



SPONSOR: Sen. Lopez & Rep. Bennett
Sens. Bonini, Hansen, Lawson, Lockman, Paradee,
Pettyjohn, Richardson, Sturgeon, Wilson; Reps.
Briggs King, D. Short, Spiegelman

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 258

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO CIVIL ACTIONS FOR TORTIOUS INJURIES, INCLUDING DEATH, TO LAWFULLY OWNED PETS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3928. Civil actions for tortious injuries, including death, to lawfully owned pets.

4 (a) Definitions. For purposes of this section:

5 (1) "Compensatory damages" means all of the following:

6 a. In the case of the death of a pet, the fair market value of the pet before death and the reasonable and
7 necessary cost of veterinary care.

8 b. In the case of an injury to a pet, the reasonable and necessary cost of veterinary care.

9 (2) "Pet" means all of the following:

10 a. "Pet" means a domesticated animal.

11 b. "Pet" does not include livestock, or an animal possessed or kept in violation of State, county, or
12 municipal law.

13 (3) "Owner" means a person who purchases or is gifted a pet.

14 (b) A person who tortiously causes an injury to, or death of, a pet while acting directly or through an animal under
15 that person's ownership, direction, or control is liable to the owner of the pet for compensatory damages.

16 (c) This subsection may not be construed as a limitation on punitive damages where otherwise appropriate under
17 the law and in light of the facts related to a claim asserted under this section. If a pet is owned by multiple persons, the
18 limitations outlined in this subsection apply.

19 (d) All applicable limitations to liability, defenses, aggravating factors, and principles of law or equity relevant to
20 the facts and circumstances of a particular action or set of actions that would otherwise apply to actions for tortious damage
21 to property, with the exception of prior limitations related to recovery of damages based on the fair market value of
22 property, shall apply to an action brought under this section.

23 (e) A person may bring an action for compensatory damages pursuant to this section in any Court of competent
24 jurisdiction.

25 Section 2. This Act shall be referred to as the Izzy the Cat Act.

SYNOPSIS

This Act abrogates current Delaware law as it presently stands regarding available recovery for damages related to injured or deceased pets that are tortiously injured by a third party or a third party's animal. Under current Delaware law, including cases such as *Naples v. Miller*, 2009 WL 1163504, (Del. Super. Ct. Apr. 30, 2009), there are substantial limitations on a pet owner's ability to recover amounts related to the cost of veterinary bills because animals that are pets in Delaware are treated as property. This Act does not change the status of pets as property but does provide new causes of action to address tortious injury to a pet.

Under current law, an owner would only be permitted to recover the fair market value of a pet, regardless of the amount of veterinary bills or expenses related to care stemming from a tortious injury that is inflicted. This Act provides that limitations on such actions apply as they would otherwise apply to actions under Delaware's common law as it relates to negligence, gross negligence, recklessness, wanton behavior, or intentionally tortious behavior where punitive damages could presently be awarded. This Act would permit an action to be brought by a legal entity that owns an animal that suffers tortious injury, although any limitations presently existing that would apply to a legal entity bringing such a claim would apply. Finally, this Act limits the ability to bring a cause of action under this Act to persons who are lawfully in possession of their pet, pursuant to relevant state, county, or municipal limitations, thus barring actions involving unlawfully possessed animals.

This substitute act differs from the original through removal of the cap on recoverable veterinary bills incurred due to a tortious injury inflicted upon a pet. This act also differs from the original through removal of the ability to recover damages related to emotional trauma suffered by a pet owner in the face of negligent, reckless, wanton, or intentional tortious injury. The other sources of relief outlined in the original act remain unaltered.

This Act shall be referred to as the Izzy the Cat Act, in honor of a cat that was severely injured due to the tortious acts of a third party. Izzy's injuries were found to be compensable during an insurance arbitration, but were limited to the "fair market value" of Izzy, which does not capture either the expense of caring for significant injuries to a pet or the emotional impact to the pet's owner. Izzy's story is like so many other pets who suffer tortious injury with little recourse for the humans that care for them to be truly made whole. This Act will correct these imbalances in Delaware's laws, and serve as a deterrent to the sort of behavior that leads to the injury or death of the pets of Delaware's residents and visitors

Author: Senator Lopez