

Regulatory Update 2021 Part 3: What We Are Watching In The Pet Products Sector

Relating to the Keeping of Pets

Service Animals and Emotional Support Animals

Along with continuing to consider how to define service animals and emotional support animals, states also are proposing legislation to guard against the misrepresentation of a service or emotional support animal. For example, Massachusetts House Bill 1565 prohibits taking a dog into a place of public accommodation where pets are not permitted, and the dog is wearing a cape, vest, special leash, or other form of identification that states or implies that the dog is a service dog entitled to be present, even if the individual makes no affirmative statements.

California Assembly Bill 468 requires a person or business that sells or provides a dog as an emotional support dog to provide an explicit disclosure form to the potential receiver of the dog stating that the dog does not have the special training required of a guide, signal, or service dog and is not entitled to the rights and privileges accorded by law to a guide, signal, or service dog.

Pets For Vets

We are tracking a number of efforts by both the federal and state governments to provide service dogs to military veterans. The “Puppies Assisting Wounded Servicemembers Act of 2021” (PAWS Act) (United States House Bill 1022 and related Senate Bill 951) was introduced into Congress early this year and is currently in committee. The bill directs the Secretary of Veterans Affairs to carry out a grant program under which the Secretary shall make grants to private entities for the provision of service dogs to eligible veterans with post-traumatic stress disorder, and for other purposes.

The “PAWS for Veterans Therapy Act” (United States House Bill 1448 and related Senate Bill 613) implements a program and a policy related to service dog therapy for veterans. Specifically, the bill requires the Department of Veterans Affairs (VA) to implement a five-year pilot program to provide canine training to eligible veterans diagnosed with post-traumatic stress disorder as an element of a complementary and integrative health program. Eligible veterans are those who are enrolled in the VA health care system and have been recommended for participation by a qualified mental health care provider or clinical team. The bill was received in the Senate in May and referred to the Committee on Veterans' Affairs.

Another emerging legislative trend helps to make it easier and less costly for veterans to adopt pets. For example, Maryland recently approved the "Pets for Vets Act of 2021" requiring an animal control facility operated by a county or municipality to waive the adoption fee for a dog or cat for a veteran who presents a valid driver's license or identification card that includes a notation of veteran status.

Pets and Divorce

While previously treated as property in divorce settlements, legislative efforts are trending in the direction of the best interests of pets instead. Alaska, California and Illinois are among states that have enacted laws giving judges leeway to consider the best interests of pets, not unlike what they do for children. On June 23 Maine also signed into law a new subsection to the state divorce statute requiring the court to consider the well-being of companion animals in the disposition of property upon the dissolution of marriages. A bill is pending in New York state to take the same approach. New York Senate Bill 4248 would require the court to consider the best interest of a companion animal when awarding possession in a divorce or separation proceeding. The bill passed the Assembly in April after being substituted for another bill and was returned to the Senate for further consideration. Although it is not tied to divorce settlements, a bill pending in Massachusetts (Massachusetts House Bill 1670) would change the legal status of "pets" from personal property to "companion animals."

Non-Economic Damages

For the past few years we have seen a few states introduce bills that would allow a pet owner to recover damages for the loss of reasonably expected society, companionship and comfort and protection or other services distinct from direct economic loss where a pet is injured or killed because of willful, reckless or even negligent action. In Massachusetts, Senate Bill 1131 would provide for damages for the loss of comfort, protection, services of the deceased animal to its owner; reasonable afterlife expenses of the deceased animal; court costs and attorney's fees; and other reasonable damages, with a cap on non-economic damages of \$30,000.00.

Relatedly, New York Senate Bill 6027 (identical to Assembly Bill 5779) currently is pending, and would establish a tort cause of action for the wrongful injury or death of a companion animal and provide for compensatory and punitive damages and injunctive relief. APPA is still involved with the Non Economic Damages coalition ("NED Coalition") led by the Animal Health Institute ("AHI") to provide a voice of the animal care community explaining the negative impact to pets of allowing emotion-based damages in pet cases.

Tethering

States continue to proliferate bills that define what is considered unlawful restraint of a dog, including the length of time a dog is tied up, during what hours, the type of restraint and what access to shelter a dog must have. As of 2021, 23 states and the District of Columbia have passed laws on dog tethering/chaining. While the laws themselves vary from state to state, they do have features in common. Some state laws allow a dog to be tethered for "a reasonable period of time," others restrict the number of hours a dog can be tethered within a 24-hour period. Other laws regulate the type and weight of the tether.

Notably, Texas passed legislation this year creating a criminal offense for an owner to leave a dog outside and unattended by use of a restraint with certain exceptions, but it was vetoed by the Governor.