

THE MARYLAND ANIMAL LAW ADVOCATE

Opinions, News and Commentary from The Animal Law Section

Jan I. Berlage, *Chair*
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Letter from the Chair

By Jan I. Berlage, Esq.

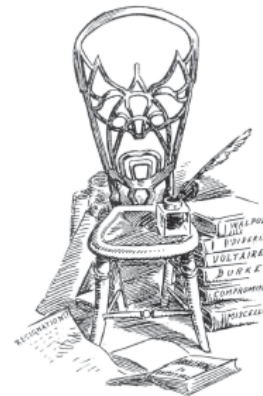
In June, I will be passing the baton of the chair of the MSBA Animal Law Section over to Nathan Herschler. Before I go, I would like to say what an honor and a privilege it has been to serve as your chair. The amount that the Section was able to achieve this year was truly astonishing. In October, 2010, the Section hosted a “kick-off dinner,” which included a panel discussion on the recent evolution of animal law. In March, 2011, it partnered with the L.L.M. Executive Board of the American University, Washington College of Law to host a colloquy with Senator Jamin B. (Jamie) Raskin on proposed animal-related legislation in the Maryland General Assembly. That same month, the Section also presented, in conjunction with the University of Maryland School of Law (particularly its Student Animal Legal Defense Fund organization), a panel discussion on issues related to tort damages and animals. In April, the Section partnered with a myriad of individuals and organizations to host a leading regional symposium on animal law and policy at the University of Baltimore School of Law. The Section also established the Roberta L. Cepko, Esq., Award to recognize outstanding leadership in animal law. While it was doing all this, the Section continued to produce and disseminate an informative newsletter and comment on proposed legislation in the Maryland General Assembly. But the Section is not yet done for the year. At the MSBA Annual Meeting at 8 AM on Thursday June 9, 2011, it will provide an enlightening panel discussion, entitled, “The Continuing Fight Against Animal Cruelty.” The Section will also host a break-out session on starting a practice focused on animal law at the MSBA Solo Day.

The Section’s great success is attributable to its incredibly talented and dedicated members. A special thank you goes out to those members who served on the Section Council and/or Chaired a subcommittee. Those individuals are as

follows: Gary Norman - Past Chair and Co-chair of the Symposium Subcommittee, Nathan Heschler - Vice Chair, Susan Hankin - Secretary, Bob Malone - Treasurer, Stacey Evans - Chair of the Legislative Subcommittee, Alexis Curry Fox - Chair of the Kick-Off Dinner Subcommittee, Joshua Friedman - Co-chair of the Symposium Subcommittee, the Honorable Lenore R. Gelfman, and Alan Nemeth. I would also like to thank my two colleagues, Tracey Collins and Tara Clarke, for all their hard work and assistance throughout this year. Thank you!

Respectfully Submitted,

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State and Federal Legislative Highlights

By Stacey Evans, Esq.

It is an honor to serve as chair of the Maryland State Bar Association's Legislative Subcommittee, especially when both Maryland and Federal legislators introduce exciting legislation impacting animals. During their short ninety-day, 428th session, Maryland legislators advanced animal welfare by introducing and passing bills to protect pets and service animals by authorizing pet protective orders in domestic violence situations, prohibit ownership or possession of animals by defendants in animal abuse cases as a condition of probation, and allow dogs in outdoor dining areas in restaurants. The Maryland Legislature also passed pro-animal bills involving puppy mills, spaying and neutering, and antifreeze products. All of the bills have been signed into law by Governor O'Malley. On the federal front, the new 112th Congressional session began with bills that threaten to remove protection for certain endangered animals, while adding protection for certain other animals.

The Legislative Subcommittee met to discuss and determine the impact of the proposed animal-related bills in Maryland. The Subcommittee voted to support various bills, like the one allowing courts to issue protective orders for pets and service animals, and submitted testimony supporting such bills on behalf of the MSBA Animal Law Section. The subcommittee will continue to monitor the federal bills mentioned in this article (and any newly added bills) during the two year session of the 112th Congress.

State Legislation

Protective Order for Pets: Domestic Violence—Additional Relief—Award of Temporary Possession of Pet (SB 747 & HB 407)

Both chambers introduced and passed bills to allow a court to issue an interim, permanent, or temporary order to protect a pet or service animal in a domestic violence situation. An amended version of these bills passed both chambers and was approved by Governor O'Malley on May 10, 2011. Our MSBA Animal Law Section testimony along with the support of others helped achieve this major victory since, previously, such bills have died every year they have been introduced.

Prohibiting Animal Ownership for Animal Cruelty Violators: Criminal Law—Animal Abuse, Neglect, or Cruelty—Conditions of Probation (SB 115/HB 227)

To address animal abuse in our state, both chambers introduced and passed a bill to authorize a court to limit or prohibit a defendant convicted of violating animal abuse or neglect laws from owning, possessing, or residing with an

animal for an unspecified time, as a condition of probation. The Legislative Subcommittee and Section Council voted to support these bills. Last session, a similar bill that would have allowed a court to limit or prohibit a defendant convicted of violating animal cruelty laws, from owning, possessing, or residing with an animal for a specific time, as a condition of sentencing, never got beyond a first reading in the House Judiciary Committee. This time, on April 12, 2011, the Governor approved an amended version of these bills, which becomes effective on October 1, 2011. The amended bill authorizes a court to prohibit a defendant in an animal abuse case from owning, possessing, or residing with an animal as a condition of probation.

Puppy Mills: Counties—Kennel Licenses—Requirement for Breeders (SB 839/HB 940)

Both chambers introduced legislation intended to determine the extent of puppy mills in Maryland. The bill as passed requires people who annually sell at least 6 litters from 15 or more unspayed female dogs that they either own or have custody of, to obtain a Maryland state kennel license. It also requires counties where these breeders live to collect, maintain, and report information on them to the Maryland Department of Labor, Licensing, and Regulation each year. The Governor approved the Senate version of the bill on May 10, 2011.

Spay and Neuter: Task Force Establishment of a State-wide Spay/Neuter Fund (SB 639/HB 339)

To reduce the number of homeless companion animals being killed in Maryland shelters each year, both chambers introduced and passed a bill that establishes a Task Force to determine the most appropriate way to create a statewide spay/neuter fund in Maryland. The bill requires Task Force members to: collect and review information on the number of spay/neuter programs in Maryland; identify best practices in spay/neuter programs in other states; recommend an appropriate way to fund a spay/neuter fund in MD; and recommend a spay/neuter fund that best meets Maryland's needs. These members must then compile that information in a report submitted to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee by January 1, 2012. Task Force members will include a representative from organizations such as BARCS, the MDSPCA, the Humane Society of the United States, Maryland Votes for Animals, The Maryland Veterinary Medical Association, among others, along with

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two members of the Maryland Senate and two members of the Maryland House of Delegates. The Governor approved the Senate version of the bill on May 10, 2011.

Antifreeze Bill: The Engine Coolant and Antifreeze Bittering Agent Act (HB 897)

Since pets and wildlife tend to love the taste of antifreeze, which is toxic and often fatal to them, the Maryland House of Delegates introduced legislation that requires antifreeze sold and offered in Maryland to contain ingredients that deter animals from drinking it. This would apply to antifreeze sold or offered in Maryland after January 1, 2012. Both chambers passed this bill, and it was approved by the Governor on May 19, 2011.

Dogs in Restaurants: The Dining Out Growth Act (HB 941)

HB 941, which authorizes restaurants with outdoor dining areas to allow dogs in the outdoor dining areas during specified hours, was approved by the Governor on May 19, 2011. This bill allows restaurants to let their patrons eat with their dogs in designated areas outside their restaurant provided the restaurants (1) notify their local health department in writing 30 days before allowing people to dine with their dogs in their respective establishments, and (2) permanently display written notice that they will let dogs dine with patrons. Patrons with dogs must also comply with certain requirements such as keeping the dogs leashed and not leaving them unattended. The bill allows restaurant owners to limit the size and type of dogs allowed, determine when people can eat with their dogs, and choose not to allow a given patron and their dog in their restaurant, or remove a given patron and their dog from their restaurant.

Federal Legislation

Delisting ESA Species

S. 249 and H.R. 509: A Bill to amend the Endangered Species Act of 1973 (ESA)

This bill would remove the gray wolf from ESA protection. As a result, states will be able to manage gray wolf populations without complying with ESA. Also this bill would preempt existing lawsuits to protect gray wolves and would prevent future lawsuits under the ESA to protect gray wolves. Supporters of this bill believe gray wolves are fully recovered and their populations need to be controlled due to the reduced number of elk, bison, and other animals that wolves eat.

H.R.39: Polar Bear Delisting Act.

This bill, like the one above that eliminates wolves from

ESA protection, would remove polar bears from ESA protection. Supporters say polar bears are thriving and their protection under ESA harms offshore oil and gas development in Alaska. Opponents argue that these bears are endangered and need ESA protection.

Conservation

H.R.50: Multinational Species Conservation Funds Reauthorization Act of 2011

This bill would authorize appropriations to carry out the provisions of the African Elephant Conservation Act, the Rhinoceros and Tiger Conservation Act of 1994, and the Asian Elephant Conservation Act of 1997 for the next five years.

H.R.306: Corolla Wild Horses Protection Act

This bill would direct the Department of the Interior to partner with North Carolina to manage free-roaming wild horses in and around the Currituck National Wildlife Refuge.

Dogs, other Pets, and Service Animals

S. 707 and H.R. 835: Puppy Uniform Protection and Safety Act

This legislation would close a loophole in the Animal Welfare Act (Act) by expanding the jurisdiction of the Act to cover breeders who sell at least 50 dogs each year for compensation, from at least one female breeding dog that they own or have an ownership interest in. It would instruct the Secretary of the United States Department of Agriculture to establish requirements for breeders to adequately exercise dogs in a spacious, clean, and properly contained area at facilities they own or operate. Such dogs are not required to be exercised if a licensed veterinarian determines that exercise is detrimental to the dogs.

H.R.198: Veterans Dog Training Therapy Act

The bill would create a pilot program for assessing the effectiveness of addressing post-deployment mental health and post-traumatic stress disorder symptoms via therapeutic dog training and handling for veterans with disabilities. Several successful programs are already in operation, and this bill would expand such programs.

H.R. 57: Disaster Recovery Improvement Act (DRI)

This bill would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to allow the President to provide assistance for rescue, care, shelter, and essential needs to pets and service animals, and their owners, in an emergency. Currently, the Pets Evacuation and Transportation Act of 2006 allows the Federal Emergency Manage-

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ment Agency---not the President---to make financial contributions to help evacuate pets. If DRI passes, then both the President and FEMA could appropriate money to help pets in a disaster.

H.R. 1406: Fairness to Pet Owners Act of 2011.

This bill would allow pet owners to receive a copy of veterinary prescriptions.

Stacey Evans, is an attorney and legislative counsel with the Federal Maritime Commission (FMC) in Washington, D.C. She is chair of the MSBA Animal Law Legislative Subcommittee and is a board member with the Baltimore Animal Rescue and Care Shelter, Inc. (BARCS). Nothing in this article reflects the views of the FMC or BARCS.