., 1983) (reporting results of study examining similarities in grief reactions following loss of pet and human loved one). The purpose of this study was to understand how adults react to the death of a pet and to compare this reaction with that following the loss of a human loved one. See id. at 391 (stating goal of study). Fifty-two adults were interviewed and asked to write an essay describing their reaction to a pet’s death. See id. (summarizing study procedure). Almost all of the adult participants in this study had lost a dog, but one had lost a pony and two others had lost small animals, including a guinea pig and a hamster. See id. at 395 (listing types of pets owned by study participants). Findings revealed that all adults in the sample experienced some degree of sadness after the loss of a pet, and approximately one-third reported being “very upset (and often cry[ing] a lot) . . . [but] still able to carry on with their normal routine.” Id.
Using a scale designed to measure strength of bereavement, researchers found that the grief responses following the loss of a pet were comparable to the grief reactions following the loss of a spouse, parent or child.126 In recognition of this grief, a number of pet-loss hotlines have been established to provide emotional support to bereaved pet owners.127

Many pet owners engage in bereavement rituals similar to those following the death of a human friend or relative.128 For example, many individuals choose to bury their deceased pets to establish an enduring memorial for an important member of the family.129 The International

126. See Archer, supra note 106, at 240 (listing studies examining grief response of humans following loss of pet); see also M.K. Gerwolls & S.M. Labott, Adjustment to the Death of a Companion Animal, 7 ANTHROZOOS 172, 173-87 (1994) (describing long-term study comparing bereavement over pets with bereavement following loss of human family members). For this study, people who had lost a pet were asked to complete an adapted version of the Grief Experience Inventory, a self-report designed to measure human grief. See id. (describing measure used to assess grief reaction). Further, a survey, designed to examine adult reactions to the death of a pet, was completed by 242 married couples who had experienced the death of a pet. See Stephens & Hill, supra note 101, at 193 (describing survey examining impact of pet deaths). Results from this investigation showed that a large number of respondents were “quite” or “extremely” distressed by the death of their pet. See id. (outlining results of survey). Many male respondents stated that their pet’s death was almost “as stressful as the loss of a close friendship” and “more stressful than children leaving home or getting married.” See id. (presenting common male responses to loss of companion animal). Women who responded to the survey stated that their pet’s death was about “as stressful as losing touch with their married children, and more stressful than the loss of a close friendship or children leaving home . . . .” Id. at 193-94.

127. See Stephens & Hill, supra note 101, at 207 (listing emotional support services for bereaved pet owners). In 1978, the University of Pennsylvania Veterinary Hospital implemented a social work program that was modeled after social work facilities in human medical hospitals. See James Quackenbush & Lawrence Glickman, Social Work Services for Bereaved Pet Owners, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS, supra note 125, at 377, 377-404 (describing social work program established in veterinary hospital). The primary purpose of this service is to provide short-term interventions with bereaved pet owners. See id. (explaining main goal of service). Four veterinary schools: Tufts University, Michigan State University, the University of Florida and the University of California at Davis have established hotlines to support bereaved pet owners. See Stephens & Hill, supra note 101, at 207 (listing veterinary schools that offer bereavement support). The International Association of Pet Cemeteries is working to establish a certification program for pet cemetery management that would focus on the bereavement process and the specific needs of people who are grieving for a pet. See id. (proposing requirements for pet cemetery managers).

128. See Stephens & Hill, supra note 101, at 189 (discussing rituals following death of pet). Stephens and Hill conducted research to examine how pet owners respond to the loss of a pet. See id. at 194-95 (noting that data was collected from pet cemetery users). To collect data, seventy-three participants who had lost a pet were asked to write an essay detailing their relationship with their companion animal while focusing on their experience at the pet’s death. See id. (outlining research methodology). In addition, the researchers gathered data at a community pet cemetery by examining the messages engraved on 100 gravestones. See id. at 194 (describing data collection technique).

129. See id. at 189, 194 (reflecting on growing popularity of pet cemeteries).
Association of Pet Cemeteries reports that there are over 600 existing pet cemeteries and that new ones are being established almost monthly. Often, companion animal owners have gravestones engraved with sentiments that reflect feelings of profound love and friendship to further memorialize their pet. Recently, Hallmark, one of the largest and most popular greeting card manufacturers, recognized the significance of pet deaths by selling condolence cards for people suffering from the loss of a companion animal. Not all species of pets are mourned with the same intensity or celebrated with the same bereavement rituals. These differences reflect "a cultural hierarchy within which pet animals are arrayed." This distinction between species is determined mainly by the degree to which the animal may be anthropomorphized or assigned human characteristics.

V. IMPACT OF EXPANDED DAMAGES ON VETERINARY PROFESSION

The classification of companion animals as more than property would have a tremendous impact on the veterinary profession. Historically,

130. See id. at 189 (estimating number of existing pet cemeteries).

131. See id. at 195 (discussing themes often found in messages on gravestones for deceased pets). The messages, which include, "We love you [n]ow and [f]orever," "To [o]ur [b]eloved [f]riend" and "My love until we meet again," reflect the profound relationship between humans and their companion animals. See id. at 195-96 (reporting messages found on pet gravestones). Other sentiments in which a pet is referred to as "son," "daughter" or "baby" indicate that pet owners often view their companion animals as esteemed members of the family. See id. at 197 (recounting epitaphs that reflect pet's status as family member).

132. See Bruce Fogle, The Changing Roles of Animals in Western Society: Influences Upon and From the Veterinary Profession, 12 ANTHROZOOS 234, 236 (1999) (exploring special services designed for pets and pet owners).

133. See Stephens & Hill, supra note 101, at 191 (proposing that different species of pets are mourned with varying intensity). The types of bereavement rituals following the loss of a pet can reflect the degree of attachment between humans and animals. See Archer, supra note 106, at 239 (explaining connection between bereavement and attachment). While some species, specifically dogs and cats, are often buried or cremated like humans after death, other species, specifically cold-blooded vertebrates, are disposed of "down a toilet or in a garbage can." See Stephens & Hill, supra note 101, at 191 (illustrating how different species are often disposed of).

134. Elizabeth C. Hirschman, Consumers and Their Animal Companions, 20 J. CONSUMER RES. 616, 624-25 (1994) ("[T]he cold-blooded vertebrates appear to occupy the lowest level of this hierarchy, while birds . . . occupy the next higher rung. Above them come . . . [rodents]. And at the top are the most humanized and anthropomorphized of animals—cats and dogs.").

135. See id. (providing explanation for hierarchy).

136. See Jeannie Perron, The Law of Veterinary Liability and the Human-Animal Bond, 210 J. AM. VETERINARY MED. ASS'N 184, 184-86 (1997) (emphasizing that promotion of human-animal bond may negatively impact veterinary profession). Perron predicts more malpractice or negligence suits against veterinarians or animal hospitals. See id. at 185 (stating future lawsuits are likely because of litigious climate of American society). She believes most of these future suits will include claims for mental suffering and loss of companionship. See id. (predicting compo-
Veterinarians have been exposed to very limited liability because of the law's categorization of companion animals. In general, the market value approach to damage awards has limited veterinarians' potential liability in malpractice cases. Even the landmark cases in this area of the law have protected veterinarians because they have allowed only non-economic damages when the wrongful conduct was willful, intentional, wanton or grossly negligent. Thus, veterinarians have been shielded from liability for any emotional harm they may cause to pet owners as a result of ordinary negligence. Expanded damages in successful veterinary malpractice cases are necessary and justified to permit recovery for emotional injuries.

The existence of the veterinary profession depends on the bond between pet owners and their companion animals. "According to the American Veterinary Medical Association, the human companions of companion animals spent $11.1 billion on health care for their companion animals in 1996." Despite this huge expenditure on animal healthcare, only one percent of companion animals are covered by pet health insurance. Pet owners are willing to pay out-of-pocket veterinary bills because they regard their animals as family members, not as personal

137. See Favre & Borchelt, supra note 8, at 233 (discussing reasons why veterinary malpractice lawsuits are at minimum level).

138. See id. ("One factor which has kept the number of lawsuits at a minimum level in the past is the low amount of damages awarded for the injury to animals.").

139. For further discussion of landmark cases, see supra notes 58-89 and accompanying text.

140. See Harold W. Hannah, Emotional Distress, Punitive Damages, and the Veterinarian—Some Judicial Responses, 216 J. Am. Veterinary Med. Ass'n 25, 25-26 (2000) (recognizing that recovery for emotional distress has only been allowed in cases where claims are based on more than ordinary negligence). Hannah contends that allowing recovery for emotional distress in addition to market value would create "chaos in the . . . companion animal marketplace." Id. at 26.


142. See Francione, supra note 31, at 54 ("The veterinary profession has benefited enormously from an increase in animal ownership and from the fact that animal owners now seek a higher level of care, including preventive treatment, than they did in the past.").

143. Wise, supra note 141, at 46.

144. See Hager, supra note 2, at J2 (noting small amount of pet owners who purchase pet health insurance).
property. As one commentator noted, "[i]f the economic value of companion animals was important . . . as is normally the case with sofas, chairs, and other inanimate property, small animal veterinarians would close their doors, because human companions would never bring their companion animals for treatment." Veterinarians formally recognize the emotional bond between humans and their pets. Thus, veterinarians should be required to compensate pet owners for destroying this bond when they engage in malpractice. Total compensation can only be accomplished through allowance of damages for emotional distress and loss of companionship. Because the veterinary profession reaps substantial benefits from the human-animal bond, it is logical and equitable that veterinarians absorb the total costs when they commit malpractice.

Many veterinarians warn that expansion of damages in veterinary malpractice cases would lead to a drastic increase in the cost of malpractice insurance. They argue that the cost of veterinary care would rise "beyond the means of some pet owners." This fear relies on the assumption that "allowing pet owners to claim loss of companionship and infliction of [emotional] distress encourages unnecessary lawsuits." Moreover, this "litigation fear" is compounded by the fact that many veterinarians believe that damage awards would rise beyond reason because of the speculative and intangible nature of emotional injuries.

145. See generally Francione, supra note 31, at 54 ("It is obvious that humans who have these relationships with animals do not regard them merely as personal property.").
146. Wise, supra note 141, at 47.
147. See Perron, supra note 186, at 184 (noting that veterinary profession has promoted bond between humans and companion animals).
148. See Wise, supra note 141, at 47 (analyzing compensation in veterinary malpractice cases).
149. See id. at 47-48 (justifying pet owners' claims to pain and suffering damages).
150. See Williamson v. Prida, 75 Cal. App. 4th 1417, 1424-25 (Cal. Ct. App. 1999) (discussing standard of care in veterinary malpractice cases). The Williamson court emphasized the majority rule that the standard of care for veterinarians is the same as it is for medical doctors. See id. (discussing standard of care). "In medical malpractice cases, the established rule is that a doctor must exercise the degree of skill or care usual in the profession . . . . We find that this standard applies to veterinary malpractice cases, as well." Id.; see also Joseph H. King, Jr., The Standard of Care for Veterinarians in Medical Malpractice Claims, 58 Tenn. L. Rev. 1, 2-6 (1990) (exploring veterinary malpractice liability and comparing it to medical malpractice claims).
151. See Willing, supra note 1, at 1A (explaining stance of critics who oppose allowing pet owners to recover for loss of companionship and emotional distress).
152. No Need to Change the Status of Pet, supra note 14, at B6.
153. Willing, supra note 1, at 1A.
154. See generally Waisman & Newell, supra note 17, at 65-68 (analyzing arguments against permitting recovery of non-economic damages for injury to or death of companion animal).
The concerns of the veterinary profession are valid. It is clear that changing the classification of companion animals and allowing non-economic damages would have a substantial effect on the profession. Traditionally, low damage awards have kept veterinary malpractice lawsuits at a minimum. Thus, an increase in the value of companion animals would increase the number of lawsuits filed. The critical issue is whether the rise in the number of lawsuits should be considered a negative consequence.

The function of law is to adapt to the ever-changing views of society. Research supports society's recognition of the human-animal bond. Medical and veterinary professionals also support the strength of the human-animal bond. Moreover, companion animals are becoming more like family members in American culture. The law must reflect this valuation and "continue along the evolutionary path toward laws that respect and uphold the value of human-animal relationships." While expanding damages would inevitably lead to a rise in veterinary malpractice lawsuits, this result would merely be a reaction to the law's recognition

155. For a further discussion of the effect of an expansion of damages on the veterinary profession, see infra notes 156-59.
157. See id. (explaining reasons for low damage awards).
158. See Julie Scelfo, Good Dogs, Bad Medicine?: More Pet Owners Sue for Malpractice—And Win, Newsweek, May 21, 2001, at 52 (examining current state of veterinary malpractice lawsuits). Lawsuits will increase as the practice of animal law becomes more widely recognized. See Charles Toutant, Animal Lawyers Do It for Love: Don't Call It a Niche Specialty, But There's Work for Attorneys in the Many-Sided, Evolving Law of Interspecies Relationships, 159 N.J. L.J. 1049, 1049-50 (2000) ("Animal law is a small but growing sideline specialty practiced by a band of New Jersey attorneys who enjoy vindicating the rights of four-legged clients, even though the cases are unlikely to make them rainmakers anytime soon.").
159. Cf. Wise, supra note 141, at 47 (discussing accountability of veterinarians in malpractice cases).
160. Cf. Waisman & Newell, supra note 17, at 73 (noting that law came to recognize that recovery for spousal and parent/child loss of consortium was necessary based on "logic, compassion and modern sensitiv[ies]").
161. For a further discussion of research supporting the human-animal bond, see supra notes 99-135 and accompanying text.
162. See Perron, supra note 136, at 185-86 (warning veterinarians that promotion of human-animal bond may lead to large damages awards in veterinary malpractice cases).
163. For further discussion of evidence supporting proposition that companion animals should be valued as family members, see supra notes 99-135 and accompanying text.
of the strength of the human-animal bond.\textsuperscript{165} Pet owners would have more incentive to bring lawsuits because the damage awards would not be limited to the market value of the animal.\textsuperscript{166} The possibility of increased lawsuits in the veterinary malpractice arena should not stand as a barrier to pet owners who seek to recover for the injury to or loss of their companion animal.\textsuperscript{167}

The number of veterinary malpractice lawsuits that likely would surface and the amount of future damage awards is unpredictable given that so few of these claims have been filed because of companion animals' classification as property.\textsuperscript{168} Indeed, it is possible that the rise in claims will necessitate at least a slight increase in veterinary malpractice insurance premiums.\textsuperscript{169} Whether a rise in veterinarian fees will be necessary is debatable considering that veterinarians "typically pay less than $200 a year for $1 million of [malpractice] coverage."\textsuperscript{170} Because three-fourths of the small animal veterinary practices in the United States gross $300,000 to $500,000 per year, and almost one-quarter gross more than $750,000, it seems shocking that veterinarians would not be able to absorb the increased insurance premiums.\textsuperscript{171}

Moreover, even if veterinarians decided to raise fees, pet owners would have alternatives to pay for the healthcare of their animals.\textsuperscript{172} Pet owners could purchase health insurance for their animals just as they do for their own children and family members.\textsuperscript{173} Currently, there are pet insurance policies that cover everything from unexpected surgeries to routine visits.\textsuperscript{174} In fact, some companies, including AT&T, are beginning to offer veterinary health insurance to their employees as a payroll deduc-

\begin{itemize}
\item \textsuperscript{165} See Kristen Convery, \textit{Lawyer Files Suit Against Xenia, Ohio, Animal Hospital on Behalf of Poodle}, \textit{Dayton Daily News}, July 19, 2001, at A1 (describing one lawyer's fight to change valuation of companion animals in Ohio).
\item \textsuperscript{166} See \textsc{favre} \textsc{& Borchelt}, \textit{supra} note 8, at 233 (predicting rise in number of lawsuits if value of companion animals is enhanced).
\item \textsuperscript{167} Cf. Waisman \& Newell, \textit{supra} note 17, at 66-67 (answering claim that allowance of non-economic damages would lead to multiplicity of lawsuits and protracted litigation).
\item \textsuperscript{168} See \textsc{favre} \textsc{& Borchelt}, \textit{supra} note 8, at 233 (discussing minimal amount of veterinary malpractice lawsuits).
\item \textsuperscript{169} See \textit{No Need to Change the Status of Pet}, \textit{supra} note 14, at B6 (predicting upgrade in status of pets would increase cost of malpractice insurance).
\item \textsuperscript{170} Willing, \textit{supra} note 1, at 1A.
\item \textsuperscript{171} See \textsc{wise}, \textit{supra} note 141, at 46 (noting survey published by American Hospital Association concerning veterinary fees and revenues).
\item \textsuperscript{172} See Mary Bridgman, \textit{Now You Can Buy Insurance for Fido, fluffy, Columbus Dispatch}, July 15, 2001, at 1C (explaining role of veterinary health insurance in United States).
\item \textsuperscript{173} See id. (describing how one pet owner uses his pet insurance policy frequently on his two dogs).
\item \textsuperscript{174} See id. ("The policy covers unexpected surgeries and medical treatments as well as routine veterinary care.").
\end{itemize}
VI. PROPOSALS FOR COURTS AND LEGISLATURES

A. How Courts Can Ensure the Appropriate Valuation of Companion Animals

Courts must recognize that the law's categorization of companion animals as property is archaic and does not reflect society’s values or expectations. Removing the “property” label will give the courts more flexibility to expand the damages recoverable for the injury to or death of a companion animal. The process of expanding recoverable damages will take numerous years because the law is well established in most jurisdictions.

First, courts must recognize that the market value approach does not adequately compensate many companion animal owners whose pets have been injured or killed through wrongful conduct. Courts should focus

175. See id. (noting manner in which AT&T uses pet health insurance as employee benefit).
176. See id. (explaining recent business success of largest provider of veterinary health insurance). This dependence on insurance is necessary as pet owners spend more on veterinary care. See Catherine Trevison, The Cost of Puppy Love, Portland Oregonian, Mar. 29, 2001, at C1 (finding that money spent on veterinary care has grown faster than overall consumer spending). One study reported that the “average cutoff for ‘economic euthanasia’—the point at which owners decide that the cost of treatment has grown too high—is rising, from $576 in 1997 to $795 [in 2000].” Id.
177. Cf. Bridgman, supra note 172, at 1C (offering reasons for growing popularity of pet health insurance).
178. See Waisman & Newell, supra note 17, at 57-62 (summarizing society’s recognition of human-animal bond). Waisman and Newell point out that animals were domesticated as long as 14,000 years ago. See id. at 57 (describing history of human-animal bond). Recognition of the bond has dramatically increased in the last two decades. See id. at 58 (discussing human-animal bond). For example, in March 2000, a motorist threw a dog named Leo to his death in heavy San Jose traffic because of a road rage incident. See id. at 62 (encouraging nationwide support for prosecuting motorist). In response, the Washington Post ran a headline story of the incident and donations amounting to $120,000 were received in order to help find and criminally convict the perpetrator. See id. (reciting story of Leo’s death).
179. Cf. Catz, supra note 56, at 17 (“Animals have been considered property, specifically ‘chattel’, both at English common law and here in America, and therefore owners whose animals have been harmed are limited to recovering only the financial cost of replacing ‘beasts.’ That may be legally changing.”).
180. See Barton & Hill, supra note 24, at 411 (noting that all reported cases have categorized companion animals as personal property).
181. See Squires-Lee, supra note 7, at 1081-82 (making compensation argument for allowing recovery of emotional suffering). Squires-Lee contends it is inconsistent for the tort system not to compensate a pet owner for the emotional pain from the death of a companion animal because it is widely accepted that
on the actual value of companion animals to their owners on a case by case basis. The presumption should be that the market value approach is insufficient to compensate pet owners and that the actual value of the pet to its owner is the most efficient benchmark. Pet owners would continue to have the burden of establishing this value through personal and expert testimony. Calculations should include factors such as pedigree, purchase price, special ability or training and the age and general health of the animal. In addition, the actual value should include a consideration of any emotional connection the owner had with his or her animal and recognition of any sentimental value that was lost. The wrongdoer could present evidence that reflects unfavorably on the value of the pet, including evidence of poor training, lack of pedigree and disproof of any human-animal bond.

Second, courts should recognize separate causes of action for intentional infliction of emotional distress, negligent infliction of emotional distress and loss of companionship. Pet owners would have to present expert testimony proving any emotional damage suffered from the injury to or loss of their pet. This requirement would decrease the risk of frivolous lawsuits. Clearly, wrongdoers could present evidence to disprove that pet owners suffered emotional damage or had an emotional attachment to their animals. After removing the property label from companion animals, courts would have more flexibility to recognize these causes of action.

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182. For further discussion of actual value approach, see supra notes 33-39 and accompanying text.
183. See generally Barton & Hill, supra note 24, at 420 (discussing advantages of actual value approach).
185. See Favre & Borchelt, supra note 8, at 54 (discussing common elements of damages).
187. See Favre & Borchelt, supra note 8, at 54 ("[D]efendant may present his own evidence as to the market value of the animal . . . ").
188. Cf. Waisman & Newell, supra note 17, at 74 (suggesting that legislatures must begin to permit recovery for non-economic damages).
190. Cf. Willing, supra note 1, at 1A (expressing fear of unnecessary lawsuits).
191. Cf. Squires-Lee, supra note 7, at 1095 ("Despite the difficulty of measuring emotional damages . . . once courts acknowledge that the emotional harms wrought by the tortious death of a companion animal must be compensated, the opportunity exists to establish a comprehensive, fair, and practical method for determining the amount of damage awards.")
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B. How Legislatures Can Ensure the Appropriate Valuation of Companion Animals

State legislatures can force a change in this area of the law much faster than the courts. Legislatures should use Tennessee’s T-Bo statute as a model and adopt similar statutes that permit recovery of non-economic damages for the wrongful injury to or death of a companion animal. These statutes could preempt the settled case law and provide remedies for emotional suffering and loss of companionship. Other states should modify Tennessee’s statute to include: (1) an expanded definition of “pet” to include a wider variety of animals, beyond a domesticated dog or cat; (2) increased limits on non-economic damages beyond $4,000; (3) no limits on types of non-economic damages available; (4) recovery of non-economic damages for injury to companion animal that does not result in death; (5) no exclusion of veterinarians in professional malpractice suits; and (6) no geographical limitation on where the statute applies.

The statute should include a broader definition of “pet” because humans can form companion relationships with animals besides dogs and cats, including birds and rabbits. In addition, a $4,000 limit on non-economic damages is extremely low considering the amount of damages awarded in modern courts and because of high litigation costs. Moreo-

192. Cf. Waisman & Newell, supra note 17, at 74 (urging that legislatures act to promote change).
193. See id. (describing impact of Tennessee’s statute).
194. For further discussion of the settled case law, see supra notes 24-43 and accompanying text.
195. See Waisman & Newell, supra note 17, at 70-71 (discussing limitations of Tennessee’s statute). For further discussion of Tennessee’s T-Bo Act, see supra notes 90-98 and accompanying text.
196. See Nienke Endenburg, The Attachment of People to Companion Animals, 8 ANTHROZOOSES 83, 87 (1995) (comparing mean attachment coefficients for different pet species); see also R. Lee Zasloff, Measuring Attachment to Companion Animals: A Dog Is Not a Cat Is Not a Bird, 47 APPLIED ANIMAL BEHAV. SCI. 43, 46-47 (1996) (describing results from study using assessment tool called Comfort from Companion Animals Scale to measure attachment to various species of pets). Results from this study indicate that other measures designed to assess the human-animal bond provide an inaccurate description of the attachment between certain pet species and their owners. See id. at 46 (critiquing human-animal attachment measures). Although dogs and cats typically engage in more activities with their owners, other small pets including birds and rabbits can provide psychological fulfillment. See id. at 46-47 (proposing that many pets, regardless of species, share close bond with their owners). Zasloff explains that “there are commonalities in the emotional experience of having a close and caring relationship with a pet, irrespective of the animal’s species.” Id. at 47.
197. Cf. Lisa Sink, Man Ordered to Pay $7,500 for Poisoning Neighbors’ Dogs, MILWAUKEE J. SENTINEL, Oct. 13, 2000, at 15B (describing jury verdict where man was ordered to pay $7,500 in punitive damages for killing his neighbors’ dogs with antifreeze-soaked meat). The owners were not satisfied with the verdict because they urged the jury to award at least $100,000 in punitive damages. See id. (noting dog owners’ original claims). The dog owners sought the high punitive award
ver, the types of non-economic damage awards available to harmed pet 
owners should be left to the discretion of the courts and not limited by 
statute.198 Furthermore, non-economic damages should be attainable in 
cases where companion animals are purely injured.199 Also, as discussed 
earlier, there is no justification for excluding veterinarians from increased 
damage awards.200 Finally, the geographical limitation is not necessary be-
cause population size cannot accurately predict how individuals within 
communities value their companion animals.201

VII. Conclusion

The law’s categorization of a companion animal as merely property 
has limited damages recoverable for pet owners in cases where their 
animal is wrongfully injured or killed.202 This classification does not ac-
curately reflect societal views relating to the human-animal bond.203 Public 
attitudes and psychological evidence indicate that in our society pets are 
thought of more as family members than as inanimate objects.204

Courts and legislatures must change this characterization of compa-

nion animals, and in turn expand the damages available to pet owners 
whose animals have been injured or killed through intentional, reckless or 
negligent conduct.205 Pet owners should be compensated for any emo-

tively, because a lower court had dismissed their claim of damages for emotional distress. 
See id. (describing dog owners’ dissatisfaction with $7,500 damage award and Wis-
sconsin’s categorization of companion animals).

198. See Waisman & Newell, supra note 17, at 70 (suggesting that Tennessee’s 
statute allow recovery for other reasonable damages).

199. See id. at 71 (arguing that pet owners should not be foreclosed from re-
cover of non-economic damages in cases where injuries to animals do not result 
in death).

200. For further discussion of veterinarian liability, see supra notes 136-77 and 
accompanying text.

201. Cf. Bruce Fogle, INTERRELATIONS BETWEEN PEOPLE AND PETS 29-35 
(1981) (exploring diverse categories of pet ownership and values and attitudes 
that characterize each category).

202. See FRANCIONE, supra note 31, at 55 (recognizing that domestic animals 
are still considered personal property and noting that remedies for negligence 
must be understood in this light).

203. For further discussion of societal views of the human-animal bond, see 
supra notes 99-135 and accompanying text.

204. For further discussion of psychological evidence that supports the 
strength of the human-animal bond, see supra notes 99-135 and accompanying 
text.

Civ. Ct. 1979) (awarding dog owner $700 in damages for shock, mental anguish 
and despondency she suffered due to wrongful destruction and loss of her dog’s 
body). In Corso, a dog owner was forced to have her fifteen-year-old poodle 
euthanized by a veterinarian. See id. at 182-83 (describing factual basis of case). 
The owner agreed with the veterinarian that the dog’s body would be turned over 
to an animal funeral arranger. See id. at 183 (discussing facts). Subsequently, the 
veterinarian failed to turn over the remains of the dog to the funeral arranger. See 
id. (establishing facts). The owner arranged an elaborate funeral for the deceased
tional suffering or loss of companionship that results from wrongful conduct against their companion animal. In addition, punitive damage awards should be mandatory in cases where injury to the animal is willful, wanton or reckless. Such a change in the law will likely take time and will likely vary across jurisdictions. Nevertheless, the gradual expansion of potential damages is justified and necessary to ensure the appropriate legal valuation of companion animals.

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dog that included the purchase of a head stone and involvement of her family. See id. (setting forth facts). At the funeral, a casket was opened, at which time the owner discovered the body of dead cat instead of her dog’s body. See id. (describing factual basis of case). The discovery caused the woman tremendous mental distress and anguish. See id. (describing effect of mistake on plaintiff). The court allowed the woman to recover beyond the market value of the animal because it viewed the dog as more than just personal property. See id. (valuing companion animals as more than property). "This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property." Id. Most courts have not adopted the Corso court’s view on the valuation of companion animals. See Wise, supra note 141, at 93 (arguing that current laws compensate pet owners for economic loss that is not suffered and fails to compensate for emotional losses that are actually suffered).

206. See Page, supra note 14, at 20 (explaining argument of those who favor increased valuations of companion animals).

207. See Waisman & Newell, supra note 17, at 70 (delineating situations in which punitive damages should be awarded for harm to companion animals).