



SPONSOR: Sen. Lopez & Rep. Bennett
Sens. Lawson, Pettyjohn; Reps. Briggs King, D. Short

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

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:

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

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

(a) Definitions. For purposes of this section:

(1) “Compensatory damages” means all of the following:

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

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

c. In the case of injury to a pet or the death of a pet, compensation related to the emotional trauma and pain and suffering caused to the pet’s owner as a result of the pet’s injury or death.

(2)a. “Pet” means a domesticated animal.

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

(3) “Owner” means a person who purchases or is gifted a pet.

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

(c) The damages awarded under this section may not in any event exceed \$15,000 for the cost of veterinary care, plus \$15,000 for emotional trauma and pain and suffering, plus the fair market value of the pet before death. This subsection may not be construed as a limitation on punitive damages where otherwise appropriate under 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 limitations outlined in this subsection apply.

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

27 (e) The Superior Court shall have exclusive jurisdiction for compensatory damages under this section or punitive
28 damages as may be appropriate under the factual circumstances before the Court.

29 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 and pain and suffering 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 for damages of up to \$15,000 in veterinary bills for injuries to a pet, the fair market value of a deceased pet, and up to \$15,000 for emotional trauma suffered by the pet's owner. Under this Act, the maximum recoverable sum available as compensation for tortious injury to a pet is \$30,000 plus the fair market value of the pet in the event the pet's death is caused by tortious injury.

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 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