

2711

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. GLICK, COLTON, ROSENTHAL -- Multi-Sponsored by --
M. of A. COOK, DINOWITZ, EDDINGTON, ENGLEBRIGHT, GALEF, GOTTFRIED,
HOOPER, V. LOPEZ, McDONOUGH, MILLMAN, ORTIZ, PHEFFER, SCARBOROUGH,
TOWNS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to establishing a cause of action in tort for the wrongful injury to or death of a companion animal

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general obligations law is amended by adding a new
2 section 11-108 to read as follows:
3 S 11-108. WRONGFUL INJURY OR DEATH OF COMPANION ANIMAL. 1. AS USED IN
4 THIS SECTION:
5 (A) THE TERM "COMPANION ANIMAL" SHALL HAVE THE SAME MEANING AS SUCH
6 TERM IS DEFINED IN SUBDIVISION FIVE OF SECTION THREE HUNDRED FIFTY OF
7 THE AGRICULTURE AND MARKETS LAW; AND
8 (B) THE TERMS "PHYSICAL INJURY" AND "SERIOUS PHYSICAL INJURY" SHALL
9 HAVE THE SAME MEANING AS SUCH TERMS ARE DEFINED IN SUBDIVISIONS NINE AND
10 TEN, RESPECTIVELY, OF SECTION 10.00 OF THE PENAL LAW.
11 2. A PERSON WHO WITH NO JUSTIFIABLE PURPOSE INTENTIONALLY, RECKLESSLY
12 OR NEGLIGENTLY, BY ACT OR OMISSION CAUSES THE DEATH OF A COMPANION
13 ANIMAL SHALL BE LIABLE IN DAMAGES FOR THE FAIR MONETARY VALUE OF THE
14 DECEASED COMPANION ANIMAL TO HIS OR HER OWNER, INCLUDING DAMAGES FOR THE
15 LOSS OF THE REASONABLY EXPECTED SOCIETY, COMPANIONSHIP, COMFORT,
16 PROTECTION AND SERVICES OF THE DECEASED COMPANION ANIMAL TO HIS OR HER
17 OWNER; COURT COSTS AND REASONABLE ATTORNEY'S FEES; AND OTHER REASONABLE
18 DAMAGES RESULTING FROM THE INTENTIONAL, RECKLESS OR NEGLIGENT ACT OR
19 OMISSION.
20 3. A PERSON WHO WITH NO JUSTIFIABLE PURPOSE INTENTIONALLY, RECKLESSLY
21 OR NEGLIGENTLY, BY ACT OR OMISSION CAUSES PHYSICAL INJURY OR SERIOUS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04533-01-9

1 PHYSICAL INJURY TO A COMPANION ANIMAL SHALL BE LIABLE IN DAMAGES FOR THE
2 EXPENSES OF VETERINARY AND OTHER SPECIAL MEDICAL CARE REQUIRED; THE LOSS
3 OF REASONABLY EXPECTED SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION AND
4 SERVICES OF THE INJURED COMPANION ANIMAL TO HIS OR HER OWNER; COURT
5 COSTS AND REASONABLE ATTORNEY'S FEES; AND OTHER REASONABLE DAMAGES
6 RESULTING FROM THE INTENTIONAL, RECKLESS OR NEGLIGENT ACT OR OMISSION.

7 4. A PERSON WHO WITH NO JUSTIFIABLE PURPOSE INTENTIONALLY OR RECKLESS-
8 LY, BY ACT OR OMISSION CAUSES THE SERIOUS PHYSICAL INJURY OR DEATH OF A
9 COMPANION ANIMAL MAY BE LIABLE IN PUNITIVE DAMAGES.

10 5. DAMAGES UNDER THIS SECTION FOR INJURIES SUSTAINED BY A COMPANION
11 ANIMAL'S OWNER SHALL BE RECOVERED IN AN ACTION IN TORT, COMMENCED WITHIN
12 THREE YEARS FROM THE DATE OF INJURY OR DEATH OR FROM THE DATE WHEN THE
13 OWNER KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE
14 KNOWN, OF THE FACTUAL BASIS FOR A CAUSE OF ACTION, SUBJECT TO FURTHER
15 EXTENSION ON ACCOUNT OF ANY SUSPENSION OF THE STATUTE OF LIMITATIONS DUE
16 TO INFANCY, DEATH OR OTHER CAUSE AS PROVIDED BY LAW.

17 6. DAMAGES UNDER THIS SECTION FOR INJURIES SUSTAINED BY A COMPANION
18 ANIMAL SHALL BE RECOVERED IN AN ACTION IN TORT BROUGHT BY A GUARDIAN AD
19 LITEM OR NEXT FRIEND APPOINTED BY THE COURT AND, COMMENCED WITHIN THREE
20 YEARS FROM THE DATE OF INJURY OR FROM THE DATE WHEN THE GUARDIAN AD
21 LITEM OR NEXT FRIEND KNEW, OR IN THE EXERCISE OF REASONABLE DILIGENCE
22 SHOULD HAVE KNOWN, OF THE FACTUAL BASIS FOR A CAUSE OF ACTION, SUBJECT
23 TO FURTHER EXTENSION ON ACCOUNT OF ANY SUSPENSION OF THE STATUTE OF
24 LIMITATIONS DUE TO INFANCY, DEATH OR OTHER CAUSE AS PROVIDED BY LAW.
25 DAMAGES SO RECOVERED SHALL BE PAYABLE INTO A TRUST FOR THE CARE OF THE
26 COMPANION ANIMAL, WHICH TRUST SHALL BE ENFORCEABLE FOR THE LIFE OF THE
27 COMPANION ANIMAL BY A PERSON APPOINTED BY THE COURT. ANY REMAINDER OF
28 TRUST FUNDS EXISTING AT THE DEATH OF THE COMPANION ANIMAL SHALL BE
29 DISTRIBUTED TO A NON-PROFIT ORGANIZATION DEDICATED TO THE PROTECTION OF
30 COMPANION ANIMALS.

31 7. RESTRAINING ORDERS AND OTHER INJUNCTIVE RELIEF FOR THE WRONGFUL
32 INJURY OR KILLING OF A COMPANION ANIMAL MAY BE ISSUED BY A COURT OF
33 COMPETENT JURISDICTION AS APPROPRIATE.

34 S 2. This act shall take effect immediately and shall apply to causes
35 of action under section 11-108 of the general obligations law as added
36 by section one of this act which arise on or after such date.