



## PIJAC: WORKING FOR YOU

## Pet Ownership Under Attack



Is pet ownership becoming passé? A national campaign has lawmakers in many jurisdictions nodding their head in affirmative response to this question. In fact, legislation proposing to do away with pet ownership is popping up in jurisdictions from California to Rhode Island.

These legislators don't admit to a goal of eliminating pets, only pet ownership. What's the difference? If you ask many of the advocates of this change, not much. Those pressing lawmakers to substitute the term pet "guardian" for pet owner in law often insist that the

change is cosmetic; it is meant to transform the way people talk about their pets, but won't actually change legal rights. If that's true, it begs the question: why amend the law if it has no legal consequences?

When challenging efforts to establish pet guardianship in law, PIJAC and others have pointed out that the term "guardian" has a specific legal meaning. Adopting it for pets can have a dramatic impact on myriad rights and obligations throughout society, from persons who breed and sell animals as pets, to veterinarians who care for them, to the legal system, to pet owners themselves. The guardian campaign is a coordinated national effort promoted by the activist group *In Defense of Animals* to eliminate pet ownership. The stated policy of IDA is to "no longer use language that accepts the current concept of animals as property."

Pets currently enjoy a special status in law. Every state in the United States has laws that criminalize animal cruelty and require humane care of pets. Governments at both the federal and state level impose additional requirements for those in the pet trade, establishing special standards to which those who breed and sell pets are subject. There is a recognition in our society that pets are not manufactured "products" but rather are typically viewed as members of the family. Even so, pets do not enjoy the legal status of people. Those who advocate for animal rights would change all that, and guardianship is clearly a step in that direction.

Already, the guardian campaign has met with success. The state of Rhode Island adopted legislation placing pet guardianship terminology in law. Currently that state has bills pending that would

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## FAA Adopts Regulations on Animal Shipments

Final regulations governing air shipment of pets, stemming from the Safe Air Travel for Animals Act, have been published by the FAA. While that act originally encompassed broad-scale requirements that would have resulted in boycotts by air carriers, the final law was more focused. Specific provisions of the legislation mandated that carriers submit data on animals lost, injured or killed during air shipment. FAA responded with a proposed rule that was ambiguous and over-reaching. In its comments, PIJAC pointed out that the proposal could not be practically implemented and failed to fulfill legislative intent.

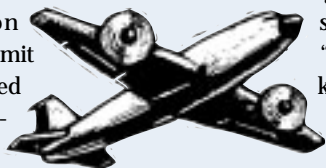
PIJAC was particularly critical of FAA for ignoring a study that had been com-

missioned to evaluate animal shipping deficiencies as well as its failure to consider airline industry considerations in proposing the rule. The study, conducted by the American Veterinary Medical Association (AVMA), provided sound guidelines for addressing issues motivating legislation in the first place,

starting with its definition of "animal." This legislation, known upon introduction as the "Boris Bill" for an airline incident involving a

dog named Boris, had as its focus dogs and cats being shipped by air. Not only did the FAA offer a definition so broad as to encompass any animal "being kept as a pet in a family household in the United States," it would also include any animal "being transported for the purposes of

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# Legislative & Regulatory News

## Federal Issues.

CITES. Approximately 175 people attended the recent CITES Animals Committee in Geneva, Switzerland to work on a number of issues assigned to the Committee in preparation for the 13th Conference of the Parties. COP 13 is scheduled to be held in November of 2004, in Thailand. Representatives from the European Pet Organization, OFI International, OATA (UK) and PIJAC coordinated industry participation on a number of key issues of interest to the pet trade.

Humane transport continues to be a key area, and it was agreed that CITES parties will follow the International Air Transport Association's *Live Animals Regulations* for both air and ground transport.

The working group, in which PIJAC participates, will be collecting a variety of standards for preparing animals for shipment as well as transporting them, and will develop best management practices as guides for shippers around the world.

Trade in captive bred animals continues to surface in a variety of ways. While trade in captive-bred off-spring of Appendix I birds is technically allowed under the Treaty, the parties have not been able to design safeguards to ensure the birds are in fact captive bred. Despite years of working on the issue, southern hemisphere countries are blocking movement by questioning the legality of the founder stock irrespective of the fact that birds were originally exported legally.

This discussion has expanded, encompassing the question of whether captive breeding of any CITES listed species benefits or harms conservation of that species in the wild. While captive breeding has long been viewed as a means to perpetuate threatened species, there is growing sentiment among some that captive breeding outside of a range state actually devalues the need to preserve wild habitat, since the demand for wild caught specimens evaporates. This represents an interesting issue for the pet industry, which could be caught in the middle of a captive breeding debate.

At COP 12, the CITES parties voted to list Seahorses, and now CITES is confronted

with the task of how to implement the permit process. A proposed 10 cm universal limit causes significant problems for species that never reach 10 cm. Also, the scientific information relied upon was faulty and is now under review. Keith Davenport of OATA and Svein Fossa of OFI were instrumental in sending the "plan" back to the drawing board. The issue, however, needs to be resolved before the listing becomes effective early next year.



PIJAC's Marshall Meyers and OATA's Keith Davenport at CITES Animals Committee

Fossil corals continue to be an issue plaguing CITES, with the United States arguing that unidentifiable rock should be covered by CITES restrictions. This debate has been ongoing for years, and still remains unresolved.

These and other issues impacting the pet trade will be the subject of another Animals Committee meeting in February or March of next year, prior to the COP convening in Thailand.

Animal Welfare Act. The Doris Day Animal League (DDAL) request for a review of the appellate decision overturning their victory at a lower level was rejected. DDAL's lawsuit against USDA was intended to expand the scope of the AWA to encompass pet retailers that are currently exempt. Although the animal advocacy group was successful in the initial trial, a panel of appeals judges threw out that decision. DDAL then requested that the full circuit court review the decision — a request the court turned down. Had DDAL prevailed in its suit, USDA would have been required to substantially revamp its program, and the effort to incrementally expand the AWA would have continued. DDAL, however, refused to give up after this latest defeat. They have now asked the Supreme Court to look at the decision.

## State Issues.

California. A bill restricting the sale of unweaned birds was adopted by the full legislature and sent to the Governor for his signature. In its final form, **AB 202** permits pet stores to possess unweaned birds so long

as they have on staff PIJAC certified avian specialists. Assuming it is not vetoed, the law will become effective in September 2004. This represents an extension of the standard effective period based upon a request by PIJAC. Although PIJAC has opposed this bill since its introduction, PIJAC also worked with the sponsor to improve the bill. As introduced, the measure would have prohibited any possession of unweaned birds (meaning they could not even be bred). PIJAC also questioned the PIJAC certification requirement for pet store possession of unweaned birds, but agreed to attempt to make its program widely available in California to meet the demand, should the law actually pass. The delayed implementation deadline will allow a revision and expansion of PIJAC's program to meet this commitment.

Legislation allowing pet owners to recover noneconomic damages for loss of a pet was sidetracked when the sponsor requested postponement of a hearing on the measure in the Senate Judiciary Committee. **SB 225** would allow pet owners to recover damages of up to \$4,000 in cases where a pet is negligently or intentionally killed. Such damages are meant to serve as "compensation for the loss of the reasonably expected society, companionship, love, and affection of the pet." Only dogs and cats would be covered by the bill, whose future is now unclear.

Colorado. The Governor has signed **SB 65**, which amends the pet facilities act. The bill increases the maximum license fee (set administratively) from \$250 to \$350 annually. It also amends the state's cruelty statute to add additional provisions, including a violation for housing animals "in a manner that results in chronic or repeated serious physical harm," among others, and establishes a minimum weight limit below which cats may not be transferred.

Hawaii. In efforts to address an issue of increasing concern throughout the United States, **HR 116** would establish a Working Group to "assess the ethical, health, and ecological consequences of crossing the species boundary and creating genetically engineered organisms in Hawaii." The measure asserts that "transgenic species could wreak the same havoc on ecological systems as alien species when introduced into environments that do not contain natural controls," and charges the Working Groups with studying potential adverse consequences of genetic engineering in the state. The bill is in

both the House Committee on Energy and Environmental Protection and the House Agriculture Committee.

Illinois. Even while **HB 3678** remains alive in committee, the Department of Agriculture is preparing a regulatory alternative to the bill. The measure would create a statutory pet warranty for retailers selling dogs and cats. It becomes unnecessary, though, if the rulemaking is adopted. PIJAC has joined with an Illinois retailer in working with the department on crafting appropriate standards. Provisions of the warranty would be similar to statutory warranties in other states, but largely encompass standards already voluntarily offered by many Illinois pet stores. The proposal may be published before the legislature convenes next year, at which time the pending legislation can again come up for consideration.

A Chicago proposal, premised on a NY City ordinance that has been in effect for many years but not heavily enforced, would ban many pet species. The city is using the Monkeypox incident as the ostensible justification for this proposal, but there is no rational relationship between a risk of Monkeypox and the listed species. Indeed, the alderman offering up the proposal simply lifted language from an ordinance that was drafted long before anybody in North America was worried about Monkeypox. It is so badly drafted, in fact, that the proposal actually includes references to NY City in some of its provisions. Among the species being prohibited are ferrets, myriad reptiles, all marsupials, and all "large rodents," among others. Substantial opposition has been voiced, and the committee reviewing this proposal has not yet set a hearing.

Kansas. **SB 257**, amending the Pet Animal Act, would increase fees on various facilities required to be licensed under the act. Original fee levels in the introduced version have been reduced with amendment of the bill, but the current iteration does include a provision requiring an additional fee of \$1.00 for each dog and cat housed on the premises at the time of licensure. It would apply to commercial breeders, retailers and hobby breeders. The fee increase, if adopted, would be used for administration of the licensing program. SB 257 was re-referred to the Senate Ways and Means Committee where it will be held over to the 2004 session.

Louisiana. The Governor vetoed **HB 2013**, which would have created the Aquaculture

Development Act. Specifically recognizing aquaculture as an agricultural activity, the measure provided for development of commercial aquaculture in the state. It established a coordinating council consisting of government agencies, academia and members of the trade, which would have been responsible for promulgating regulations to implement a licensing program. Additionally, the bill addressed restrictions on non-native aquatic species deemed to be invasive.

Maine. Legislation creating a tax on pet food was defeated in the Joint Agriculture, Conservation and Forestry Committee. **HB 889** defined domestic animals as cats, dogs, equines, rabbits and other "domesticated animals including any animal normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles." Livestock was specifically exempted from the bill, which would have imposed a tax of 3% on the sale of all pet food.

Massachusetts. Anyone selling the offspring of more than one litter of dogs or cats would be deemed a commercial breeder under **HB 2274** and **HB 3197**. The identical bills amend the existing licensing law to expand the scope of those treated as commercial breeders. Already the bills have been heard by the Joint Committee on Natural Resources. No vote has yet been taken by the committee.

Michigan. The Governor signed a measure increasing pet store license fees for a specified period. Beginning in October of 2003, license applications carry a \$200 license fee, with a \$100 annual renewal. However, this fee increase is set to sunset after October 2007, meaning that the law reverts to the license fee levels in effect before adoption of **SB 361**.

Oregon. A bill that would have placed restrictions on the import of puppies by shelters has died in the Senate Committee on Agriculture and Natural Resources. **SB 670** would have established a prohibition against the import of dogs from Hawaii, a territory or possession of the U.S. or a foreign country by or for any animal shelter. Additionally, the bill created records and reporting requirements for shelters concerning information about all animals in the possession or under control of the shelter. Such reports would have been open to public inspection, with violations resulting in fines of up to \$50,000. ■

being sold as a pet in a family household." Many commenters took the opportunity to point out to the FAA the practical impossibility of making such a determination every time an animal is shipped. In the final rule, this second part of the definition has been deleted. Thus, the rule will apply only to animals that are actually being kept as household pets at the time of shipment.

Drawing from the legislation itself, the FAA proposed rule referred to an "owner or guardian." Suffering from a common failing of the "guardian" term (see story on page 1), it was left undefined in the statute and ambiguous in the regulatory language. Notwithstanding recommendations from PIJAC and others about addressing this weakness, the FAA failed to clarify its final rule. Ambiguities such as this make airline compliance more difficult.

Following publication of the original proposed rule, there was concern that air carriers may feel compelled to eliminate animal shipments due to the onerous nature of the proposal. Although the final rule reflected positive changes (principally in further clarifying which animals are subject to the reporting requirement), it retains defects. One complication is FAA's deferral to USDA on actual submission of reports. The final rule provides that "the report shall be made in the form and manner set forth in reporting directives by the Animal & Plant Health Inspection Service." While FAA has no authority to direct APHIS in the adoption of a reporting mechanism, it is unclear how USDA will proceed.

Further complicating the process is FAA's announcement that the final rule is not actually final. In its public notice, the agency stated that the "Office of Management and Budget has not approved the information collection contained in these requirements [which means they] don't become effective until after the FAA publishes a notice" of approval. Because OMB still has not acted on the information collection requirement, this regulation remains in limbo. Implementation will need to await a response by both OMB and USDA before air carriers are in a position to know how they must report on the pets they place on their planes. ■

expand the implications of that statute. Local jurisdictions that have adopted pet guardian language since 2000 include the California cities of Berkeley, West Hollywood, and San Francisco, as well as Sherwood, Arkansas; Menomonee, Wisconsin; and Amherst, Massachusetts. Rather than eliminate "owner" altogether, however, "guardian" has simply been included in these jurisdictions as an interchangeable term (i.e. ordinances add the term to existing language so that they refer to "owners or guardians"). This incremental approach legitimizes the guardian term, and paves the way for "owner" to be dropped from the law at a later time without generating as great an opposition. PIJAC was successful in battling an initiative in Los Angeles that would have replaced ownership altogether.

In challenging the LA proposal, PIJAC raised a number of legal issues the city would have to confront. Evaluating the proposed ordinance, LA's City Attorney addressed these, and rendered an opinion noting that "current state law defines 'owners' and 'guardians' in a manner which may render these two entities' rights and responsibilities legally incompatible." This opinion went on to state that the proposed change "may also subject these entities to unwarranted pressure and even frivolous litigation arising from the performance of their normal duties and/or activities." As a result, a recommendation was made to reject the proposal and it was subsequently tabled.

But the campaign targeting pet ownership continues. And many pet owners, even those in the pet trade, don't always appreciate the true implications. Although the specific application and context depends on the jurisdiction, and the particular law in question, guardians are generally persons charged with protecting the care or interests of another. Whether they be minors or others deemed incapable of looking out for their own interests, persons in such circumstances may have guardians appointed by a court, and such guardians have specific legal obligations. What's wrong with using this same term for pet animals? Nothing, if one wants them to be treated like people. But do pet owners want to have their status sanc-

tioned by a court? Do they want others to possess a legal right to petition a court for custody of their pets? Do they want to have the same obligations vis-à-vis pets as they do their children?

Veterinarians are confronting the legal implications of guardianship to their profession. Treatment options could be affected, as would patient rights. Contentious court cases garner national headlines in this country when parents' medical choices for their children are challenged by outsiders. Are such headlines on the horizon for pet guardians being compelled to provide certain veterinary treatment they don't endorse? Would it even be legal to deprive pets of their "reproductive rights"? Do to their concerns about the implications of a change in law, the American Veterinary Medical Association recently adopted a formal policy position against guardianship. "Any change in terminology describing the relationship between animals and owners," said the AVMA, "does not strengthen [the existing strong] relationship and may, in fact, diminish it."

There are those who dismiss the guardian campaign as either having little chance at success, or not leading to the predicted legal quagmire. Already the campaign is enjoying demonstrable success. Unless pet owners raise their objections, there is no reason to believe this success won't spread. Short-term legal implications remain unanswered, because issues have yet to be raised at the judicial level in jurisdictions adopting pet guardianship. But the long-term prospects do not favor pet owners. Should potential legal complications to pet ownership escalate, it is likely that many people will conclude that pet ownership is not worth the hassle, much less the liability. And what about those who breed and sell pets? Just remember, you can't sell something you don't own!

Would *In Defense of Animals* like to see their guardian campaign deprive the pet trade of business? No doubt about it! The organization sights as a goal of its campaign to achieve "a sustained reduction in the number of animals bred and sold for profit." IDA is not alone in their efforts to persuade legislators across the country to adopt guardianship. Their Website boasts a long list of others ostensibly endorsing the campaign, including hundreds of orga-

nizations claiming to promote the interests of animals.

Don't be surprised to see guardian proposals continue to pop up in state houses and city halls. When such proposals succeed, encroachment of pet owners' rights is a likely outcome. If pet ownership becomes a thing of the past, pet owners are sure to follow. ■

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