

RESOLUTION 01-03-2006

DIGEST

Animal Protection: Civil Injunction Act

Adds Code of Civil Procedure section 535 to provide for an injunction to prohibit animal cruelty.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of the California Bar Associations recommends that legislation be sponsored to add section 535 to the Code of Civil Procedure to read as follows:

1 535

2 Section 1 – Name of Act

3 This Act shall be known as the “Animal Protection Civil Injunction Act.”

4 Section 2 -- Declaration of Purpose

5 The Legislature recognizes that mistreatment of animals is a serious societal
6 problem. California has a variety of laws aimed at protecting animals from mistreatment.

7 However, due to lack of resources and other reasons, many of these laws often are not
8 enforced. The purpose of this Act shall be to strengthen enforcement of existing laws by
9 providing a civil right of action to any party seeking to enjoin an act or acts prohibited by
10 any California law protecting animals. No monetary relief may be afforded to any plaintiff
11 under this Act, except as specifically provided in sections 6(f), 7(a)(3) or 8. The remedies
12 set forth in this Act shall be cumulative to any other remedies available at law.

13 Section 3 – Definitions

14 For purposes of this Act, the following terms shall have the following meanings:

15 (a) A “party” is any individual, organization, association of individuals or
16 organizations, corporation, body politic, agency, municipality, county, town or other
17 government entity.

18 (b) The term “animal” shall be defined as set forth in California Penal Code, § 599b.

19 Section 4 – Prohibited Conduct

20 It shall be a violation of this Act for any party to engage in any conduct that is
21 prohibited by any California law that relates to the treatment of animals, or is directly or
22 indirectly designed to protect animals (hereinafter "Acts of Animal Mistreatment").

23 Section 5 – Enforcement

24 (a) Any party may bring a claim or cause of action under this Act to enjoin any Act
25 or Acts of Animal Mistreatment by filing a civil action, whether or not the party has a
26 possessory or ownership interest in the animal or animals that are the subject of the action, if
27 both of the following requirements are met:

28 (1) The action is commenced more than 60 days after the date that the party
29 commencing the suit has given notice of the alleged violation that is the subject of the action
30 to an appropriate authority in the jurisdiction in which the violation is alleged to have
31 occurred; and

32 (2) No appropriate authority has commenced or is diligently pursuing an action
33 against the alleged violator.

34 (b) Any claim or cause of action brought under this Act may be joined with other
35 claims, or may be brought as an individual claim in an action.

36 Section 6 - Special Motion to Strike

37 (a) A cause of action against a party arising under this Act shall be subject to a
38 special motion to strike, unless the court determines that the plaintiff has established that
39 there is a probability that the plaintiff will prevail on the claim.

40 (b) The special motion to strike may be filed within 60 days of the service of the
41 complaint or, in the court's discretion, at any later time upon terms the court deems proper.
42 The motion shall be noticed for hearing not more than 30 days after service of the motion,
43 unless the docket conditions of the court require a later hearing.

44 (c) All discovery proceedings in the action shall be stayed upon the filing of a
45 noticed motion made pursuant to this section. The stay of discovery shall remain in effect
46 until notice of entry of the order ruling on the motion. The court, on noticed motion and for
47 good cause shown, may order that specified discovery be conducted notwithstanding this
48 subdivision.

49 (d) In ruling on the special motion to strike, the court shall consider the pleadings,
50 and supporting and opposing declarations and evidence establishing the facts upon which
51 the liability or defense is based.

52 (e) If the court determines that the plaintiff has established a probability that he or
53 she will prevail on the claim, neither that determination nor the fact of that determination
54 shall be admissible in evidence at any later stage of the case, and no burden of proof or
55 degree of proof otherwise applicable shall be affected by that determination.

56 (f) A prevailing defendant on a special motion to strike under this Act shall be
57 entitled to recover his or her reasonable attorney's fees and costs. If the court finds that a
58 special motion to strike is "frivolous," as defined in Code of Civil Procedure, § 128.5(B)(2),
59 or is solely intended to cause unnecessary delay, the court shall award costs and reasonable
60 attorney's fees to the plaintiff prevailing on the motion.

61 (g) An order granting or denying a special motion to strike shall be appealable under
62 Code of Civil Procedure, § 904.1.

63 (h) The filing of a special motion to strike shall not affect, limit, or stay any
64 temporary restraining order, preliminary injunction, or other injunctive relief that has or may
65 be entered by the court.

66 (i) This section shall not apply to any enforcement action brought in the name of the
67 people of the State of California by the Attorney General, district attorney, or city attorney,
68 acting as a public prosecutor.

69 Section 7 – Remedies

70 (a) Temporary Restraining Order / Preliminary Injunction

71 (1) Upon the filing of a complaint in the county in which the prohibited conduct has
72 allegedly occurred, a temporary restraining order or preliminary injunction may be granted
73 in accordance with the procedures set forth in Code of Civil Procedure §§ 526 and 527.

74 (2) Upon a finding by the court that the allegations of a complaint warrant such
75 relief, the temporary restraining order or preliminary injunction may include an order
76 providing:

77 A. Plaintiff or plaintiff's agents, or another willing party designated by the court,
78 shall take custody of some or all animals who are the subject of the act or acts alleged in the
79 complaint; and

80 B. If custody of all animals is not granted to plaintiff or plaintiff's agents, or other
81 willing party appointed by the court, then duly licensed veterinarians, humane officers or
82 other party appointed by the court may be granted ongoing and complete access to all areas
83 of defendant's premises to evaluate, monitor, and treat the animal or animals who are the
84 subject of the complaint. Said veterinarians, humane officers or other appointed parties shall
85 also be allowed to remove animals in need of veterinary treatment that cannot be reasonably
86 administered on defendant's premises; and

87 C. Any other order that the Court deems necessary and proper under the
88 circumstances

89 (3) When a complaint supports a custody order, a court may require the defendant to
90 post a bond in an amount sufficient to pay for the costs of necessary veterinary care and
91 daily maintenance of the animal or animals at issue through the duration of the action.
92 Where such bond has been posted, a plaintiff, or other party appointed by the court, in
93 custody of an animal or animals pursuant to this Act, may apply to the court for use of these
94 funds to pay for necessary veterinary care and daily maintenance of the animal or animals at
95 issue.

96 (4) When a complaint supports a custody order, the court may grant the plaintiff, or
97 other willing party appointed by the court, the power to authorize any veterinary treatment
98 deemed necessary by a veterinarian licensed in this State. A plaintiff or other appointed
99 party in that circumstance may authorize any veterinarian licensed in this State to euthanize
100 the animal at issue if euthanasia is deemed necessary and in the best interest of the animal,
101 in the opinion of two independent veterinarians licensed in this State.

102 (5) Whenever a court makes a custody order to the plaintiff or other court-appointed
103 party, the court may, in its discretion, require the plaintiff to post a bond not exceeding
104 \$2000 to be deposited with the court until the final resolution of the action. The amount of
105 the bond shall be payable to a defendant who obtains a judgment in that defendant's favor if
106 the court ultimately determines the defendant has not violated the underlying animal
107 protection law. In all other instances, the plaintiff shall recover the bond at the conclusion
108 of the action.

109 (b) Permanent Injunction

110 A permanent injunction may be granted based on written findings of fact, after
111 presentation of evidence to the court. If the court determines that there would be a
112 substantial risk of animal mistreatment if the animal or animals in question were returned to
113 the defendant, or there would be no reasonable way to monitor the defendant's compliance
114 with any remedial conditions imposed to eliminate any alleged mistreatment, the court may,
115 as part of the permanent injunction, terminate the defendant's rights of possession and
116 ownership in the animal or animals and transfer the rights of ownership and possession to
117 plaintiff, plaintiff's appropriate designee, or any other willing party that the court deems
118 proper.

119 (c) Penalties

120 In addition to the remedies set forth above, the court may in its discretion require a
121 defendant to pay a civil penalty in an amount up to one thousand dollars (\$1,000) for each
122 violation, and up to one thousand dollars (\$1,000) for each day the violation continues. The
123 civil penalty shall be payable to a special government fund to which state or local agencies
124 may apply for financing of companion animal sterilization programs, humane education
125 programs, and investigations and/or prosecutions of animal cruelty.

126 Section 8 – Costs and Fees
127 A prevailing plaintiff may be entitled to recover reasonable attorney’s fees and costs
128 pursuant to Code of Civil Procedure § 1021.5. If the court finds that any suit brought under
129 this Act is “frivolous,” as defined in Code of Civil Procedure § 128.5(B)(2), a prevailing
130 defendant may be entitled to recover reasonable attorney's fees and costs.

(Proposed new language underlined, language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Current California law recognizes a strong public policy favoring humane treatment of animals. While many state law provisions relate to animal welfare, these laws often are not enforced. Hence, there is inadequate bite to existing laws designed to protect animals.

This Resolution: provides for a civil right of action to be brought by any party (as defined in the Act) to seek injunctive relief against violations of current law with respect to the treatment of animals.

The Problem: Current animal protection laws, in practice, do not afford animals the protections contemplated therein. For example, studies conducted in at least four states conclude that animal cruelty is a severely under-prosecuted crime, with estimates suggesting that typically less than 3% of complaints result in prosecutions. Causes include competing priorities for scarce public resources, high standard of proof and under-availability of trained investigatory personnel. In addition, private parties have lacked standing to sue on behalf of animals who are suffering treatment and/or conditions that are illegal under state law. This Resolution addresses the problem pragmatically, utilizing existing law, and shifting much of the burden of bringing such actions to interested parties. A recent North Carolina suit brought under a similar statute resulted in the rescue and rehoming of several hundred dogs who had languished in horrific conditions. Remedies in this Act are not exclusive.

While proper use of these provisions can dramatically improve the lot of unlawfully treated animals, this Resolution contains adequate safeguards against misuse of its provisions. It requires 60-days pre-filing notice to an appropriate authority. In addition, a special motion to strike is available to defendants, requiring that plaintiffs establish a probability of success on the merits at an early stage in the proceedings (with costs and attorneys fees to successful defendants). Further, if a court ultimately determines that a plaintiff’s case was frivolous, defendant may also recover reasonable attorney’s fees and costs. Finally, this Resolution does not broaden the coverage of current law, as it adopts existing legal requirements concerning the treatment of animals.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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