S T A T E O F N E W Y O R K

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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:

Section 1. The general obligations law is amended by adding a new section 11-108 to read as follows:

S 11-108. WRONGFUL INJURY OR DEATH OF COMPANION ANIMAL. 1. AS USED IN THIS SECTION:

(A) THE TERM "COMPANION ANIMAL" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBDIVISION FIVE OF SECTION THREE HUNDRED FIFTY OF THE AGRICULTURE AND MARKETS LAW; AND

(B) THE TERMS "PHYSICAL INJURY" AND "SERIOUS PHYSICAL INJURY" SHALL HAVE THE SAME MEANING AS SUCH TERMS ARE DEFINED IN SUBDIVISIONS NINE AND TEN, RESPECTIVELY, OF SECTION 10.00 OF THE PENAL LAW.

2. A PERSON WHO WITH NO JUSTIFIABLE PURPOSE INTENTIONALLY, RECKLESSLY OR NEGLIGENTLY, BY ACT OR OMISSION CAUSES THE DEATH OF A COMPANION ANIMAL SHALL BE LIABLE IN DAMAGES FOR THE FAIR MONETARY VALUE OF THE DECEASED COMPANION ANIMAL TO HIS OR HER OWNER, INCLUDING DAMAGES FOR THE LOSS OF THE REASONABLY EXPECTED SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION AND SERVICES OF THE DECEASED COMPANION ANIMAL TO HIS OR HER OWNER; COURT COSTS AND REASONABLE ATTORNEY'S FEES; AND OTHER REASONABLE DAMAGES RESULTING FROM THE INTENTIONAL, RECKLESS OR NEGLIGENT ACT OR OMISSION.

3. A PERSON WHO WITH NO JUSTIFIABLE PURPOSE INTENTIONALLY, RECKLESSLY 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.

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

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

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

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

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

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