

# Law and Veterinary Medicine

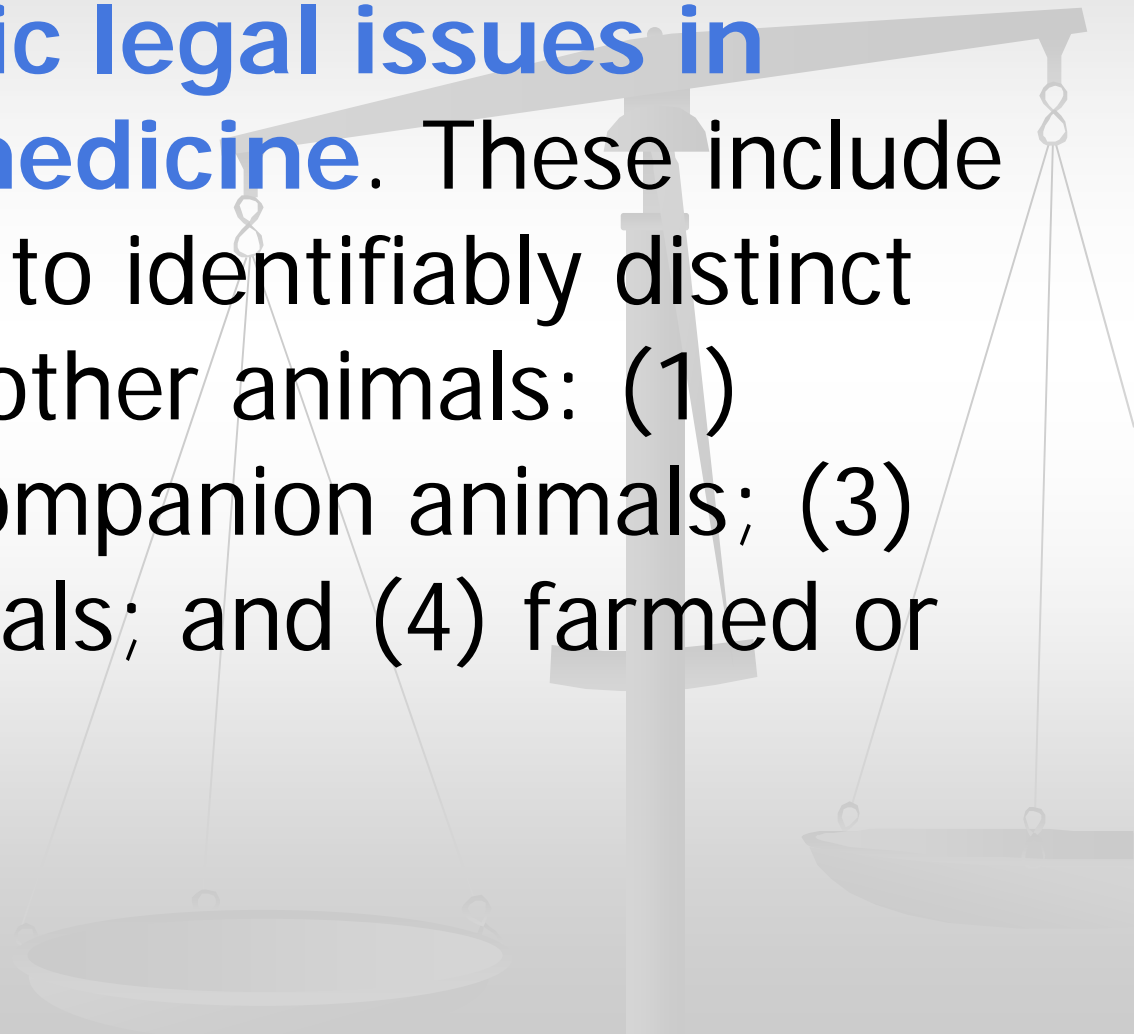


Second Hour: Companion Animals, Cruelty Issues  
December 6, 2006

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# Objectives in Course

- **Identify basic legal issues in veterinary medicine.** These include issues related to identifiably distinct categories of other animals: (1) wildlife; (2) companion animals; (3) research animals; and (4) farmed or food animals.



# Course Objectives



- Read and understand JAVMA or other profession-based articles that deal with legal issues ...
- Identify and explain basic legal issues arising out of today's veterinary medicine, including issues in veterinary education, the veterinary profession, and public health

# Are companion animals the villain?

## Market Revolution: Recognizing Animals Intrinsic Values

14th Annual Animal Law Conference

Lewis & Clark Law School Portland, Oregon

<http://www.lclark.edu/org/saldf/conference.html>

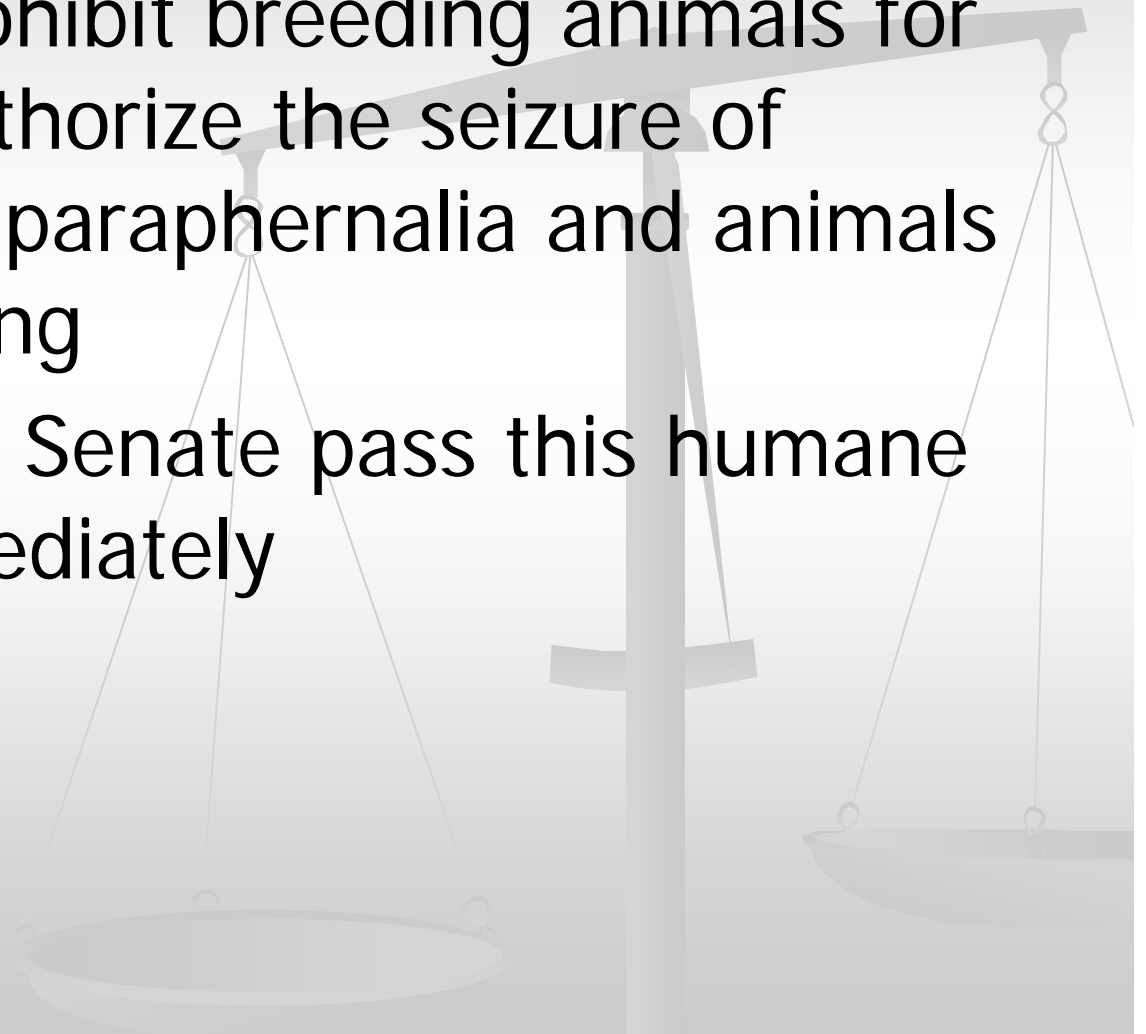


# Continuing political turmoil on companion animals

- Email rec'd 12/5/2006 from HSUS
- **Urge the Massachusetts Senate to Crack Down on Animal Fighting**
- The Massachusetts House has just passed H. 1765, which contains provisions to crack down on animal fighting!

# Continuing political turmoil

- H. 1765 will prohibit breeding animals for fighting and authorize the seizure of animal fighting paraphernalia and animals used for breeding
- Urgent that the Senate pass this humane legislation immediately

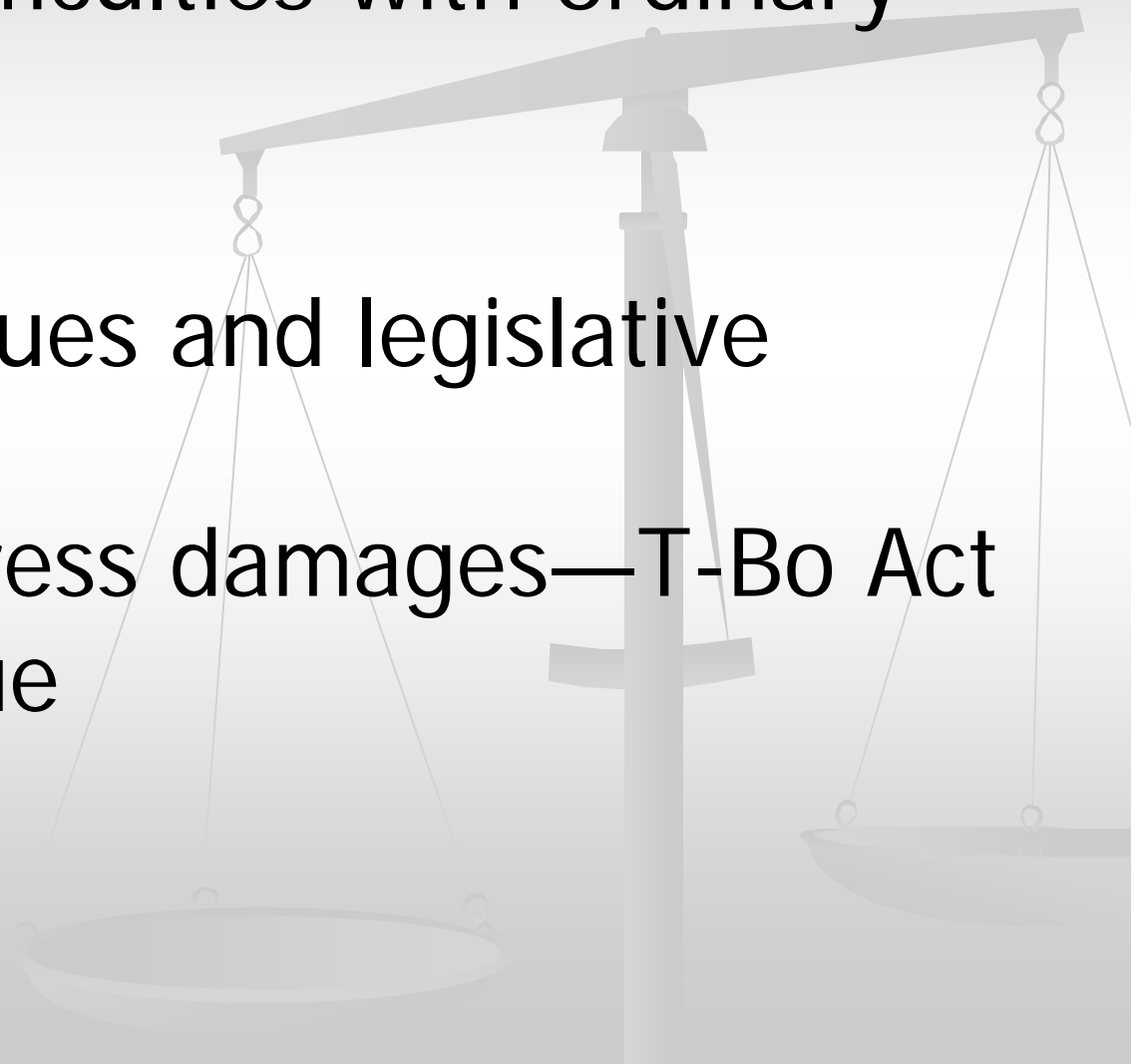


# General profile


- Law on companion animals is well developed
- Reflected in “black letter law”, such as T-Bo Act and the 2002 Illinois Act
- MA Regs 7.01 Code of Professional Conduct—**provisions** that are, without explicitly saying so, **geared toward humans’ relationships with our companion animals**
- PVME also reflects this special relationship—e.g., in its provisions regarding VCPRs
- **Bottom line** — **this area is the paradigm for animal protection**

# Complicating factors

- Prosecution difficulties with ordinary crimes
- Hoarding
- Anti-cruelty issues and legislative developments
- Emotional distress damages—T-Bo Act  
“guardian” issue



# Specific issues for veterinarians

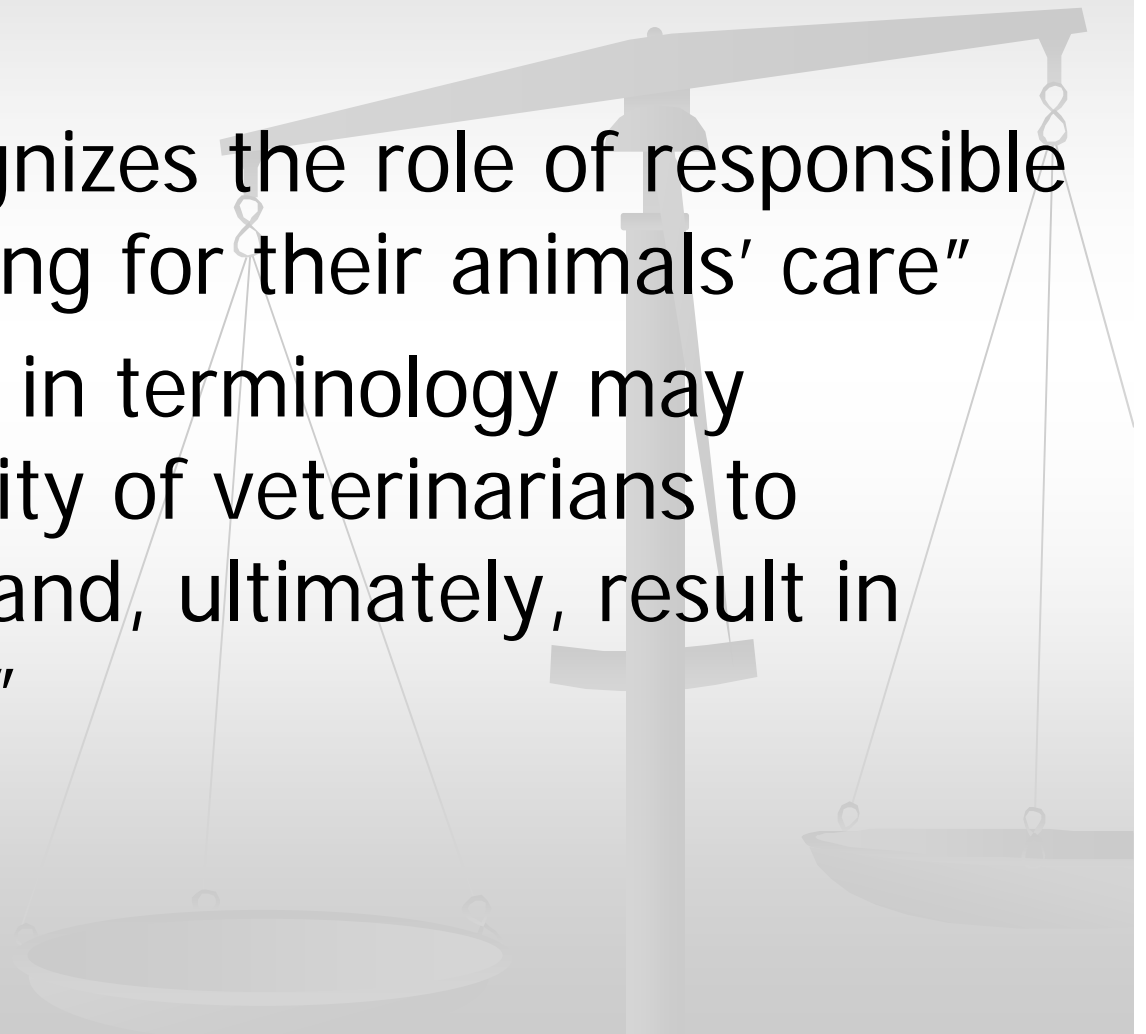
- Reporting requirements on cruelty—state by state affair
  - Effectiveness of cruelty laws (ALDF report)
  - Best: Illinois, Maine, Michigan, Oregon, California
  - Worst: Hawaii, Idaho, Kentucky, Utah, North Dakota
  - Massachusetts listed in “top tier”
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# “Guardian”

- Issue: changing “owner” to “guardian”
- AVMA (July 1, 2003) opposes this change
- Reasoning: No evidence ‘guardianship’ enhances relationship between owner and pet
- Note what is emphasized in the discussion:
- “The American Veterinary Medical Association promotes the optimal health and well-being of animals.” →

# “Guardian”

- The companion animal paradigm is driving this →
- “The AVMA recognizes the role of responsible owners in providing for their animals’ care”
- ... “such changes in terminology may decrease the ability of veterinarians to provide services and, ultimately, result in animal suffering.”

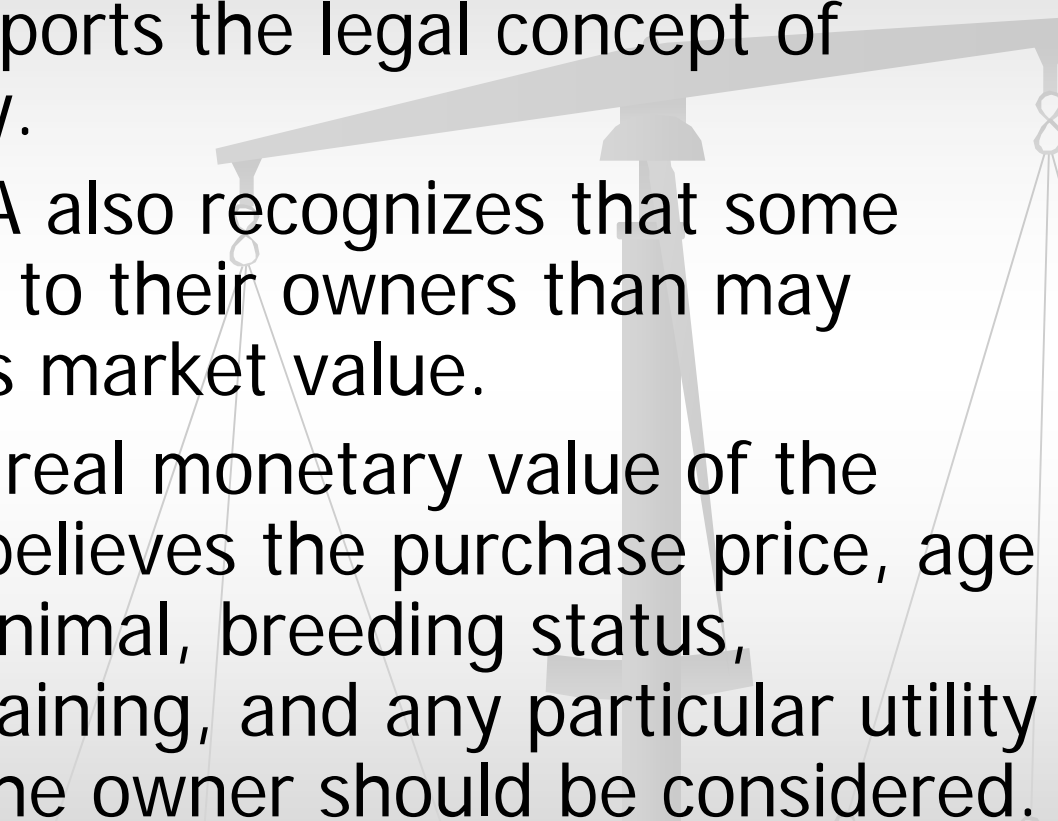


# Emotional distress damages

- The profession's organization trying to influence legislation: JAVMA News July 1, 2003
- **Several factors at play when determining compensatory value of animals, AVMA says**
- "Profession must be proactive in developing alternatives to market value as a basis for compensation"



# Text of AVMA pronouncement

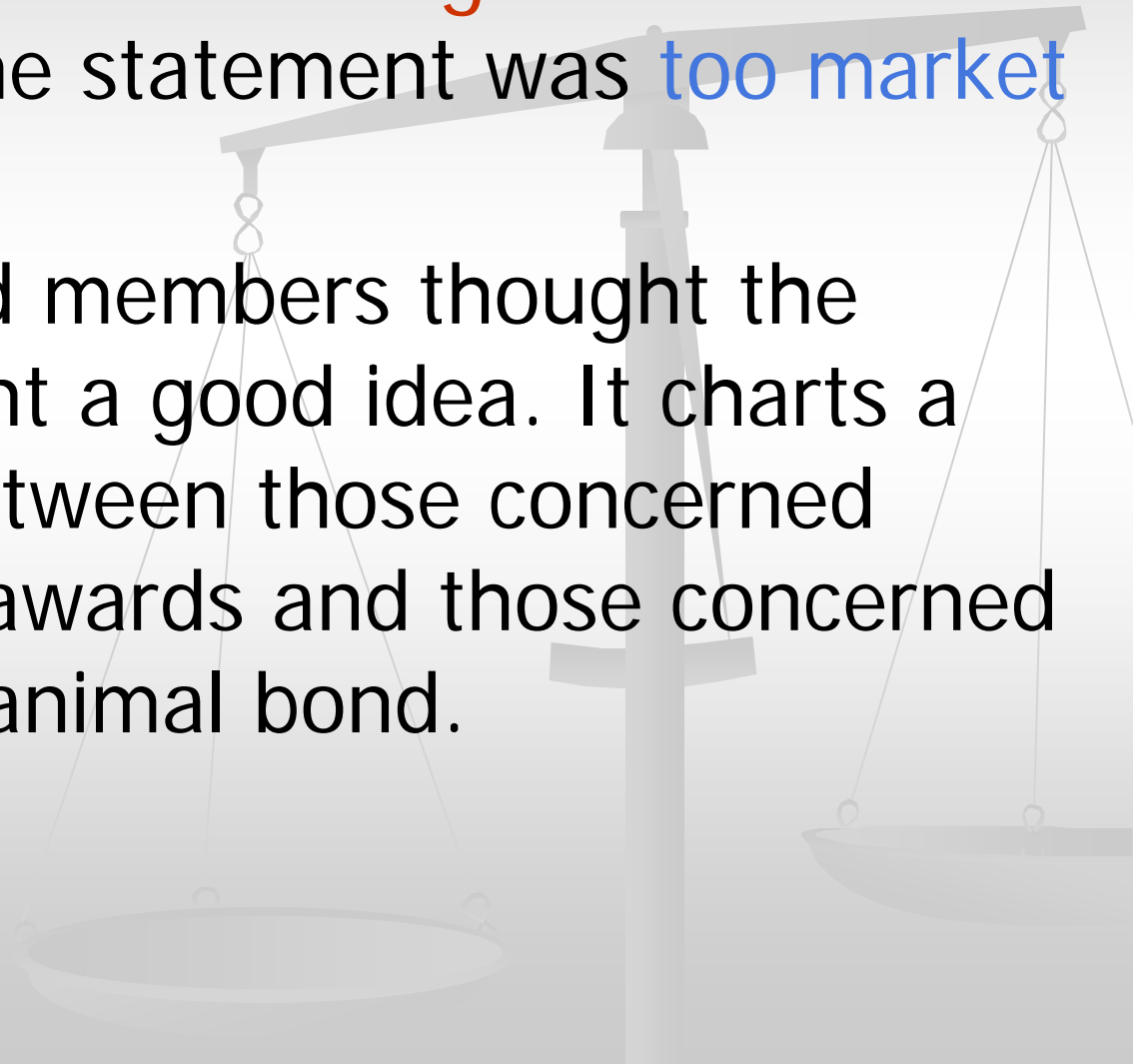
- The American Veterinary Medical Association recognizes and supports the legal concept of animals as property.
  - However, the AVMA also recognizes that some animals have value to their owners that may exceed the animal's market value.
  - In determining the real monetary value of the animal, the AVMA believes the purchase price, age and health of the animal, breeding status, pedigree, special training, and any particular utility the animal has to the owner should be considered.
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# AVMA's description of internal comments

- During deliberations, **AVMA President Joe M. Howell** wondered whether the statement focused too much on economic factors while not adequately accounting for the relationship between people and animals. "Does this statement water down the human-animal bond?" Dr. Howell asked.

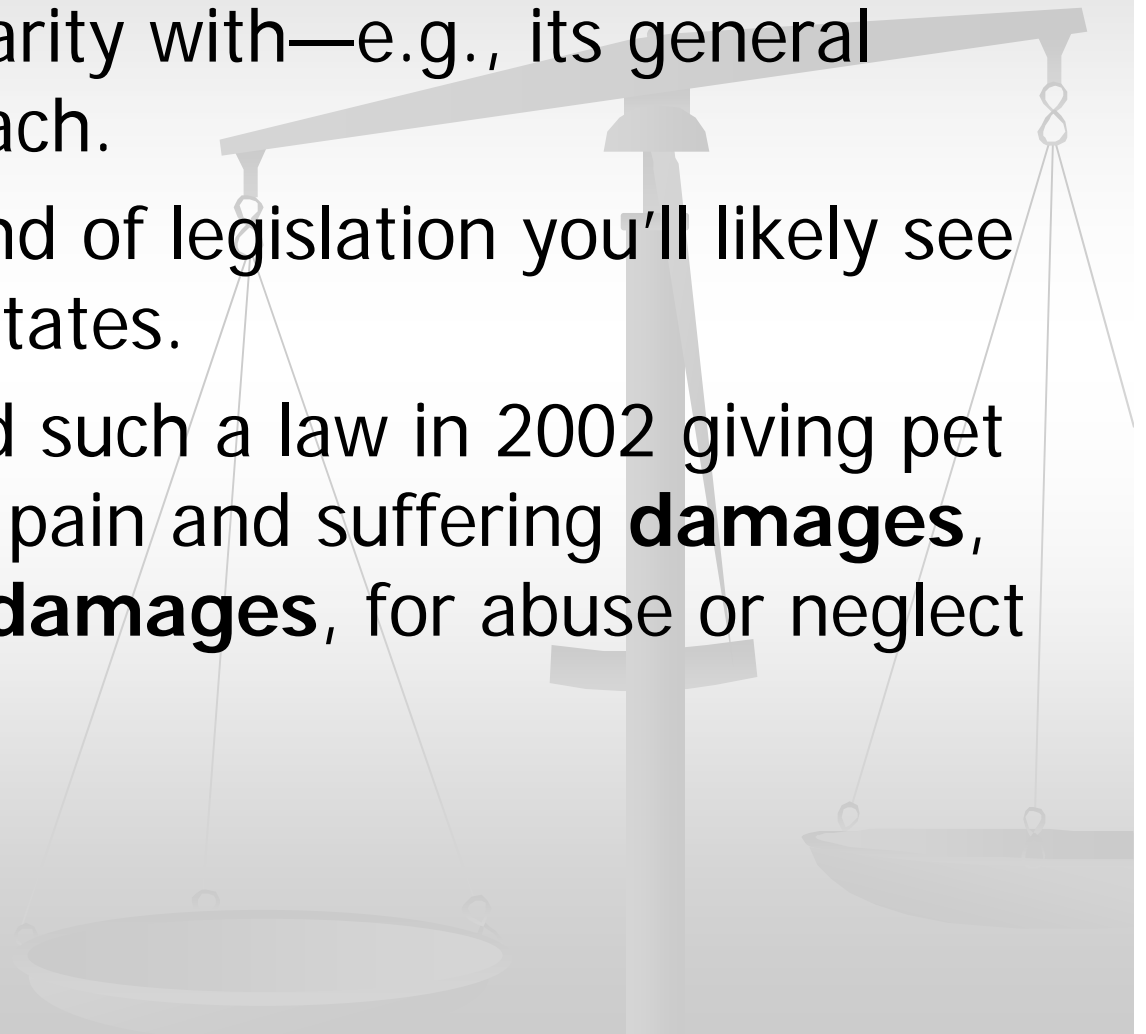
# AVMA's description of internal comments

- District VI Representative **Roger K. Mahr** agreed, saying the statement was **too market focused**.
- But several board members thought the position statement a good idea. It charts a careful course between those concerned about excessive awards and those concerned with the human-animal bond.



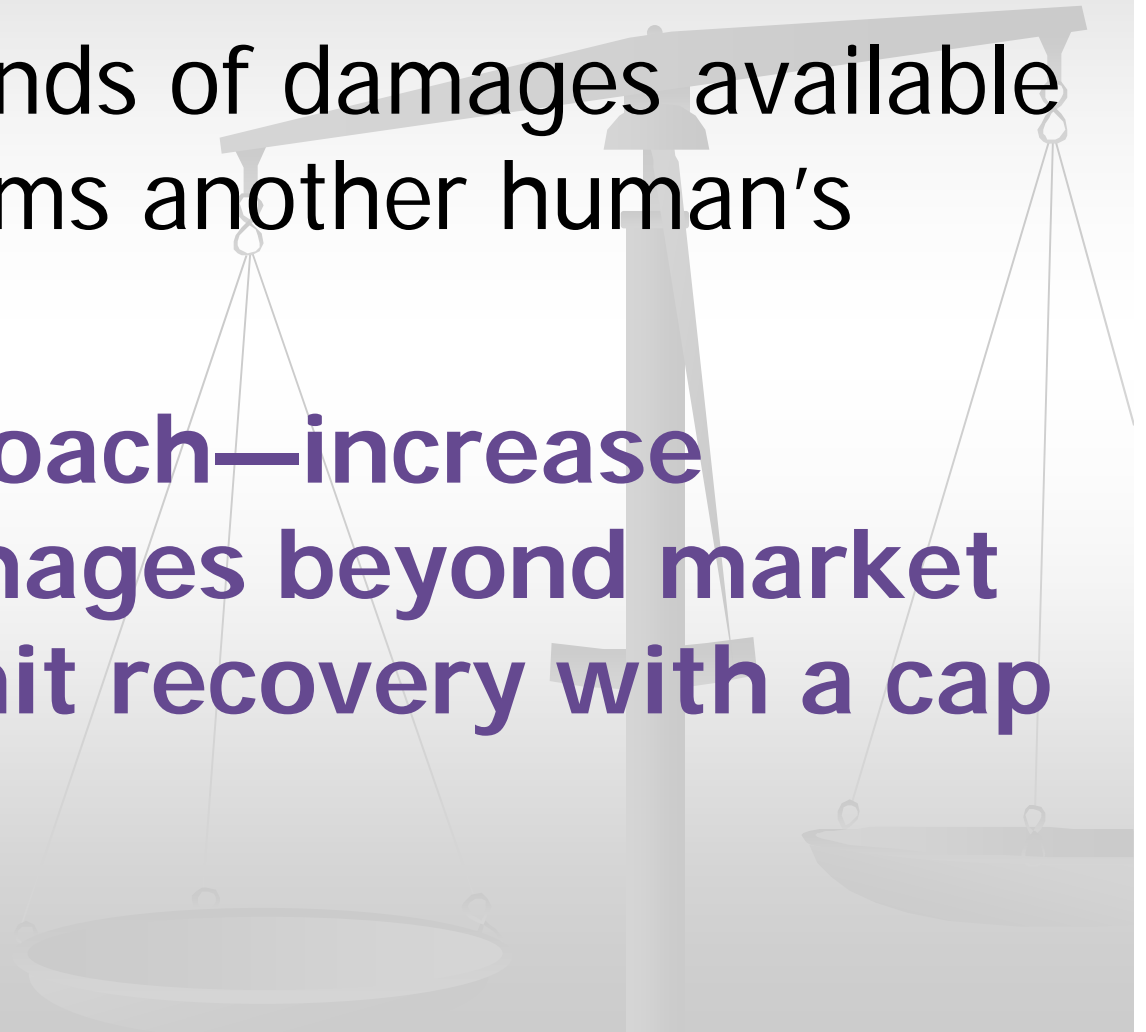
# T-Bo Act

- This is the one piece of legislation I want you to have general familiarity with—e.g., its general purpose and approach.
- Why? This is the kind of legislation you'll likely see proposed in many states.
- **Illinois** also passed such a law in 2002 giving pet owners the right to pain and suffering **damages**, as well as punitive **damages**, for abuse or neglect to their **pets**.



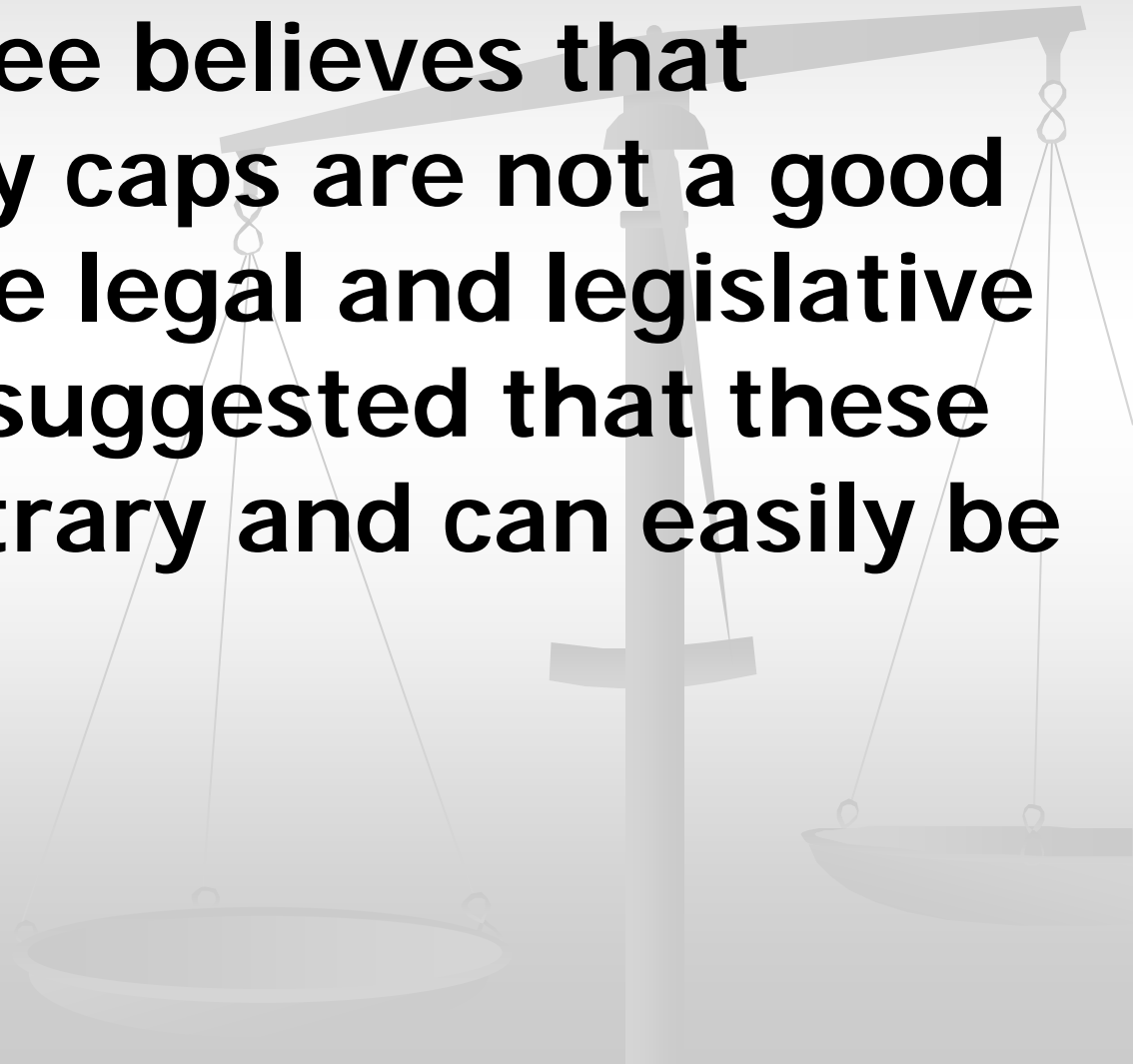
# Tennessee's T-Bo statute

- Enacted in May 2000
- Specifies the kinds of damages available if someone harms another human's animal
- **General Approach—increase available damages beyond market value, but limit recovery with a cap (upper limit)**



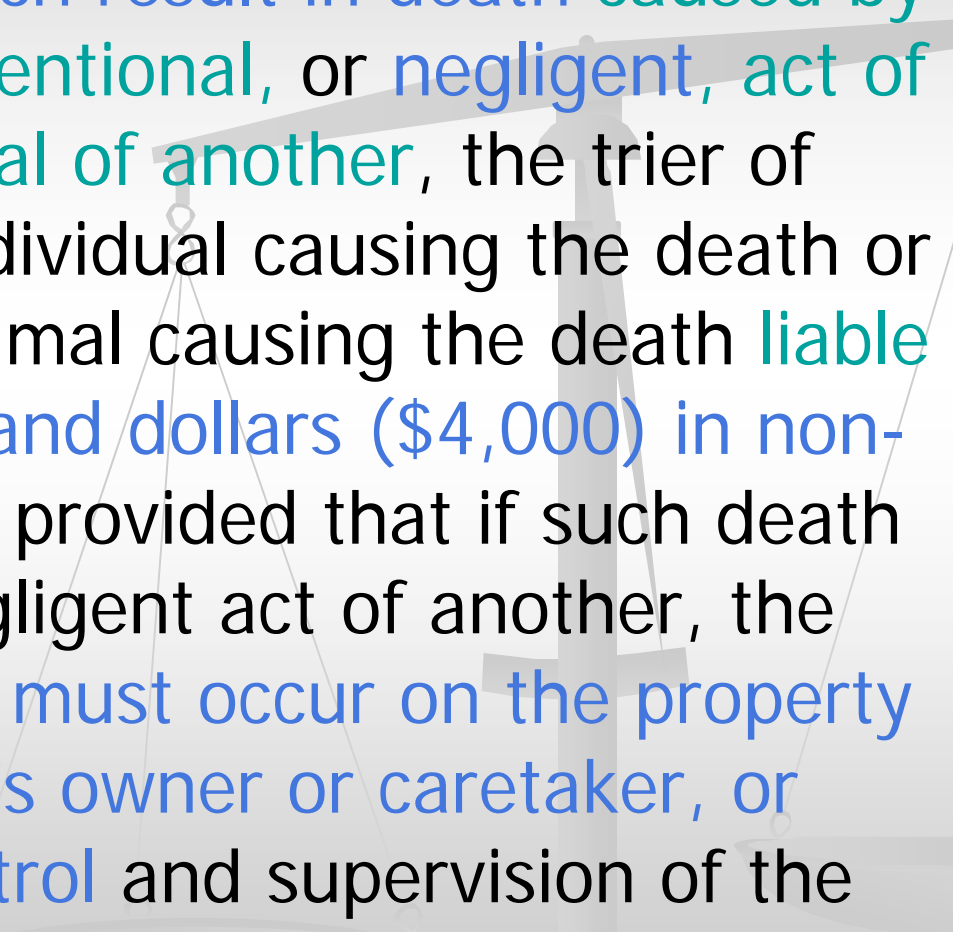
# Tennessee's T-Bo statute

- AVMA's problem with this approach:  
**"the committee believes that compensatory caps are not a good solution, since legal and legislative history have suggested that these caps are arbitrary and can easily be raised."**



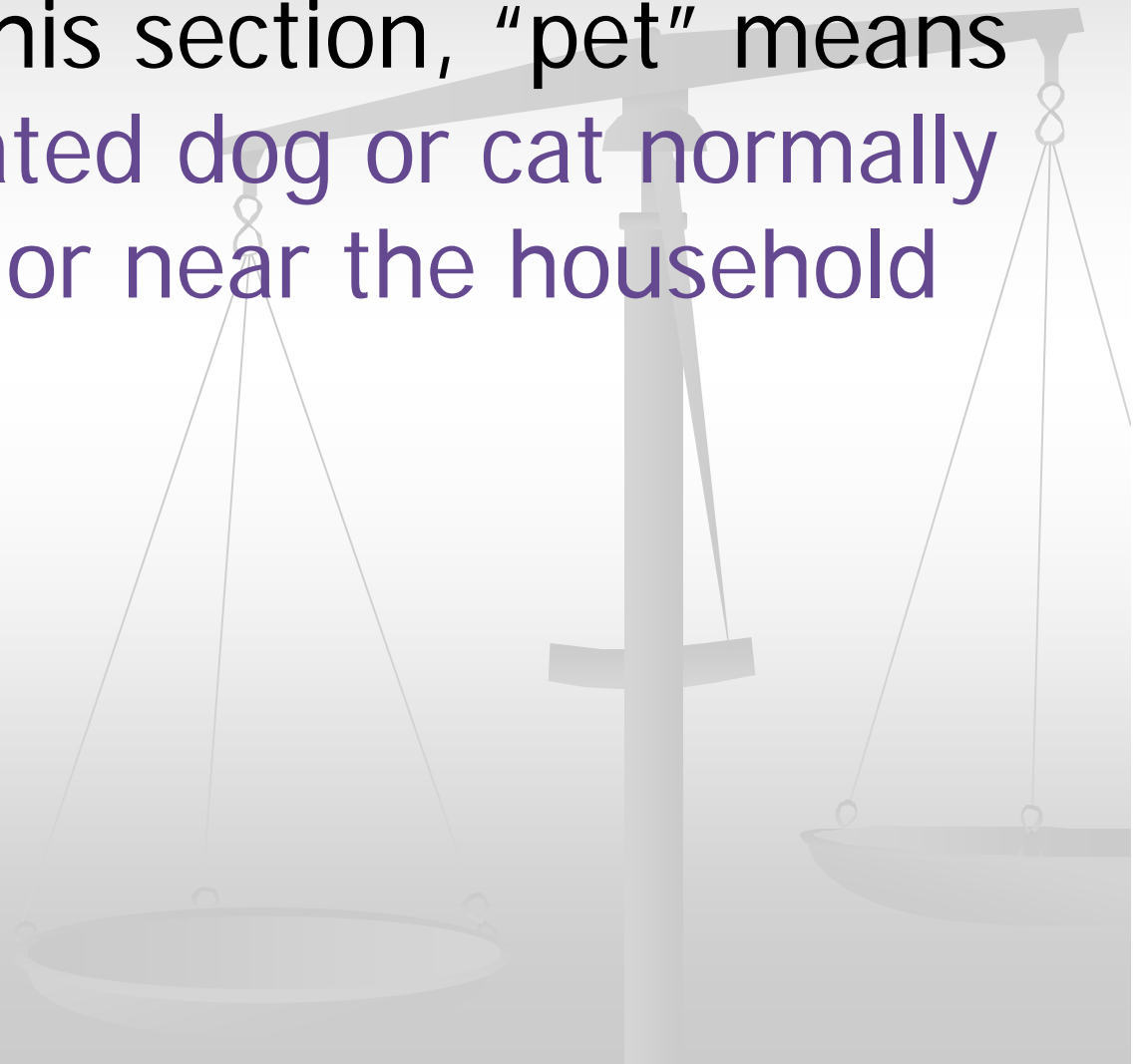
# Statutory provisions

Section 44-17-4 (a) **If a person's pet is killed or sustains injuries which result in death caused by the unlawful and intentional, or negligent, act of another or the animal of another**, the trier of fact may find the individual causing the death or the owner of the animal causing the death **liable for up to four thousand dollars (\$4,000) in non-economic damages**; provided that if such death is caused by the negligent act of another, the death or **fatal injury must occur on the property of the deceased pet's owner or caretaker, or while under the control** and supervision of the deceased pet's owner or caretaker.

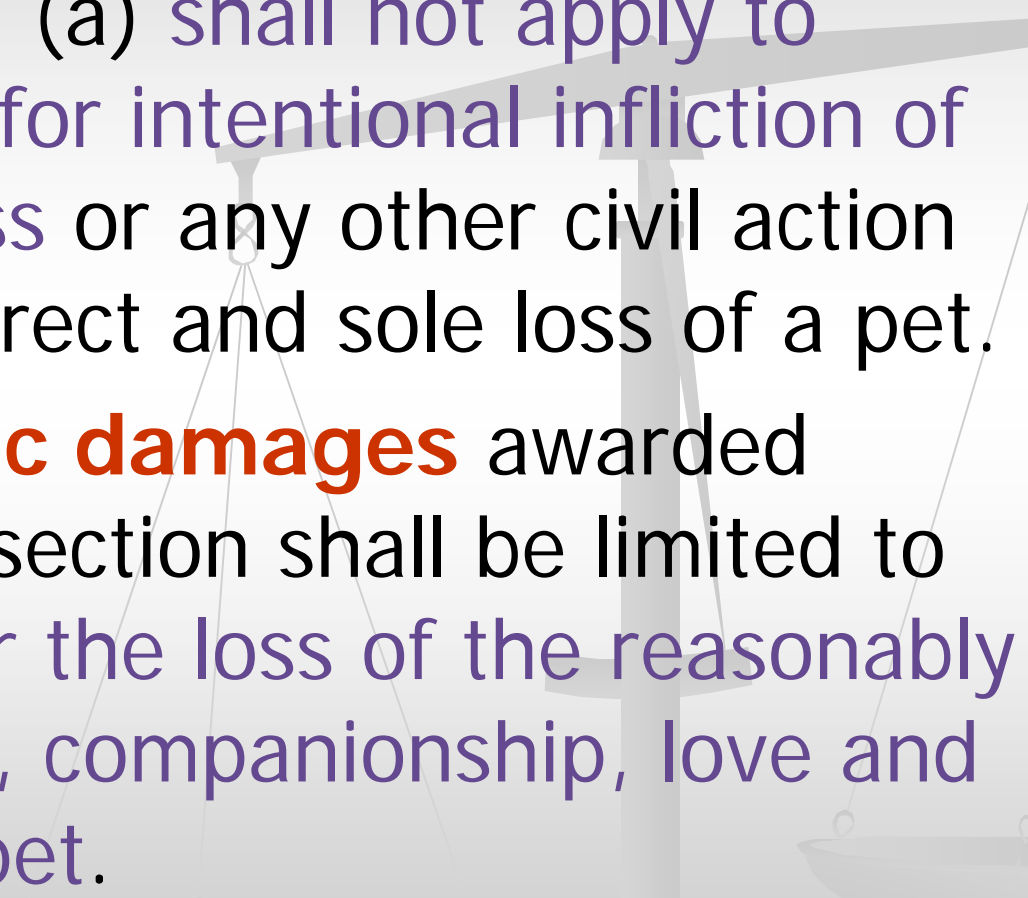


# Who/What Is covered?

(b) As used in this section, “pet” means any domesticated dog or cat normally maintained in or near the household of its owner;

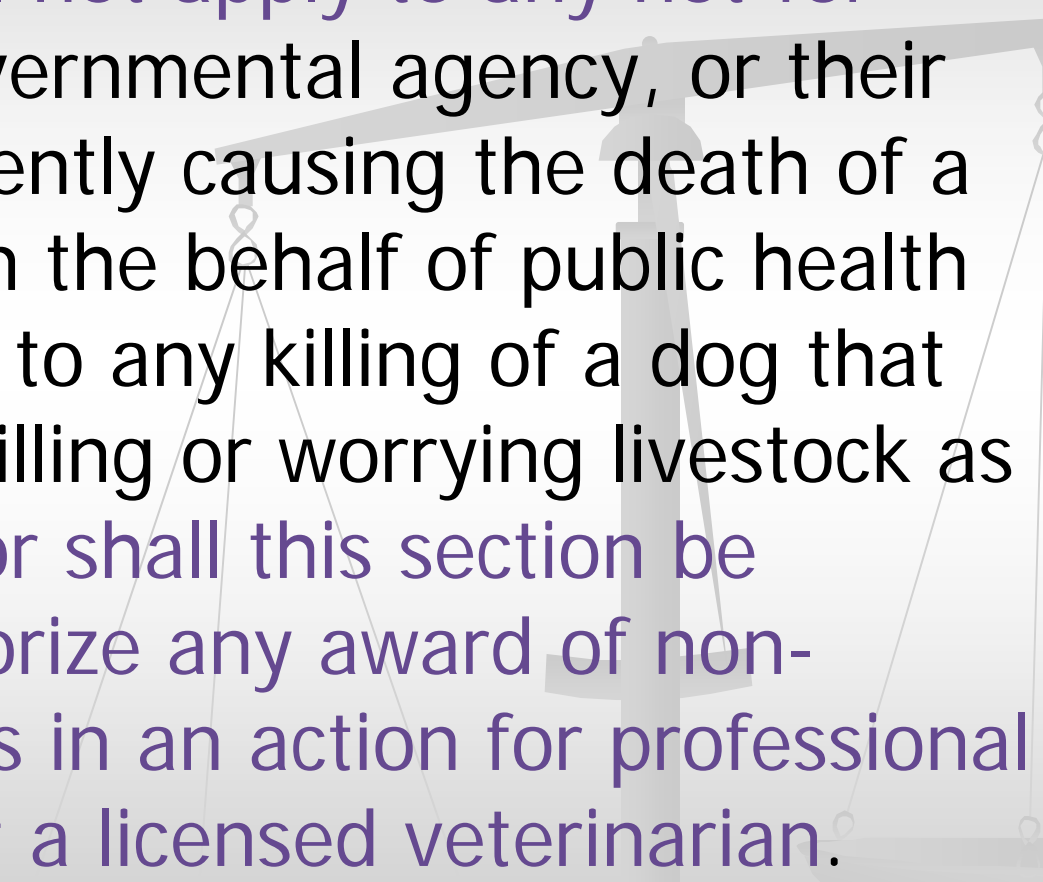


# Statutory provisions

- (c) **Limits for non-economic damages** set out in subsection (a) shall not apply to causes of action for intentional infliction of emotional distress or any other civil action other than the direct and sole loss of a pet.
- (d) **Non-economic damages** awarded pursuant to this section shall be limited to compensation for the loss of the reasonably expected society, companionship, love and affection of the pet.
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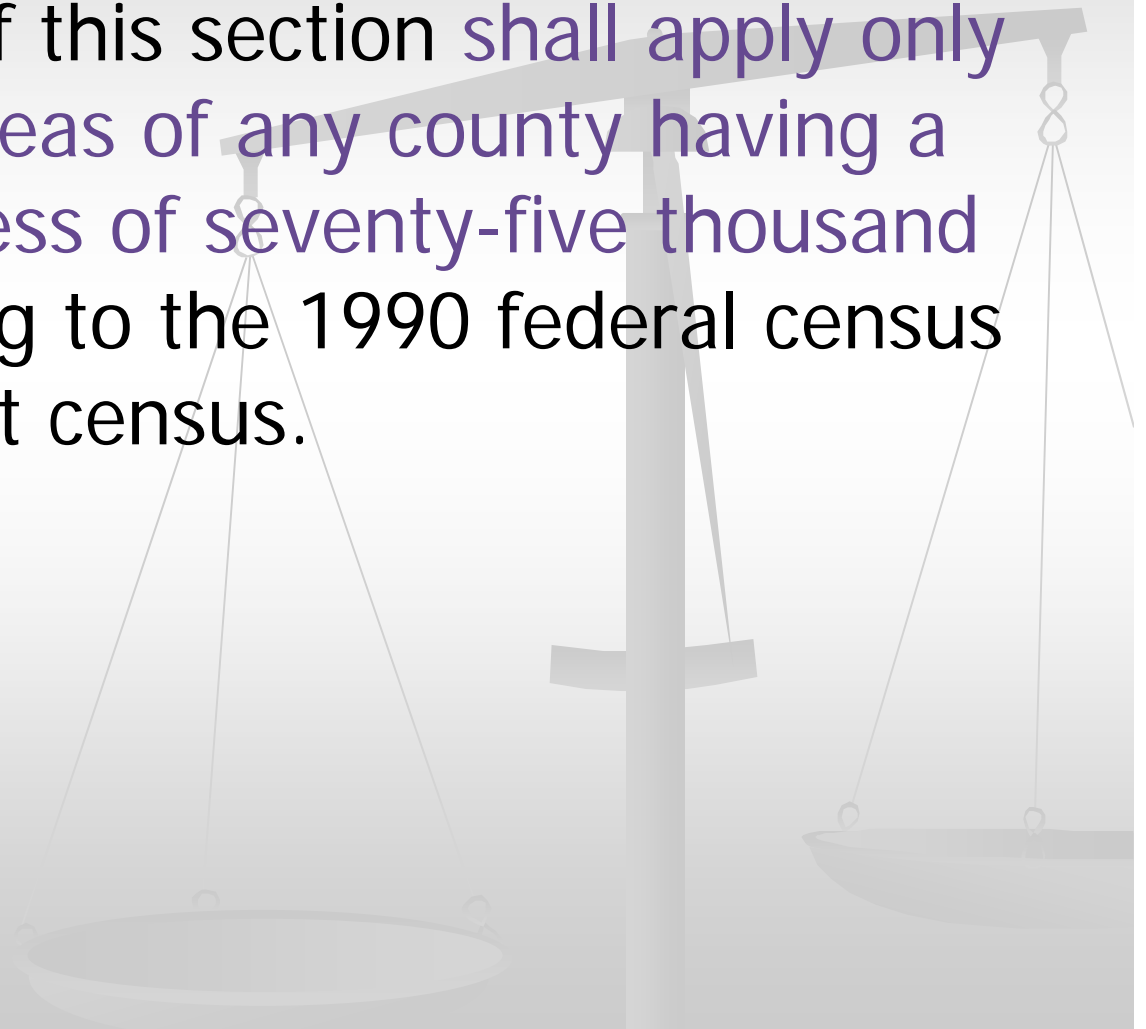
# Limits

(e) This section shall not apply to any not-for-profit entity or governmental agency, or their employees, negligently causing the death of a pet while acting on the behalf of public health or animal welfare; to any killing of a dog that has been or was killing or worrying livestock as in § 44-17-203; nor shall this section be construed to authorize any award of non-economic damages in an action for professional negligence against a licensed veterinarian.



# Limits

(f) The provisions of this section shall apply only in incorporated areas of any county having a population in excess of seventy-five thousand (75,000) according to the 1990 federal census or any subsequent census.



# Reading, responding to legislative proposals

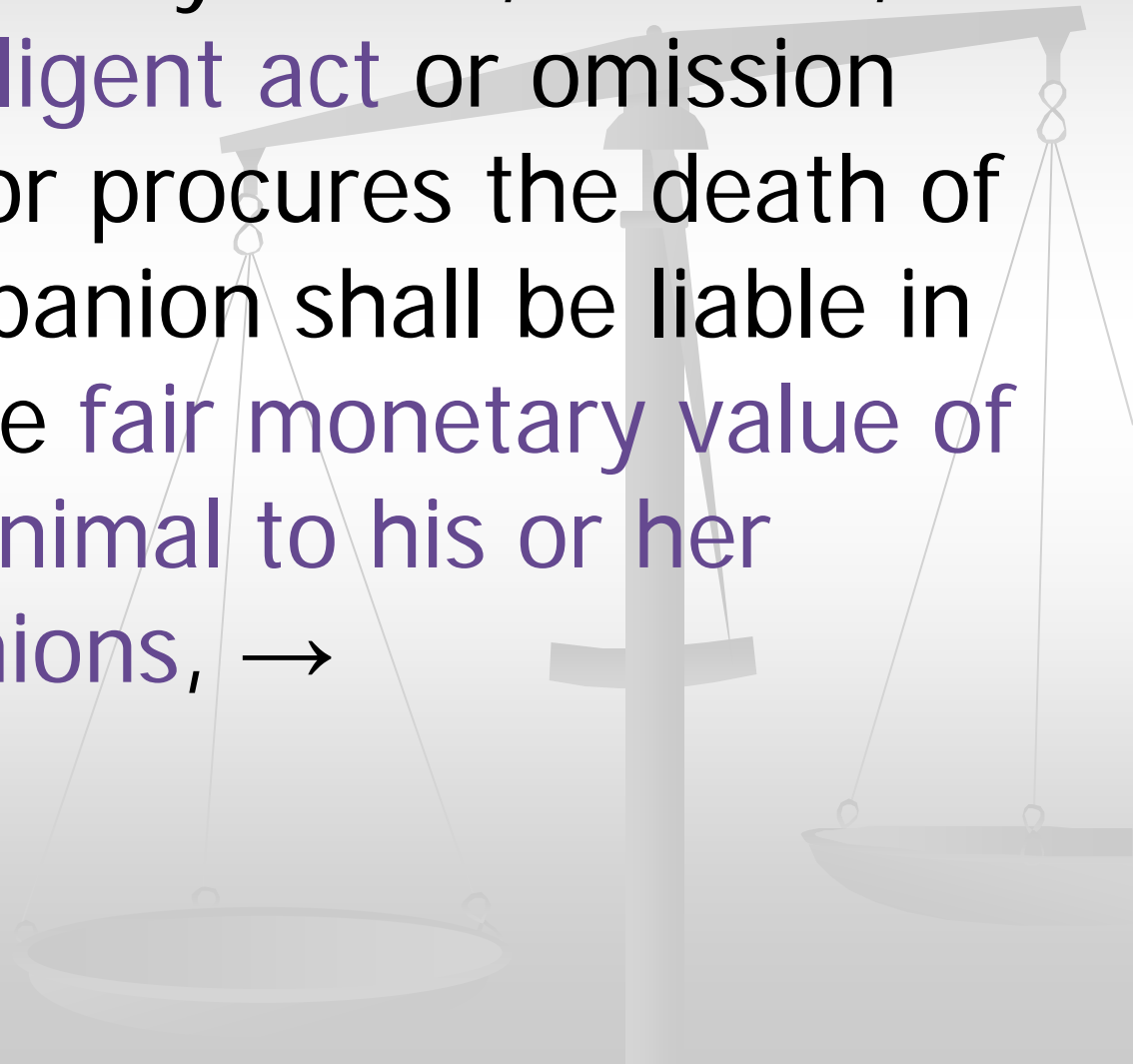
- Massachusetts Senate Bill 932 *"AN ACT RELATIVE TO THE WRONGFUL INJURY OR DEATH OF ANIMAL-COMPANIONS"*
- Proposed in 2003, but **NOT LAW AT THIS POINT**
- Deals with compensation for wrongful injury of "animal-companions"

# Language issue

- Section 85B. (a) As used in this section, **the term “animal-companion” shall mean a dog, cat or any warm-blooded, domesticated non-human animal dependent on one or more human persons** for food, shelter, veterinary care, or companionship.
- **It does not include animals that are the subjects of legal, humane farming practices; legal, humane biomedical research practices; or activities regulated by the federal Animal Welfare Act.**

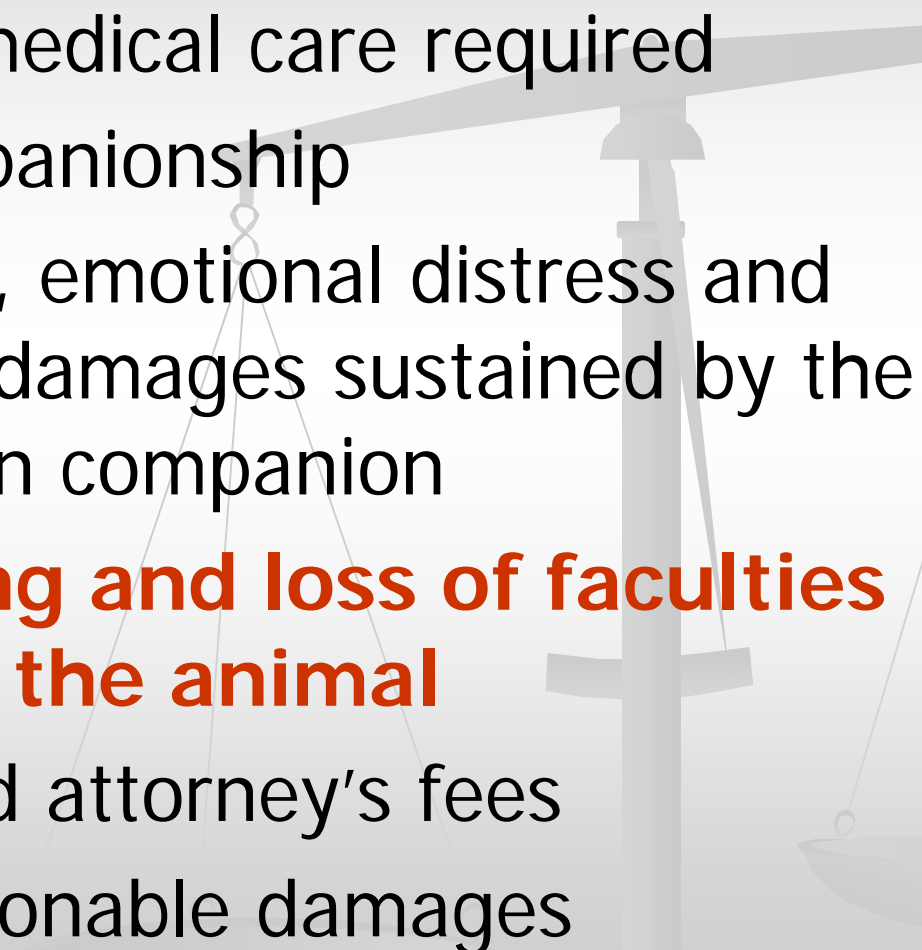
# Proposed damages

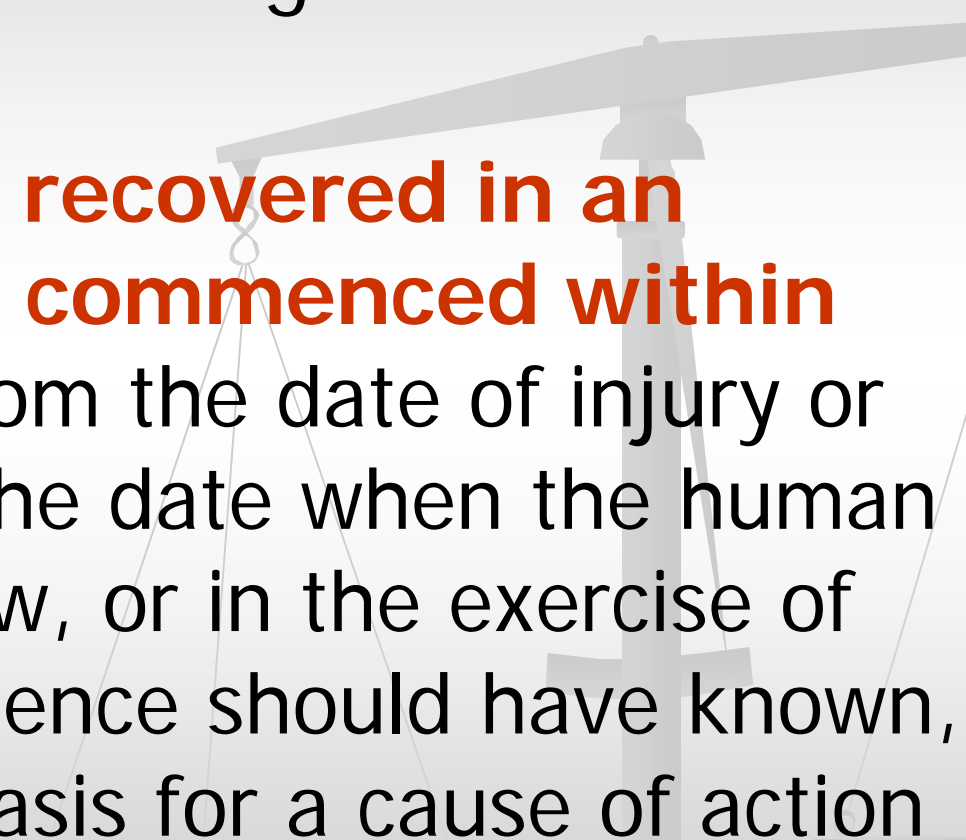
- (b) A person who by willful, wanton, reckless or negligent act or omission kills or causes or procures the death of an animal-companion shall be liable in damages for the fair monetary value of the deceased animal to his or her human companions, →



## And how much else?

- "... including damages for the loss of the reasonably expected society, companionship, comfort, protection and services of the deceased animal to his or her human companions; reasonable **burial** expenses of the deceased animal; **court costs and attorney's fees**; and **other reasonable damages** resulting from the willful, wanton, reckless or negligent act or omission."

- 
- (c) ... liable in damages for
    - expenses of veterinary
    - other special medical care required
    - loss of ... companionship
    - pain, suffering, emotional distress and consequential damages sustained by the animal's human companion
    - **pain, suffering and loss of faculties sustained by the animal**
    - court costs and attorney's fees
    - and other reasonable damages

- 
- (d) ... willful, wanton, or reckless act ... liable in punitive damages of not less than \$2,500
  - (e) Damages ... **recovered in an action of tort, commenced within three years** from the date of injury or death or from the date when the human companion knew, or in the exercise of reasonable diligence should have known, of the factual basis for a cause of action

# Nonhuman animal's damages?

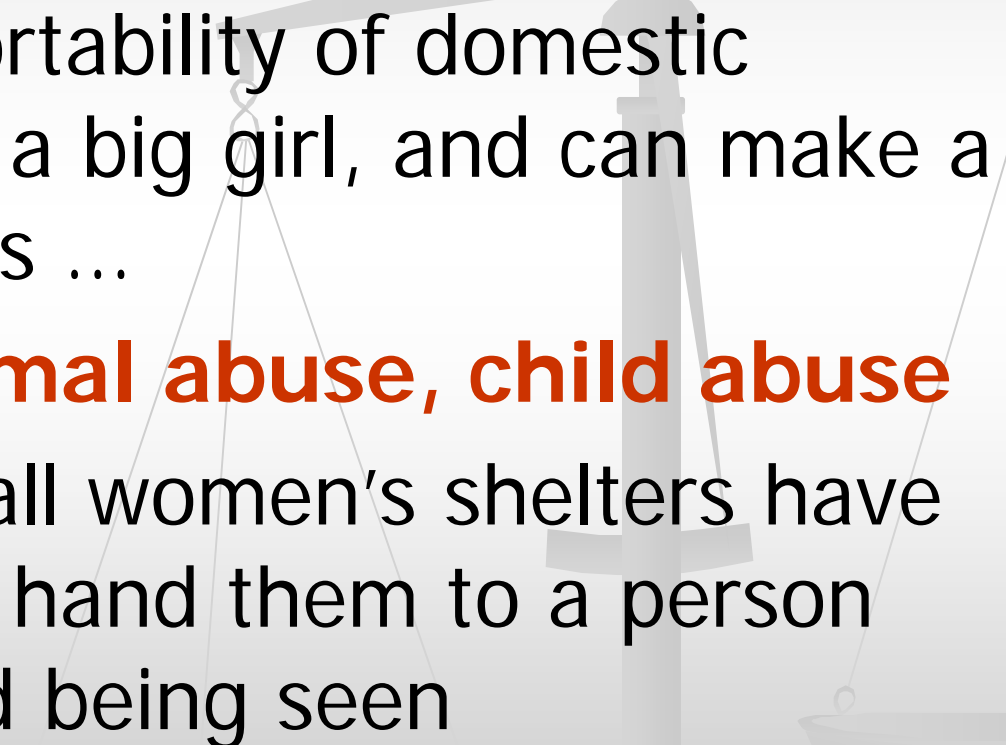
- (f) Damages ... sustained by an animal **shall be recovered in an action of tort by a guardian ad litem** or next friend, commenced within three years ...
- **Damages so recovered shall be payable into a trust for the care of the animal**, which trust shall be enforceable for the life of the animal by a person appointed by the court. Any remainder of trust funds existing at the death of the animal shall be distributed to a non-profit organization dedicated to the protection of animals.

# Policy issues

- What should veterinary profession's role be here?
- What should individual veterinarian's role be?



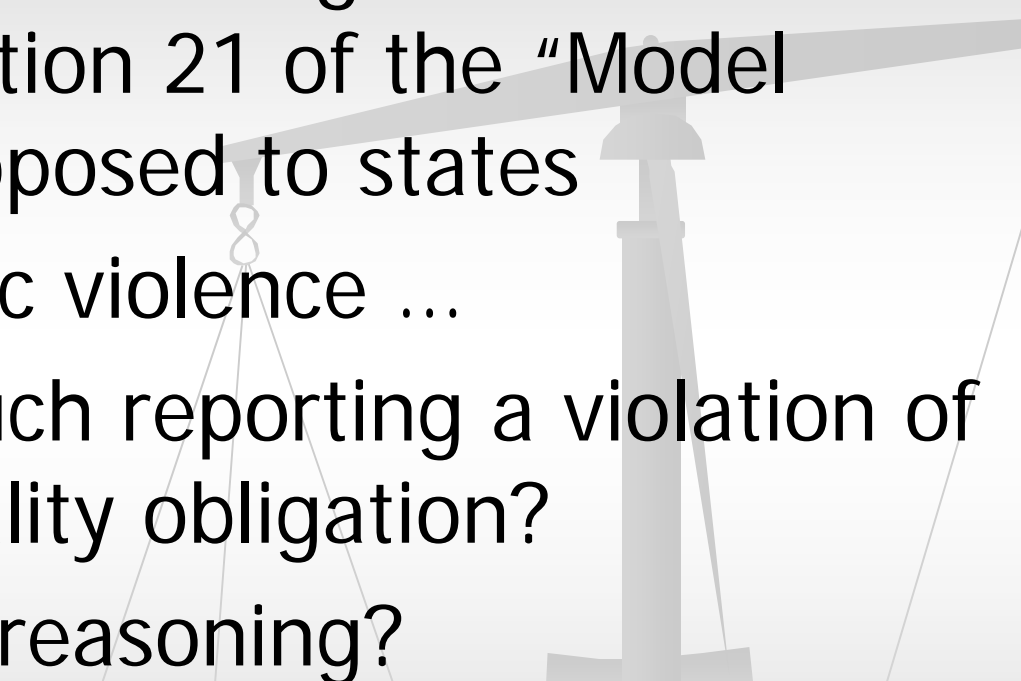
# More laws arising out of companion animal relationships: Lorna Grande 2005 in HAR

- Distinguish reportability of domestic violence (“she’s a big girl, and can make a decision”) versus ...
  - **Reporting animal abuse, child abuse**
  - “palm cards” – all women’s shelters have them – you can hand them to a person without the card being seen
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# Lorna Grande 2005

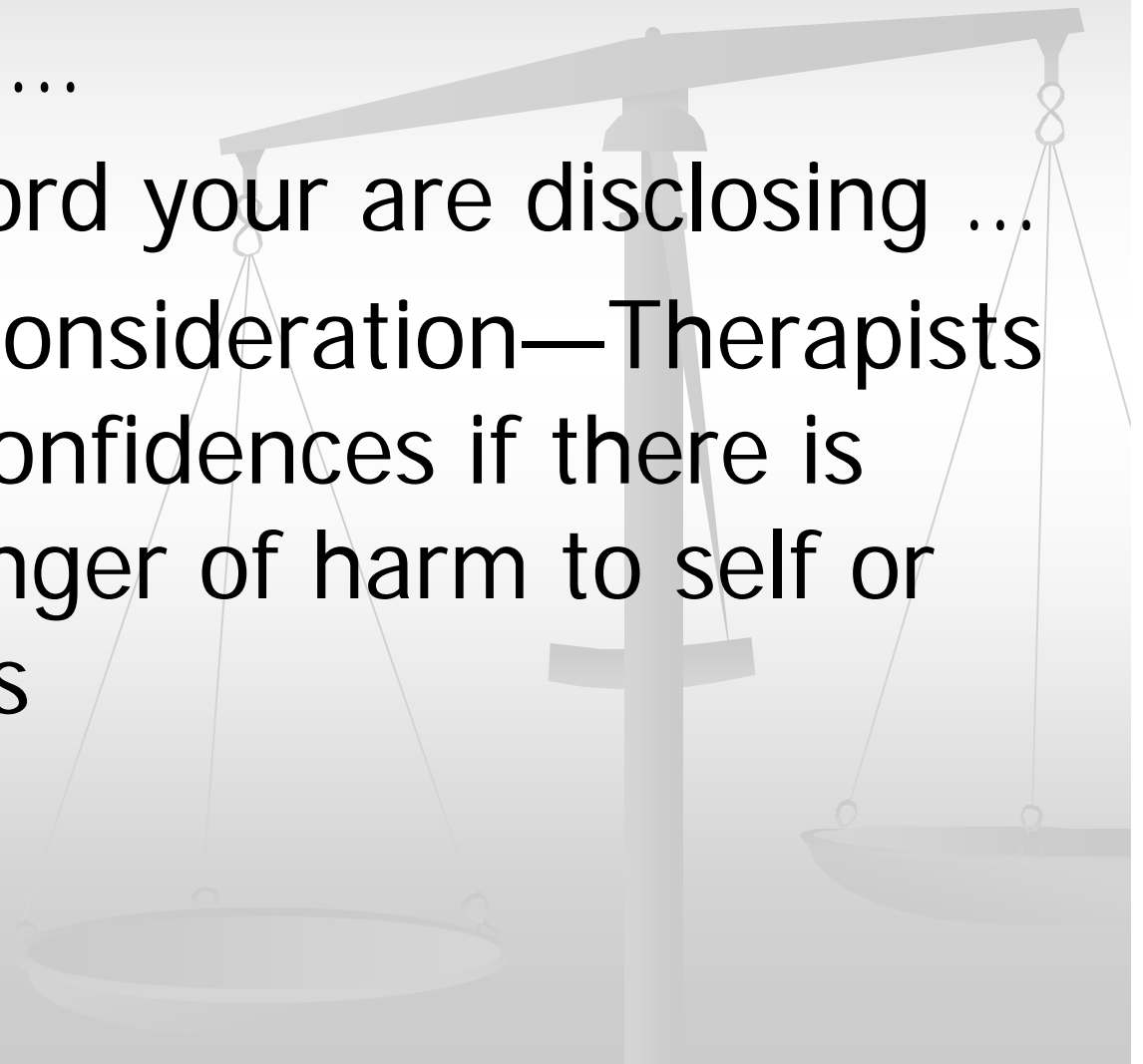
- Why help is needed ...
- ... on the average, women try to leave 7x before being successful
- Helpful input—calling DSS puts matter on the record—“Things start to accumulate”
- Importance of demonstrating a pattern, not a single incident
- Vets are “encouraged” in MA to report cruelty

# Lorna Grande 2005

- AVMA has an overarching statement about reporting in Section 21 of the “Model Code” it has proposed to states
  - But not domestic violence ...
  - Refresher—is such reporting a violation of your confidentiality obligation?
  - Generally, no – reasoning?
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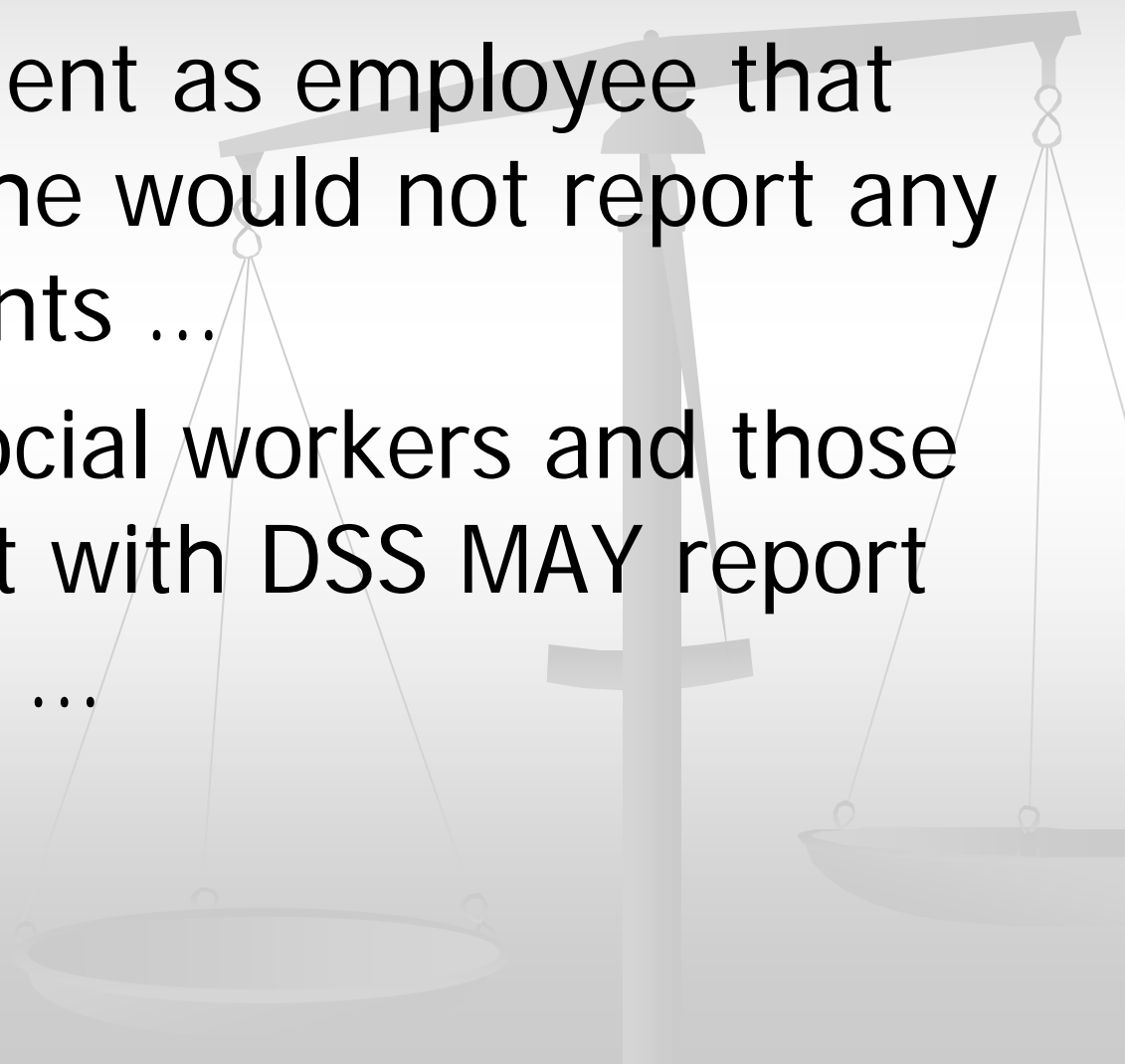
# What is being disclosed?

- It is NOT a communication that you are disclosing ...
- It is not a record your are disclosing ...
- Policy-based consideration—Therapists can disclose confidences if there is immediate danger of harm to self or harm to others



# What is being disclosed?

- STUDENT experience – student had to sign statement as employee that represented she would not report any cruelty by clients ...
- In MA now, social workers and those under contract with DSS MAY report animal cruelty ...



# Next session

- Dec 8, Controlled Substances

