

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8-9, 2010

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association adopts the Model Act
- 2 Governing Standards for the Care and Disposition of Disaster Animals,
- 3 dated February 2010 and recommends its adoption by state and territorial
- 4 legislative bodies.

1 **AMERICAN BAR ASSOCIATION**
2 **MODEL ACT GOVERNING STANDARDS FOR THE CARE AND**
3 **DISPOSITION OF DISASTER ANIMALS**
4 **(February 2010)**
5

6 **Section 1. Short Title**
7

8 This Act may be cited as the “Standards for the Care and Disposition of
9 Disaster Animals.”
10

11 **Section 2. Purpose**
12

13 The purpose of this Act is to provide certainty of ownership for disaster
14 animals by providing an owner with a specific time frame by which the
15 owner must reclaim companion animals following a Major Disaster and to
16 provide an animal shelter with specific guidelines as to how long disaster
17 animals must be held prior to their disposition.
18

19 **Section 3. Definitions**
20

21 As used in this Act:
22

23 (1) “Animal Shelter” means: a physical facility or entity, including
24 those utilizing private homes, operating for the purpose of providing
25 temporary or long term shelter to lost, unwanted or abandoned
26 animals, that is recognized and approved by the state or local
27 authority. For the purposes of this Model Act, the singular, as in
28 “Animal Shelter,” shall include the plural, as in “Animal Shelters,”
29 and vice versa.
30

31 (2) “Disaster Animals” means domesticated companion animals that
32 have become separated from an owner as the result of a Major
33 Disaster. Disaster animals include those found on private property or
34 running at large, as well as, owner surrendered or relinquished
35 companion animals. Feral animals are excluded from this Act.
36

37 (3) “Companion Animals” mean domesticated animals, such as a dog,
38 cat, bird, rabbit, rodent, or turtle that are traditionally kept in the home
39 for pleasure rather than for commercial purposes, can travel in

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40 commercial carriers, and be housed in temporary facilities.
41 Companion animals do not include reptiles (except turtles),
42 amphibians, fish, insects/arachnids, farm animals (including horses),
43 and animals kept for racing purposes or animals held by a registered
44 research facility under the federal Animal Welfare Act. Feral animals,
45 animals covered by the federal Animal Welfare Act or by regulations
46 issued under that act, and any other animals held for use in or used in
47 research are excluded from this Act.

48

49 (4) "Owner" means the person having title to companion animals.

50

51 (5) "Feral Animals" means animals that do not have an owner.

52

53 (6) "Holding Period" means the length of time that disaster animals
54 are cared for by an animal shelter and not disposed of, except by
55 humane euthanasia.

56

57 (7) "Reclaim" means the taking back of possession of disaster animals
58 by the owner or an agent of the owner.

59

60 (8) "Major Disaster" means a major disaster or emergency declared by
61 the President of the United States under the Robert T. Stafford Relief
and Emergency Act, P.L. 93-288, as amended.

62

63 (9) "Tracking Information" means available information about the
64 owner, physical description and health history of the disaster animal,
65 photographs of the disaster animal, information about where the
66 disaster animal was found and transported to, recommended course of
67 treatment, and communications with an owner, including holding
period extension by contract.

68

69 (10) "Approved Website" means a website approved by the state
70 veterinarian.

71

72 (11) "Extension by Contract" means extensions of the mandated
73 holding period based upon an agreement between the owner and
74 animal shelter for an additional time period.

75

76 (12) "Shelter Animals" means companion animals living at an animal
77 shelter before a Major Disaster.
78

79 **Section 4. Provisions for Disaster Animals**
80

81 (a) Disaster animals taken from a disaster area or delivered to an animal
82 shelter following a Major Disaster will be kept by the animal shelter that
83 receives the disaster animals according to the applicable holding period,
84 unless the owner of the disaster animals agrees otherwise in writing. After
85 the applicable holding period has passed for disaster animals, then the
86 animal shelter has the authority to dispose of the disaster animals as allowed
87 under state law when there is no Major Disaster, unless the owner has an
88 extension by contract with the animal shelter for additional time. An owner
89 who does not retake possession of their disaster animals by the end of the
90 applicable holding period plus any extension by contract thereof, has
91 abandoned the disaster animals and any new owner shall have
92 unencumbered title to the disaster animals.
93

94 (b) Disaster animals brought to an animal shelter shall be kept for at least 30
95 days after the posting of a photograph and tracking information about the
96 disaster animal on an approved website, and up to six months if required by
97 the State Veterinarian. The requirement for posting a photograph and
98 tracking information on an approved website may be modified or eliminated
99 as determined by the State Veterinarian.
100

101 (c) During the holding period, the animal shelter is fully authorized to
102 provide or arrange for necessary veterinary health services that are in the
103 best interests of the disaster animal as may be determined by a veterinarian.
104 Disaster animals that exhibit ownership by the presence of a tag or
105 identification chip or were removed from a private residence, including
106 fenced adjacent land, may not be spayed or neutered without the written
107 permission of the owner unless it is medically necessary as may be
108 determined by a veterinarian.
109

110 (d) During the holding period an animal shelter may place a disaster animal
111 in a private home or other animal shelter either in the state or out of the state
112 so long as available tracking information is kept, and any transfer out of
113 state is authorized by the state veterinarian. In no case shall title to a disaster

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114 animal be awarded to a new owner until after the holding period has expired,
115 together with any extension by contract thereof.

116

117 (e) If the owner of a disaster animal contacts an animal shelter about a
118 disaster animal but is unable to assume possession of the disaster animal by
119 the end of the applicable holding period, then the owner may request the
120 animal shelter to keep the disaster animal for up to an additional 30 days, if
121 the owner is willing to pay the cost of care as established by the animal
122 shelter for the disaster animal during the extension by contract. The animal
123 shelter may require payment of the costs as a condition of extending the
124 holding period. If by the end of the extension by contract the disaster animal
125 has not been reclaimed by the owner, then the animal shelter may treat the
126 holding period as expired. The animal shelter shall advise an owner of the
127 dates of the required holding period and opportunity for extensions by
128 contract, if any owner inquiry is made.

129

130 (f) If an animal shelter becomes inoperative because of a Major Disaster,
131 then all the companion animals removed from the animal shelter shall be
132 treated as disaster animals by whoever takes control of the companion
133 animals. However, if records that accompany these shelter animals
134 demonstrate that it was lawfully permissible to transfer title to the shelter
135 animals before the Major Disaster, those shelter animals would not be
136 treated as disaster animals.

137

138 (g) If the owner of a disaster animal has contacted the animal shelter
139 responsible for the disaster animal before the end of the holding period to
140 reclaim the disaster animal, but the animal shelter refuses to return the
141 disaster animal, then any transfer of title agreement by the shelter to a new
142 owner is voidable by court order.

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144 **Section 5. Private Keeping of Disaster Animals**

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146 Any individual, who is not working under the authority of an animal shelter,
147 who takes possession of disaster animals, shall transfer the disaster animals
148 as quickly as reasonably possible to an animal shelter along with available
149 tracking information.

150

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153 **Section 6. Movement of Animals**

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155 (a) No disaster animals may be removed from the State without the
156 permission of the State Veterinarian or by satisfying such requirements as
157 might be established by the State Veterinarian.

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159 (b) Except as provided above, anyone who knowingly removes disaster
160 animals from the state is subject to a civil fine of up to \$1,000 per offense.

161

162 **Section 7. Exemptions**

163 (a) This Act shall not limit an animal control authority or agent thereof from
164 humanely euthanizing an animal in accordance with existing state law.

165 (b) This Act does not impose any affirmative duty on an animal shelter to
166 admit disaster animals.

167 (c) This Act shall not restrict or interfere with the general powers of the
168 State Veterinarian [or Department of Agriculture] [Department of Health],
169 including the power to quarantine or restrict the movement of disaster
170 animals, or to exercise powers provided by law.

171 (d) This Act shall not be construed as preventing veterinary care for disaster
172 animals either before or after they are brought to an animal shelter.

173 **Section 8. Effective Date**

174 This Act shall take effect July 1, 20xx.

REPORT

Hurricanes, Gustaf, and Ike are the most recent reminders of the major disasters that periodically strike American communities. The country also experiences many smaller, but locally no less significant disasters such as fires, tornados, and others. A common thread in such disasters is that both the human and animal populations often become dislocated from the disaster area.

This recommendation is intended to address a problem that arises with animal rescue operations. When disaster strikes, many companion animals, primarily dogs and cats, are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters which quickly become overwhelmed.

Often, there are no guidelines for how long a shelter must keep an animal, how and when it may adopt the animal out, or when it may otherwise move the animal. At the same time animal owners encounter problems; their efforts to find and reunite with their companion animals are also affected by the lack of any guidelines as to how long an animal must be kept, when it can be adopted out, and when it can be moved.

In the wake of Hurricane Katrina many owners found the location of their companion animals only to discover that their companion animal had been adopted by a new family, or even euthanized because of the lack of shelter space or other problems. Many ownership disputes and much human and animal suffering resulted from the lack of guidelines as to what shelters can do with companion animals and how long they must keep a companion animal before taking action.

The TIPS Animal Law Committee was instrumental in putting together an Animal Disaster Relief Network following Hurricanes Katrina and Rita. The Network includes most of the major animal organizations in the United States. It includes representatives from State Veterinarians and Veterinary organizations. The Network subsequently formed a Legal Panel on Emergency Management Regarding Animals. One of the issues the Legal Panel addressed was the concern about disaster guidelines and rules for animal shelters, including the general lack of mandatory minimum hold periods. The Legal Panel's primary conclusion was that every state and territory needs to have a policy in place that provides rules

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and guidelines for animal shelters in disaster situations, including mandatory minimum holding periods.

To achieve that goal, the Legal Panel recommended that states and territories adopt statutes setting forth mandatory minimum hold periods for animals caught up in disasters. With input from major animal organizations in the United States, the Legal Panel developed a model statute that could be used by the states and territories in establishing guidelines and hold periods for disaster animals. The Legal Panel's recommended statutory language, The Model Act governing "Emergency Holding Periods for Disaster Animals", is set forth in this recommendation. The Legal Panel addressed this topic because it has been the subject of comment and concern by organizations dealing with disasters, including FEMA (for more information see <https://training.fema.gov/emiweb/downloads/b-3.pdf>) and veterinarian associations, including the American Veterinary Medicine Association (for more information see <http://www.avma.org/disaster>).

The Tort Trial and Insurance Practice Section urges adoption of this Recommendation calling for states and territories to adopt a statute to establish disaster guidelines for animal shelters and mandatory minimum hold periods for companion animals following disasters.

Respectfully submitted

John R. Tarpley, Chair
Tort Trial and Insurance Practice Section
February 2010

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: John R. Tarpley, Chair

1. Summary of Recommendation(s). This Recommendation is intended to address a problem that arises with animal rescue operations in disasters, when many companion animals, primarily dogs and cats are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters with uncertain results because the animal shelters become overwhelmed with animals and there is often no guidelines for how long a shelter must keep an animal, how and when they may adopt the animal out, or when they may otherwise move the animal.
2. Approval by Submitting Entity. Approved by the Council of the Tort Trial and Insurance Practice Section on October 4, 2009.
3. Has this or a similar recommendation been submitted to the House or Board previously? Yes, but it was withdrawn so that revisions could be made.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption? Not applicable
5. What urgency exists which requires action at this meeting of the House? It has been established that the fate of companion animals has affected the life and health of concerned and loving owners. Providing a set of procedural rules that establish mandatory minimum hold periods for companion animals following disasters provides certainty to shelters and owners in search of companion animals. The next hurricane season begins June 1.
6. Status of Legislation. (If applicable.) Not applicable
7. Cost to the Association. (Both direct and indirect costs.) Not applicable
8. Disclosure of Interest. (If applicable.) Not applicable

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9. Referrals.

This Report and Recommendation is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

10. Contact Persons. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

This Recommendation calls for states and territories to adopt a statute to establish guidelines for animal shelters and mandatory minimum hold periods for companion animals following disasters.

2. Summary of the Issue that the Resolution Addresses

The Recommendation is intended to address a problem that arises with animal rescue operations in disasters, when many companion animals, primarily dogs and cats, are separated from their owners, abandoned, or otherwise dislocated. The animals that survive usually end up in animal shelters with an uncertain fate, because the animal shelters become overwhelmed with animals and there are often no guidelines for how long a shelter must keep an animal, how and when they may adopt the animal out, or when they may otherwise move the animal.

In the wake of Hurricane Katrina, many owners found the location of their companion animals, only to discover that their companion animal had been adopted by a new family, or even euthanized because of the lack of shelter space or other problems. Many ownership disputes and much human and animal suffering resulted from the lack of guidelines as to what shelters can do with companion animals and how long they keep a companion animal before taking action.

3. Please Explain How the Proposed Policy Position will Address the Issue

The recommended model statute can be used by the states and territories in establishing guidelines and hold periods for disaster animals, providing a safe harbor for shelters and greater certainty for owners concerning the time periods available to them to seek, find and recover their companion animals. It does not require any government agency to accept the financial or physical burden of disaster animals. It does not change the legal status of animals already in government control but is an aid for those animal shelters that voluntarily accept responsibility for disaster animals. This is done by providing clearer guidelines on what should be done by the holding agency to allow the owners to find their animals and stating how long to hold the

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animals. The provisions also seek to limit difficulties experienced in the past by requiring that the animals be kept in the state of the disaster for a minimum period rather than having the animals scattered across the county.

4. Summary of Minority Views or opposition which have been identified:

No minority or opposing view has been identified.