VETERINARY LIEN LAWS: HYPOCRISY IN A HEALING PROFESSION

By
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This Article discusses the problem of veterinary lien laws that treat companion animals as inanimate objects, in a modern society that often views pets as members of the family. Historically, pets, like automobiles, were subject to possessory liens. If an automobile owner couldn't pay the repair bill, the mechanic could keep possession of the car or sell the car to recoup costs. Veterinary lien laws treat companion animals in a similar fashion. If the owner cannot not pay the veterinary bill in full, the veterinarian is often permitted to keep possession of the companion animal until the bill is paid. Typically, after some designated time-limit expires, the companion animal is deemed abandoned and the veterinarian may sell or euthanize the animal. This Article highlights the hypocrisy of the veterinary industry that benefits from owners treating pets like family while simultaneously treating pets as mere property by using veterinary lien laws to assert liens against these owners.

Pilot, a mixed breed border collie, was diagnosed with parvovirus, a disease that is often fatal to dogs. The disease could have been preventable with vaccination. Pilot's owner did not inoculate the dog, resulting in the animal requiring extensive medical care.

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Pilot's owner brings his dog to a nearby veterinarian, and the veterinarian's service and treatment save the dog's life. As a result, Pilot should have a normal life.

It turns out that the care for Pilot ended up being more expensive than Pilot's owner could afford. An extra $500 meant that the owner couldn't pay the bill in full. As a result, the veterinarian refused to return Pilot to his owner. In addition, the veterinarian told Pilot's owner that unless the bill was paid in full within ten days, plus the additional charges incurred for food and lodging for Pilot, he would send Pilot to the pound where he may be euthanized.[1]

As shocking as this story may seem to people who love their dogs, it depicts a situation that can occur in many places in the United States.[2] It presents the clash of several deeply held values that gets little attention in state legislatures and state courts. At the heart of this conflict lies a truth about how we, as a society of humans, want to define our relationships with our animal companions[3] in an evolving world where old definitions and their corresponding legal principles no longer seem to make sense. Are companion animals merely personal property even though they are living beings? Or, are they special members of a family entitled to additional protection? And, should veterinarians and their staff, the only licensed professionals allowed to provide medical treatment for companion animals, be authorized by state law to refuse to return an animal to its family unless fully paid for services rendered?

Turning back to the story between the veterinarian, Pilot, and Pilot's owner, there are several important questions raised that I will address in this article:[4]

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[1] This is an accurate account of a news story that was reported in the Atlanta Journal-Constitution on September 19, 2007. The name of the veterinarian has been changed and the name of Pilot's owner is deliberately not disclosed.

[2] *See* Deanna Raeke, *Vets Holding Dogs 'Hostage,' Threatening Death*, FOR THE LOVE OF THE DOG BLOG (Sept. 15, 2007, 11:29 AM), http://fortheloveofthedogblog.com/animal-advocacy/vets-holding-dogs-hostage-threatening-death [https://perma.cc/F6WL-ENZ2] (accessed Sept. 1, 2018) (relating how several veterinaries have been refusing to release treated dogs until owners pay treatment bill); Aimee Green, *Lawsuit Alleges Banfield Pet Clinic in Tualatin Put Profits Over Pets*, OREGONLIVE.COM, (updated Apr. 30, 2010), http://www.oregonlive.com/tualatin/index.ssf/-2010/04/lawsuit_alleges_banfield_pet_clinic_in_tualatin_put_profits_over_pets.html [https://perma.cc/Z5V5-PJA6] (accessed Sept 1, 2018) (describing claims of Banfield Pet Hospital pressuring veterinarians to utilize an ultrasound machine once a week, leading to increased treatment costs for pet owners).

[3] My primary focus of this article will be dogs. I am truly a dog lover whose life has been enriched by my relationships with some outstanding dogs, namely Gabe, Heshy, Morty, Kirby, Reese, Morey, Eli, Dixie, and Louie. Although many issues that pertain to dogs would be true for cats and other companion animals, I have had much less experience with them.

[4] I would like to make sure that no one confuses my motive for this article. I have had nothing but wonderful experiences with the veterinarians who have treated my dogs. They have all been compassionate veterinarians whose love and concern for my dogs and my family's financial situation have fostered a sense of trust and respect that

1. Can the veterinarian legally refuse to return Pilot to his owner if his owner cannot pay the entire bill for services rendered plus any additional accrued food and lodging charges?
2. What can Pilot's owner do to get his dog back?
3. What about Pilot? Doesn't he have any rights independent of his owner and the veterinarian who has treated him?
4. In a modern society, should veterinarians continue to be given special lien status to use as leverage in seeking full payment for services rendered?

I. THE VETERINARY LIEN

Historically in the United States, animals have been relegated to the legal status of personal property or chattels.[5] Accordingly, they were viewed as objects, similar to tables and automobiles with little distinction made between inanimate and living beings.[6] Again based on this concept, animals can be owned by humans and, therefore, have no rights of their own.[7] Human owners were given the absolute property rights inherent in ownership such as the ability to transfer title to another and the ability to recover money damages from someone who injured or destroyed the value of his property.[8] Correspondingly, the owner of an animal was responsible for any damage that was done to others, either to their person or property, caused by the animal.[9]

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has enhanced our relationships. The result has been that my dogs have received excellent health care services.

[5] *See, e.g.*, 3 PA. CONS. STAT. § 459-601(a) (2018) ("All dogs are hereby declared to be personal property . . . ."); NEB. REV. STAT. § 54-601(1) (2018) ("Dogs are hereby declared to be personal property for all intents and purposes . . . ."); KAN. STAT. ANN. § 79-1301 (2018) ("A dog shall be considered as personal property . . . ."); W. VA. CODE § 19-20-1 (2018) ("Any dog shall be and is hereby declared to be personal property within the meaning and construction of the laws of this State . . . ."); OR. REV. STAT. § 609.020 (2018) ("Dogs are hereby declared to be personal property.").

[6] Cass R. Sunstein, *Centennial Tribute Essay: The Rights of Animals*, 70 U. CHI. L. REV. 387, 398–99 (2003).

[7] *Id.*

[8] *See* Carbasho v. Musulin, 618 S.E.2d 368, 370 (W. Va. 2005) (holding the value of a dog in a civil suit is its "market value, pecuniary value, or some special value" at the time of death); Jankoski v. Preiser Animal Hosp., Ltd., 510 N.E.2d 1084, 1086 (Ill. App. Ct. 1987) (recognizing that dogs are personal property and damages are recoverable when it is negligently killed by another); Anzalone v. Kragness, 826 N.E.2d 472, 476–78 (Ill. App. Ct. 2005) (holding that damages may still be awarded when the pet has no market value).

[9] *See, e.g.*, NEB. REV. STAT. § 54-601(1) ("[T]he owner or owners of any dog or dogs shall be liable for any and all damages that may accrue . . . to any person, other than a trespasser . . . and . . . [if the dog wounds or kills] any person . . . or other domestic animals . . . ."); HAW. REV. STAT. § 663-9 (2018) ("The owner or harborer of an animal . . . shall be liable in damages to the person injured . . . ."); DEL. CODE ANN. tit. 16, § 3053F (2018) ("The owner of a dog is liable in damages for any injury, death or loss to person or property that is caused by such dog . . . ."); OHIO REV. CODE ANN. § 955.28(B) (Lexis-Nexis 2018) ("owner . . . of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog . . . ").

Based upon this classification as personal property, many states have provided veterinarians with lien status[10] giving them leverage in collecting fees for services rendered.[11] These statutory lien rights are derived from the "common law lien" which allowed those in certain professions to retain possession of another's property until full payment was made for the service rendered.[12] However, at common law, the lien right was limited to those who use their "labor and skill" to improve the value upon another's property (people in such professions are also known as "artisans")[13] or people in a "public service" profession.[14] Therefore, because of the limited scope of the common law lien, whether or not veterinarians were entitled to the common law lien would vary from state to state. Some courts held that the veterinarian

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[10] A lien is "a legal right or interest that a creditor has in another's property." *Lien,* BLACK'S LAW DICTIONARY (10th ed. 2014). When a creditor has a lien on another person's property and it is sold, the creditor will have rights to the proceeds of the sale up to the amount necessary to satisfy his or her lien.

[11] S.C. CODE ANN. § 40-69-285 (2018); ALA. CODE § 35-11-390 (2018); FLA. STAT. ANN. § 713.655 (West 2018); KY. REV. STAT. ANN. § 376.470 (West 2018); GA. CODE ANN.§ 44-14-490 (West 2018); KAN. STAT. ANN. § 47-836 (West 2018); TENN. CODE ANN. § 63-12-134 (West 2018); VA. CODE ANN. § 3.2-6520 (West 2018). Some states also only provided a veterinary lien for services rendered to livestock animals. IOWA CODE § 581.2A (West 2018); MD. CODE ANN., COM. LAW § 16-401 (West 2018); MINN. STAT. ANN. § 514.966 subdiv. 1 (West, 2018); NEB. REV. STAT. ANN. §52-701 (West 2018); N.D. CENT. CODE ANN. § 35-31-01 (West 2018); S.D. CODIFIED LAWS § 4-27-12 (2018) (creating veterinary liens on livestock when the veterinarian administers certain types of vaccinations); CAL. CIV. CODE § 3051 (West 2018); CONN. GEN. STAT. § 49-70 (West 2018); COLO. REV. STAT. ANN. § 38-20-102 (West 2018); N.J. STAT. ANN. § 2A:44-51 (West 2018); N.Y. LIEN LAW § 183 (McKinney 2018); Maryville Nat'l Bank v. Snyder, 85 Mo. App. 82, 86 (1900) (holding a veterinarian has a common law lien for medical care costs).

[12] A common law lien is one that arises "by implication of law, not by contract, which entitles the lienor to retain possession of an article in his possession which belongs to another until certain demands against such other person are satisfied." *Common-law Lien*, BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

[13] *See, e.g.*, White v. Smith, 44 N.J.L. 105, 105–06 (1882) (showing the repairer has a lien on a wagon after repairing it); Lord v. Jones, 24 Me. 439, 444 (1844) (stating farriers, blacksmiths, tailors, and shipwrights all were entitled to a lien). The reasoning for providing a lien to those who increased the value of the owner's property was to promote fairness and ensure those who spent their time and special skills to increase the value of another's property are compensated for their services which will, in turn, provide "security and confidence" in the commercial market. *Id.*; Aviaus v. Brickley, 26 N.W. 188, 189 (1885) (citing 2 Kent's Comm. 634) ("This right rests on principles of natural equity and commercial necessity . . . and gives security and confidence to agents.").

[14] By the nature of the businesses, people in these types of professions are bound by law to serve the public and also have mandatory extraordinary duties and liabilities under the law while holding the owner's property. For example, an innkeeper has a common law lien on guests' luggage property because they are obliged to serve the general public, look after their guests' belongings, and provide entertainment. *See* Cook v. Prentice, 13 Or. 482, 483 (1886); Sharp v. Johnson, 38 Or. 246, 250 (1901) (stating innkeepers have a common law lien because they are bound to receive guests and their luggage for keeping); *see also* George v. Walton, 43 N.E.2d 515, 516 (Ohio Ct. App. 1942) (finding common law liens for common carriers and innkeepers are provided because they are bound by law to serve the public).

profession was similar to agisters[15] and livery stablemen[16] and were not entitled to the lien while others recognized that "doctoring" an animal did technically improve upon its value and thus, the veterinarian was entitled to a lien.[17]

Today, common law lien rights have generally been replaced and expanded upon by statute.[18] Now, pursuant to state statutes, veterinarians are given a special possessory lienholder status that allows the veterinarian to retain the patient animal claiming a superior right of possession that can be exercised against the owner of the animal if the owner cannot make full payment or make other payment arrangements satisfactory to the veterinarian.[19] In addition, state statutes may also provide that the animal being held by the veterinarian in these circumstances can be sold if the debt is not satisfied in a timely fashion.[20]

As a general rule, in states that provide for veterinarian liens, a veterinarian may refuse to return an owner's pet until full payment is made.[21] If the owner cannot or does not pay the bill within a specified

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[15] An agister is a person who is hired to care for, feed, and pasture another's cattle. *Agister*, BALLENTINE'S LAW DICTIONARY (3d Ed. 2010).

[16] A livery stable keeper is a person who boards another's horses for compensation. *See Livery stable*, BALLENTINE'S LAW DICTIONARY (3d Ed. 2010) (defining livery stable as a building where horses are kept for hire).

[17] *See Maryville Nat'l Bank*, 85 Mo. App. at 82 (holding a veterinarian has a common law lien); *See also Lord* 24 Me. at 444 (stating that the authorities would be opposed to a lien for a farrier, or "horse doctor").

[18] *See, e.g.,* CAL. CIV. CODE § 3051 (enacted in 1872 to codify lien rights for those who improve the value of another's property with their labor and skill); N.D. CENT. CODE ANN. § 35-20-11 (West 2018) (any professional hired for their skills can acquire a lien); MO. ANN. STAT. § 430.080 (West 2018) (any person expending labor or skill on any chattel shall have a lien for services costing in excess of twenty-five dollars). However, merely because a statute is in place does not mean the legislature meant to abolish the existence of the common law lien. *See, e.g.*, Moynihan Associates, Inc. v. Hanisch, 201 N.W.2d. 534, 536–37 (Wis. 1972) (holding that common law lien had not been abrogated by the enactment of several lien statutes).

[19] S.C. CODE ANN. § 40-69-285; ALA. CODE § 35-11-390; FLA. STAT. ANN. § 713.655; KY. REV. STAT. ANN. § 376.470; GA. CODE ANN.§ 44-14-490; KAN. STAT. ANN. § 47-836; TENN. CODE ANN. § 63-12-134; VA. CODE ANN. § 3.2-6520; IOWA CODE § 581.2A; MD. CODE ANN., COM. LAW § 16-401; MINN. STAT. ANN. § 514.966 subdiv. 1; NEB. REV. STAT. ANN. §52-701; N.D. CENT. CODE ANN. § 35-31-01; S.D. CODIFIED LAWS § 4-27-12; CAL. CIV. CODE § 3051; CONN. GEN. STAT. § 49-70; COLO. REV. STAT. ANN. § 38-20-102; N.J. STAT. ANN. § 2A:44-51; N.Y. LIEN LAW § 183.

[20] CAL. CIV. CODE § 3052 (West 2018); KY. REV. STAT. ANN. § 257.105 (West 2018); N.J. STAT. ANN. § 2A:44-52; MINN. STAT. ANN. § 514.93 (West 2018); VA. CODE ANN. § 3.2-6520; COLO. REV. STAT. ANN. § 38-20-102(1)(a)–(b); 34 R.I. GEN. LAWS ANN. § 34-48-1 (West 2018); OHIO REV. CODE ANN. § 1311.49 (West 2018); NEV. REV. STAT. ANN. § 108.550 (West 2017); TENN. CODE ANN.§ 63-12-134(e).

[21] S.C. CODE ANN. § 40-69-285; ALA. CODE ANN. § 35-11-390; FLA. STAT. ANN. § 713.655; KY. REV. STAT. ANN. § 376.470; GA. CODE ANN. § 44-14-490; KAN. STAT. ANN. § 47-836; TENN. CODE ANN. § 63-12-134; VA. CODE ANN. § 3.2-6520. Some states also only provided a veterinary lien for services rendered to livestock animals. IOWA CODE ANN. § 581.2A; MD. COMM. LAW CODE § 16-401; MINN. STAT. ANN. § 514.966 subdiv. 1; NEB. REV. STAT. ANN. §52-701; N.D. CENT. CODE ANN. § 35-31-01; S.D. CODIFIED LAWS

period of time (usually ranging from ten to twenty days),[22] the veterinarian is empowered to either sell the beloved pet or even give it to a humane society. The only obligation imposed on the veterinarian is to provide the owner with a required notice, which typically outlines a time period by which full payment must be made and a description of what may happen to the companion animal if the bill is not paid.[23] If the veterinarian chooses to sell the companion animal, any excess funds (over and above the amount claimed by the veterinarian plus the costs incurred in selling the companion animal) from the sale is to be given back to the owner.[24] However, like the common law lien, the veterinarian's statutory lien will not be enforceable unless the veterinarian retains possession of the animal.[25]

This is an example of how this process is designed to work:

Dog owner X brings his ailing dog to the veterinarian. After an initial consultation, the veterinarian determines that X's dog has a blockage in his colon and requires surgery in order to resolve the problem. The veterinarian advises the owner that without the surgery, the dog will die within a short period of time. The veterinarian further advises the owner that given the dog's young age and otherwise healthy condition, the dog has an excellent chance of full recovery if he has the surgery. In addition, the veterinarian provides the owner with an estimate of the costs covering the surgery and post-operative care in the amount of $2,500.00. The veterinarian also requires the dog's owner to pay one-half of the estimate up front before the surgery is performed.

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§ 4-27-12; CAL. CIV. CODE § 3051; CONN. GEN. STAT. ANN. § 49-70; COLO. REV. STAT. § 38-20-102; N.J. STAT. ANN. § 2A:44-51; N.Y. LIEN LAW § 183.

[22] *See, e.g.*, KY. REV. STAT. ANN. § 257.105 ("any unclaimed animal held for more than ten [ ] days . . . may be sold . . ."); MINN. STAT. ANN. § 514.93 (permitting veterinarians to sell animals after ten days); VA. CODE ANN. § 3.2-6520 (permitting veterinarians to sell animals after fourteen days without payment) *but see* WASH. REV. CODE ANN. § 60.56.010 (West 2018) (granting agisters a lien on the animal, but no power of sale is granted); N.J. STAT. ANN. § 2A:44-51 (granting livery stable keepers liens and the right to possess the animal, but no power of sale is granted).

[23] *See, e.g.*, KY. REV. STAT. ANN. § 257.105 ("The veterinarian . . . shall give . . . notice of the proposed sale of the animal to the owner"); MINN. STAT. ANN. § 514.93 ("written notice of the proposed sale of said animal shall be given to the owner").

[24] *See, e.g.*, KY. REV. STAT. § 257.105 ("the excess amount . . . from a sale shall be paid to the owner . . ."); MINN. STAT. ANN. § 514.93 (stating that the excess amount of payment received by the veterinarian from the animal's sale shall be sent to the original owner); VA. CODE ANN. § 3.2-6520 ("[a]ny balance of the proceeds shall be paid to the owner").

[25] *See e.g*., Kirkman Corp. v. Owens, 62 Cal. App. 2d 193, 199 (Dist. Ct. App. 1944) (holding that a fruit drier and processor was entitled to a lien on the fruit, but "the lien is lost by relinquishment of possession [of the fruit]"); N.E. Kan. Production Credit Ass'n v. Ferbrache, 693 P. 2d 1152, 1154 (1985) (stating veterinarian must have possession of animal to enforce liens acquired under Kansas Statute 47-836). *But see* KAN. STAT. ANN. § 47-836 (when veterinarians record a "notice of lien" within sixty days after service is rendered, a non-possessory lien will attach); Johanns v. Flicke, 121 N.E. 358, 358 (1918) (lien will not be broken if the veterinarian maintains "reasonably consistent" possession of the animal).

The dog's owner agrees to have the surgery done and pays the required $1,250.00 by check.

The surgery is successfully performed and after two days of post-operative care at the veterinarian's office, the owner is advised that he can take his dog home. When the owner goes to the office to pick up his dog, he is presented with a bill in the amount of $4,000.00. After acknowledging the pre-surgery payment of $1,250.00 by the owner, the balance now due is $2,750.00. However, the owner cannot pay the new balance but he can pay the estimated $1,250.00 balance.

Unless the parties can arrive at some mutually agreed upon resolution as to how the balance due of $1,500.00 can be satisfied, a state veterinary lien statute would allow the veterinarian to refuse to return the dog to the owner. And, the bill will continue to grow as the veterinarian can now charge for the costs of boarding, feeding, and continued care. And ultimately, if the owner cannot pay the ever increasing bill within a mandated statutory time period (e.g. ten days, twenty days) the veterinarian is allowed to sell the dog, give the dog to a local shelter, or otherwise dispose the dog (i.e. euthanize the dog) depending upon the defined remedies provided by a state statute.[26]

Given the statutory lien structure, if the dog owner and the veterinarian cannot resolve the payment issue, the veterinarian, the owner, and the dog suffer. The veterinarian is not likely to recover the full fees for services rendered to the dog. The owner suffers the loss of the now healthy dog because of the lack of funds to pay the increased balance owed. And, the dog suffers because it is separated from its owner, possibly sold to a new owner, placed in a local dog shelter, or perhaps euthanized.

II. ABANDONMENT LAWS

The veterinarian lien is not the only legal framework in place to "encourage payment" by pet owners. Thirty-seven states have abandonment laws that provide if a pet is left at the veterinary office for a specified period of time, it is deemed "abandoned" and the owner's property rights are extinguished.[27] The veterinarian then has the au-

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[26] *See, e.g.*, GA. CODE ANN. §44-14-491 (2018) (permitting veterinarians to euthanize animals if no specified shelter or facility is within a fifty-mile radius of the veterinary business and the veterinarian could not sell or rehome the animal).

[27] ALA. CODE § 34-29-86 (2018); ARIZ. REV. STAT. ANN. § 3-1310 (2018); ARK. CODE ANN. § 17-101-313 (West 2018); CAL. CIV. CODE § 1834.5 (West 2018); COLO. REV. STAT. ANN. § 12-64-115 (West 2018); CONN. GEN. STAT. § 20-205a (West 2018); FLA. STAT. ANN. § 705.19 (West 2018); GA. CODE ANN. § 44-14-491; IDAHO CODE ANN. § 25-3512 (West 2018); 225 ILL. COMP. STAT. ANN. 115/18 (West 2018); IND. CODE ANN. § 25-38.1-4-8 (West 2018); KAN. STAT. ANN. § 47-835 (West 2018); KY. REV. STAT. ANN. § 257.100 (West 2018); LA. STAT. ANN. § 3:2452 (2018); MASS. GEN. LAWS ch. 112, § 59A (West 2018); MICH. COMP. LAWS § 333.18838 (West 2018); MINN. STAT. ANN. § 346.37 (West 2018); MISS. CODE ANN. § 73-39-89 (West 2018); MO. REV. STAT. § 340.288 (West 2017); N.H. REV. STAT. ANN. §§ 437:18, :20 (2018); N.J. STAT. ANN. §§ 45:16-14 to -15 (West 2018); N.M. STAT. ANN. § 77-1-17 (West 2018); N.Y. AGRIC. & MKTS. LAW § 331 (McKinney 2018); N.C. GEN. STAT. ANN. § 90-187.7 (West 2018); N.D. CENT. CODE ANN. § 43-29-

thority to lawfully "dispose" of the animal in any lawful way the veterinarian chooses.[28] As a general rule, this disposal can include euthanizing the pet if the veterinarian's bill is not paid within ten days from notification to the owner.[29] Fourteen of those states have both abandonment and veterinarian lien statutes,[30] and in four of those it appears the statutes operate in conjunction with one another.[31]

For example, in Alabama, if the owner hasn't paid the bill within ten days after written demand is made to the owner, the animal is deemed abandoned and the veterinarian is authorized to sell the dog either at public or private sale.[32] The owner's property rights are extinguished and if the veterinarian does not succeed in selling the companion animal within fifteen days after the original written demand is made, the veterinarian may dispose of the companion animal in any

16.1 (West 2017); OHIO REV. CODE ANN. § 4741.30 (West 2018); OKLA. STAT. ANN. tit. 59, § 698.16 (2018); 3 PA. CONS. STAT. AND CONS. STAT. ANN. § 459-601 (West 2018); S.D. CODIFIED LAWS § 43-39-12.1 (2018); S.C. CODE ANN. § 40-69-280 (2018); TENN. CODE ANN. § 63-12-134; TEX. OCC. CODE ANN. § 801.357 (West 2017); UTAH CODE ANN. § 58-28-601 (West 2018); VT. STAT. ANN. tit. 20, §§ 3511, 3513 (West 2018); WASH. REV. CODE ANN. §§ 16.54.010, .020 (2018); W. VA. CODE ANN. § 26-4-9 (West 2018); WYO. STAT. ANN. § 33-30-215 (West 2018).

[28] Abandoned is generally defined in the statutes as "to forsake entirely, to neglect, or refuse to provide or perform the legal obligations for care and obligations for care and support of an animal by its owner . . . ." *See, e.g.,* ALA. CODE § 34-29-86(c) (defining abandoned).

[29] *See, e.g.*, IDAHO CODE ANN. § 25-3512 (West 2018) (describing the euthanasia option for veterinarians after holding abandoned animals for ten days); MASS. GEN. LAWS ANN. ch. 112, § 59A (West 2018) (describing the euthanasia option for veterinarians after holding "abandoned" animals for ten days); LA. STAT. ANN. § 3:2452 (2018) (describing the euthanasia option for veterinarians after holding "abandoned" animals for ten days); Of course, the amount of time a veterinarian must wait before the pet will be deemed abandoned does vary amongst the states. *Compare, e.g.*, ARIZ. REV. STAT. ANN. § 3-1310 (2018) (stating that after thirty days, the animal will be abandoned), *with* 225 ILL. COMP. STAT. ANN. § 115/18 (West 2018) (stating that owner relinquishes their rights after seven days pass without claiming the animal), *and* OKLA. STAT. ANN. tit. 59, § 698.16 (West 2018) (stating that if the owner of the pet is known the animal may be disposed of after three days; if the owner is unknown, the animal may be disposed of after five days).

[30] ALA. CODE §§ 35-11-390, 34-29-86; CAL. CIV. CODE §§ 3051, 1834.5; COLO. REV. STAT. ANN. §§ 38-20-102, 12-64-115; CONN. GEN. STAT. ANN. §§ 49-70, 20-205(a); FLA. STAT. ANN. §§ 713.655, 705.19; GA. CODE ANN. §§ 44-14-490 to -491; KAN. STAT. ANN. §§ 47-835 to -836; KY. REV. STAT. ANN. §§ 376.470, 257.100; MINN. STAT. ANN. §§ 514.94, 346.37; N.J. STAT. ANN. §§ 2A:44-51, 45:16-15; N.Y. LIEN LAW § 183; N.Y. AGRIC. & MKTS. LAW § 331 (McKinney 2018); N.D. CENT. CODE ANN. § 43-29-16.1; S.C. CODE ANN. §§ 40-69-285, -280; S.D. CODIFIED LAWS §§ 40-27-12, 43-39-12.1; TENN. CODE ANN. §§ 63-12-134(a) to (b).

[31] ALA. CODE § 34-29-86 (providing that animals left unclaimed for ten days are deemed abandoned and may be given to a humane society or sold to satisfy the veterinarian lien); GA. CODE ANN. § 44-14-491 (stating that after ten days without payment on the lien, the animal is abandoned); N.Y. AGRIC. & MKTS. LAW § 331 (McKinney 2018) (stating that the lien is waived after a veterinarian gives notice the pet will be deemed abandoned if not claimed within five days); TENN. CODE ANN. § 63-12-134 (stating that abandoned animals may be sold to satisfy the veterinary lien).

[32] ALA. CODE § 34-29-86.

lawful manner.[33] However, some statutes, like the one in Vermont, provide that if the veterinarian deems the animal abandoned the lien is released and no longer can be enforced.[34]

Another way of examining the lien and abandonment laws protecting the economic interests of veterinarians is to compare it to the laws designed to protect automobile repair mechanics. The owner of an automobile repair shop is typically provided with a state statutory mechanic's lien.[35] Both types of liens are possessory which provides protection to the lienholder. Similarly, the veterinarian or the auto repair business are not required to return the property in question until the bill is paid in full.[36] And, if the bill is not paid within a certain period of time, under both types of liens, the property can be sold or otherwise disposed of in order to reduce any financial harm suffered by the lienholder because of the unpaid bill.[37] They operate in a similar fashion because companion animals and automobiles are both legally deemed to be personal property with no inherent rights of their own. Although dogs and automobiles are both legally classified as personal property or chattels, dogs and automobiles are very different from each other and should not be treated in a similar fashion. Dogs are living beings while automobiles are inanimate objects. An owner of an automobile can deliberately damage his car with a sledgehammer. As long as no one else was hurt or damaged by the owner's actions, it would be looked upon as a rightful act of ownership. On the other hand, if the same person engaged in the same conduct on his dog, it would be viewed as criminal and treated very differently under various state statutes. The next section will examine some of the protections provided to dogs to further illustrate the point that statutory lien laws should be re-evaluated to take into account these differences.

III. ARE COMPANION ANIMALS STILL TREATED LIKE AUTOMOBILES?

Over time, state legislatures, courts, and societal actions in general have shown that dogs are no longer being viewed as just a piece of personal property. Our society has recognized that dogs, in spite of being classified as objects of personal property by the law, have certain rights because of their status as living beings.[38] They need legal

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[33] ALA. CODE § 35-11-391 (2018).

[34] VT. STAT. ANN. tit. 20, § 3512 (2018).

[35] James Fullerton, *Mechanic's Liens*, CONSTRUCTION LAW SURVIVAL MANUAL, http://www.fuller-tonlaw.com/docs/appendices/50_state_survey_of_mechanics_lien_rights.pdf [https://perma.cc/FRL9-GCRB] (accessed Sept. 1, 2018).

[36] *Id.*

[37] *Id*.

[38] *See Pets Not 'Mere' Property: Oregon Supreme Court Upholds Dog-Starvation Conviction*, THE OREGONIAN (June 16, 2016), http://www.oregonlive.com/portland/index.ssf/2016/06/-pets_arent_just_property_orego.html [https://perma.cc/9NWB-RQCK] (accessed Sept 1, 2018) (reporting a case decided by the Oregon Supreme Court that recog-

protection from abusive and neglectful owners[39] and other human beings.

A. State Legislature Changes

Every single state imposes criminal liability against those who abuse or neglect animals.[40] For example, in the state of California it is unlawful for a person to maliciously and intentionally maim, mutilate, torture, or wound a living animal.[41] So, while legislatures have adopted anti-cruelty and abuse laws to protect dogs, they have not been concerned with other inanimate objects or pieces of "property." It does not matter if an owner beats his car with a sledge-hammer, fails to provide gasoline to the car's gas tank, or takes an axe to a table and destroys it. As long as the owner does not interfere with another person's use of their property or create a public hazard, they are generally free to destroy their own personal property. However, when it comes to dogs, legislatures have become quite specific in defining the type of conduct that is prohibited such as tethering dogs for too long a time period, leaving dogs in closed cars on hot days, or training dogs to engage in dogfighting.[42] Therefore, legally classifying dogs as personal property in a traditional ownership paradigm no longer makes sense because living beings need a level of protection from harm that is greater than inanimate property. The fact that both are considered personal property with no distinction makes this similar classification over-inclusive and inadequate. And, as will be discussed later, the American Veterinary Medical Association, rather than advocating for a change in the status of dogs, has opposed attempts to reclassify dogs as something other than personal property.[43]

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nizes that a dog does not hold the same status as an inanimate object under the 4th Amendment search analysis).

[39] *See generally Anti-Cruelty: Related Statutes*, MICH. ST. U. C. OF L.: ANIMAL LEGAL & HISTORICAL CTR., http://www.animallaw.info/statutes/topicstatutes/sttoac.htm [https://perma.cc/53RQ-7GKX] (accessed June 9, 2018) (providing a detailed list of state anti-cruelty and anti-abuse statutes). *See also, e.g.,* COLO. REV. STAT. § 18-9-202 (West 2018) (concerning aggravated cruelty to animals); CAL. PENAL CODE § 597(f) (West 2010) (concerning failure to care for animals); 18 PA. CONS. STAT. § 5511 (2010); 18 PA. CONS. STAT. § 5511(H.1) (stating a person is guilty of third degree felony for animal fighting conviction); MASS GEN. LAWS. Ch. 119 § 85 (2010) (requiring certain persons to report incidents of animal abuse or neglect discovered while working in their professional capacity).

[40] *Anti-Cruelty: Related Statutes, supra* note 39.

[41] CAL. PENAL CODE § 597 (West 2010).

[42] *See, e.g.,* COLO. REV. STAT. § 18-9-204 (2015) (stating "[n]o person shall . . . encourage a fight between animals for the purpose of monetary gain or entertainment"); CAL. PENAL CODE § 597.5(a) (2011) (stating any person who causes a dog fight is guilty of a felony); MASS. GEN. LAWS ch. 272 § 88 (2007) (regarding complaints and warrants relative to fighting animals, searches, and arrests).

[43] *See infra* Section III.B. (discussing the AVMA's opposition to considering a dog's sentimental value, preferring the "fair market value" approach).

B. Court Decisions and Case Law

Historically, because dogs were viewed as personal property under the law, the damages an owner could recover for the intentional or negligent harm suffered by the dog caused by the actions of another was limited to market value of the dog.[44] If the dog was a mutt who was rescued from a shelter for a nominal amount of money, the damages were limited to the amount required to purchase a similar rescue mutt. If the dog was a purebred, the owner could recover the amount of money needed to purchase a similar purebred from a breeder.[45] In both situations, mutt and purebred, the owner might also recover the amount of money necessary to restore the dog to its previous condition.[46] Damages were valuated strictly on an economic basis.[47]

Recent court decisions are starting to recognize that dogs deserve to be treated as something different from other forms of personal property. These cases recognize the special relationship that exists between a dog and its owner. Some courts and state statutes have used terms such as "sentimental value" and "loss of companionship" to indicate that they may have a greater value to an owner than the harsh and narrow view of measuring damages solely on the basis of how much someone paid for a dog.[48]

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[44] Rebecca Wisch, *Brief Introduction to Pet Damages*, MICH. ST. U. C. OF L.: ANIMAL LEGAL & HISTORICAL CTR. (2003), https://www.animallaw.info/article/brief-introduction-pet-damages [https://perma.cc/NB3C-YVGF] (accessed Sept. 1, 2018).

[45] *See id.* (explaining that damages awarded for loss of a dog would be the amount of money needed to purchase a similar dog).

[46] *See* David Favre, *Overview of Damages for Injury to Animals - Pet losses*, Animal Legal & Historical Center, MICH. ST. U. C. OF L.: ANIMAL LEGAL & HISTORICAL CTR. (2003), https://www.animal-law.info/article/overview-damages-injury-animals-pet-losses [https://perma.cc/76P6-ZBVQ] (accessed Sept. 1, 2018) (discuss-ing a case where a defendant who had illegally driven cattle was required to pay for feed to bring the cattle back up to their previous weight).

[47] *Id.*

[48] *See, e.g.,* TENN. CODE ANN. § 44-17-403 (West 2018) (permitting an individual owner to collect up to $5,000 in noneconomic damages for death of a pet. "Noneconomic damages" in this statute is limited to compensation for loss of "reasonably expected society, companionship, love and affection of the pet." Further, the limitations under this section do not apply to an IIED claim or any other claim other than the direct and sole loss of a pet); Jankoski v. Preiser Animal Hosp., Ltd., 510 N.E.2d 1084 (Ill. App. Ct. 1987) (recognizing that sentimental value of a pet to an owner is a proper element in considering the amount of damages the owner should be awarded in a destruction of property or IIED case); Anzalone v. Kragness, 826 N.E.2d 472, 477–78 (Ill. App. Ct. 2005) (upholding *Jankoski's* analysis that sentimental value is a valid element for consideration of compensatory damage for loss of an animal. In addition, merely because the prayer for relief in the complaint may be extravagant, a case cannot be dismissed merely based on those terms. The relevant amount of damages awarded is left largely to the discretion of the trier of fact in these types of cases). In addition, *Anzalone* provides a nice history of the types of damages allowed, especially considering sentimental value damages and emotional distress damages in cases involving the loss of property. *See also* Leith v. Frost, 899 N.E.2d 635, 637 (Ill. App. Ct. 2008) (showing how the court awarded plaintiff's approximately $4700 for veterinary care of their animal because it went to show the amount of damage the plaintiffs actually suffered, and the trial court

However, the American Medical Veterinary Association has been very resistant to change in this area. It continues to advocate "fair market value" or economic damages as the proper measure of damages if a dog is injured or killed.[49] In a position statement made in 2012, the AMVA refused to recognize the value of a dog in other than economic terms and thereby continued to fight against broadening the scope of damages to include sentimental value. However, it did for the first time, pronounce its position to support "punitive damages" in cases involving criminal or outrageous conduct.[50] Although the AMVA's position is understandable from a protectionist perspective, this position fails to protect dogs and their owners from the negligent acts committed by humans, including veterinarians. By limiting the amount of damages to solely an economic analysis, owners will often find that seeking legal redress in the courts will cost the owners more money than they are likely to recover.

C. Societal Shift Regarding the Status of Dogs

Further proof that dogs are no longer merely "property" in eyes of society can be seen when examining the role change of dogs from guards or hunters to one of companionship, the evolution of veterinary treatments and medicine, and the large amount of money spent on dogs and pets in general. In his book, *One Nation Under Dog*, Michael Schaffer looks at the way American attitudes towards dogs have changed.[51] In the past, families acquired dogs as guards and hunters and often left them to sleep outside in doghouses or worse.[52] However, "[b]y 2001 . . . 83% of American pet owners referred to themselves as their animals' 'mommy' or 'daddy,'" which indicates the importance of

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erred by only awarding the "$200" market value of the animal. The court reasoned that a puppy at seven and a half weeks old has nominal value and the measure of damages should be what the value of the puppy was to the owners. It is reasonably foreseeable that an owner would develop an emotional attachment to their pets and would pay veterinary bills for care of their animal; therefore, the cost of veterinary bills is a rational consideration when finding the value of the animal to the owner); Brousseau v. Rosenthal, 443 N.Y.S.2d 285 (Civ. Ct. 1980) (finding that plaintiff had suffered a grievous loss when her eight-year-old German shepherd died at the negligent hands of a veterinarian. Allowed for emotional/sentimental value of the owner as a measure of damages so that she could be adequately compensated for her loss).

[49] Adrian Hochstadt, *AVMA Revises Recovery of Monetary Damages Policy*, AM. VETERINARY MED. ASS'N. (May 1, 2012), https://atwork.avma.org/2012/05/01/avma-revises-recovery-of-monetary-damages-policy/ [https://perma.cc/JL6F-TLUA] (accessed July 8, 2018).

[50] *Id.* ("A new clause acknowledges the awarding of punitive damages when warranted in accordance with a state's punitive damage law. These are normally awarded to punish or deter conduct such as animal cruelty, and are not available in cases involving simple negligence.").

[51] Jonathan Yardley, *Book Review: 'One Nation Under Dog' by Michael Schaffer*, WASH. POST, http://www.washingtonpost.com/wpdyn/content/article/2009/04/10/-AR200904100-1143.html?noredirect=on [https://perma.cc/3QVQ-ACA8] (accessed Sept. 1, 2018).

[52] *Id.*

dogs to ordinary people.[53] Further, Americans who see their dogs as extensions of themselves or members of their family will not hesitate on spending a significant amount of money on veterinary care for their companions.[54]

Despite the economic downturn that started around 2008, the pet industry continued to grow. Pet industry spending figures show that total pet spending reached $43.2 billion in 2008.[55] Then, in 2009, that figure grew to $45.53 billion.[56] Of that money spent, about $11.1 billion was towards veterinary care costs in 2008 and $12.2 billion in 2009.[57]

These results are similar to an economic analysis found in *U.S. Pet Market Outlook 2009-2010: Surviving and Thriving in Challenging Economic Times*.[58] This report "projects that the U.S. pet market will grow at a 7.1[%] compound annual rate from 2008 to 2013, up [almost 1%] in the previous five-year period."[59] The major category fueling this projected growth is veterinary expenses, which have become the pet industry's largest category of expenses in 2008.[60] The explanation provided by Packaged Facts publisher, Tatjana Meerman, is particularly noteworthy:

> Packaged Facts views pet humanization as a dynamic, multifaceted shift that virtually guarantees steady pet market sales not just in 2009 and 2010, but well beyond. . . . Many pet owners view their pets as full-fledged members of the family, and would take no more lightly any serious cutbacks on spending for [nondiscretionary] products and services than they would for their kids. In most cases, such cutbacks would only seriously be considered after owners have reduced spending on their own [less essential] needs.[61]

Not surprisingly, pet ownership remains on the rise in the U.S. According to the American Pet Products Manufacturers Association 2007 Survey, the dog population in the U.S. in 2003 and 2004 was 65

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[53] *Id.*

[54] *See id.* (stating that millions of Americans see dogs as family members and also that "[p]eople who see their pets as extensions and reflections of themselves apparently have no hesitation about laying out significant sums to give those pets the best . . . veterinary care").

[55] *Pet Spending Topped $43 Billion In 2008*, VETERINARY PRAC. NEWS (Apr. 17, 2009), https://-www.veterinarypracticenews.com/pet-spending-topped-43-billion-in-2008/ [https://perma.cc/6NZL-RWTE] (accessed Sept. 1, 2018).

[56] *Vet Care Spending Tops $13 Billion In 2010*, VETERINARY PRAC. NEWS (Mar. 17, 2011), https://www.veterinarypracticenews.com/vet-care-spending-tops-13-billion-in-2010/ [https://perma.cc/S45X-FRUV] (accessed Sept. 1, 2018).

[57] *Pet Spending Topped $43 Billion In 2008*, *supra* note 55.

[58] *See Health Spending to Fuel Pet Industry Growth*, VETERINARY PRACTICE NEWS (Apr. 17, 2009), https://www.veterinarypracticenews.com/health-spending-to-fuel-pet-industry-growth/ [https://perma.cc/2BS2-ZB5F] (accessed Sept. 1, 2018) (citing DAVID LUMMIS, PACKAGED FACTS, U.S. PET MARKET OUTLOOK 2009-2010: SURVIVING AND THRIVING IN CHALLENGING ECONOMIC TIMES (2009)).

[59] *Id.*

[60] *Id.*

[61] *Id.*

million.[62] In 2006 this number rose to 73.9 million, and finally in 2007, reached a high of 74.8 million.[63] In 2007, 37.2% of U.S. households owned at least one dog and, on average, owners have almost two dogs.[64] These dog owners spent approximately $200.00 on veterinary visits (vaccines, check-ups) annually.[65]

Americans spent $55.7 billion on their pets in 2013.[66] In projecting future growth in this industry, the President and CEO of the American Pet Products Association based his prediction on recognizing "[p]ets across America live like little humans these days—and as long as people treat them that way, pet spending should keep climbing."[67] Out of the $55.7 billion spent on pets, $14.37 billion was spent on veterinary care.[68] American pets included 83.3 million dogs at this time.[69]

The growth of the pet products industry is indicative of how popular dogs have become in our culture. But the increase in the dog population combined with the essential role that dogs play in creating benefits to their human owners do not necessarily explain why people are willing to spend more and more money on their dogs. The critical link here is that owners have informally elevated the status of dogs from personal property to 'members of the family.' And, the veterinary profession and other pet industries have financially benefitted by encouraging people to view dogs as members of the family.[70] The goal is

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[62] Lianne McLeod, *American Pet Ownership Statistics*, ABOUT.COM EXOTIC PETS (site no longer available) (reporting American Pet Products Manufacturers Association statistics).

[63] *Id.*

[64] *Market Research Statistics - U.S. Pet Ownership 2007*, AVMA, https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership-2007.aspx [https://perma.cc/EAZ7-T4CY (accessed Sept. 1, 2018).

[65] *Id.*

[66] *Money Watch*, *Americans Spent a Record $56 Billion on Pets Last* Year, CBS NEWS (Mar. 13, 2014, 12:31 PM), https://www.cbsnews.com/news/americans-spent-a-record-56-billion-on-pets-last-year/ [https://perma.cc/V4V2-YKRE] (accessed Sept. 1, 2018). This CBS Report is based on information presented by Bob Vetere, the president and CEO of the American Pet Products Association at the 2014 Global Pet Expo in Orlando, Florida. *Id.* This "trade association has been tracking pet industry figures since 1996, when total pet spending was just $21 billion." *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.* The same report by the American Pet Products Association reported that it estimated that there were 95.6 million cats. *Id.*

[70] For example, it has become increasingly more popular for families to take their dogs on vacation with them. As a result, hotels and motels have become more 'dog friendly' to take advantage of this trend. Emadene Travers, *Adorable or Deplorable? Pet Friendly Hospitality*, ART INST. ONLINE: BLOG (Jul. 24, 2017), https://www.artinstitutes.edu/online/about/blog/aio-adorable-or-deplorable-pet-friendly-hospitality [https://perma.cc/7PXH-5DYD] (accessed Sept. 1, 2018). Restaurants have also become more flexible in allowing dogs to join their families when dining in outdoor patios. *Id.* California recently removed the prohibition that prevented restaurants and municipalities from making this accommodation. Patrick May, *New California Law Allows Dogs to Dine on Restaurant Patios*, MERCURY NEWS (Aug. 22, 2014, 10:44 AM), https://www.mercurynews.com/2014/-08/22/new-california-law-allows-dogs-to-dine-on-restaurant-patios/ [https://perma.cc/E3MD-AUGT] (accessed Sept. 1, 2018). Veterinary clinics em-

that people will spend more money on their dogs if they are viewed as members of the family.[71]

This change in informal status is essential to the veterinary profession. As the health care industry for dogs has become more sophisticated in developing new technological tools that advance the health treatment veterinarians can provide to their dog patients, the cost of treatment has also escalated.[72] By acquiescing or encouraging dog owners to view dogs as members of the family, people will be willing to spend more money on expensive treatment options. Someone needs to pay for the expensive education required to be a licensed veterinarian[73] and for the sophisticated technology and equipment that is necessary to provide adequate health care for dogs. Similar to the human medical profession, the veterinary profession has become so sophisticated that specialty areas have developed. For example, the veterinary profession now recognizes such specialty areas as imaging and MRI, oncology, surgery, ophthalmology, dermatology and anesthesiology to name a few.[74] And, consulting with a specialist

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phasize their understanding that companion animals are family. *See*, *e.g.*, ACADEMY ANIMAL CARE, www.academyanimalcare.com [https://perma.cc/5H8J-GCPS] (accessed Sept. 1, 2018) ("At Academy Animal Care we treat your pets like family."); *see also* COMPANION ANIMAL HOSP. SELINSGROVE, https://www.companionanimalhospitalselinsgrove.com [https://perma.cc/RW2W-2VJ4] (accessed Sept. 1, 2018) ("Companion Animal Hospital and Paws Inn acknowledge the importance of the human animal bond, knowing that the majority of pets we see are thought of as members of the family . . . ."); *see also* COMPANION ANIMAL CLINIC http://www.cacokc.net/ [https://perma.cc/K6P4-PUTN] (accessed Sept. 1, 2018) ("We understand that your pet is part of your family . . . ."); *see also* LAFAYETTE COMPANION ANIMAL HOSP., www.lafayettepetvet.com [https://perma.cc/L3NQ-FK9B] (accessed Sept. 1, 2018) ("At Lafayette Companion Animal Hospital, we treat your pets like the valued family members they are.").

71 *Money Watch*, *supra* note 66.

72 Mary Brophy Marcus, *Pet Care Costs Can Top Human Medical Bills, New Report Reveals*, CBS NEWS (Dec. 1, 2016, 10:30 AM), https://www.cbsnews.com/news/pet-health-care-costs-can-top-human-medical-bills-new-cat-and-dog-health-insurance-report/ [https://perma.cc/NVP7-A7HW] (accessed Sept. 1, 2018).

73 "The harsh reality is that the average educational debt for 2016 veterinary school graduates including those with zero debt was $143,757.82. The average for only those 2016 veterinary school graduates with debt is $167,534.89 and over 20% has at least $200,000 in debt. There are factors beyond [students'] control, such as rising tuition, that contribute to the increasing debt load." *Financing Your Veterinary Medical Education*, AVMA, https://-www.avma.org/About/SAVMA/StudentFinancialResources/Pages/default.aspx#refs [https://perma.cc/5JXK-8YDV] (accessed Sept. 1, 2018).

74 *Veterinary Specialists*, AVMA, https://www.avma.org/public/YourVet/Pages/veterinary-specialists.aspx [https://perma.cc/D8KT-XHMF] (accessed Sept. 1, 2018). As an illustration, my female husky is a 'rescue dog.' She was abandoned by her original owner at the age of five to six months. At age four she significantly damaged the knee of one of her hind legs so my wife and I took her to a knee surgical specialist who repaired her knee. The following year, our husky damaged her knee in her other hind leg. Again, we took her to the same specialist who surgically repaired her other knee. The combined cost for both successful surgeries was over $8,000. Recently, our same husky developed a mass that was a cause of concern for us. We took her to our general veterinarian who examined her, performed various tests, and took x-rays resulting in an approximate cost of $1,000. Based on her preliminary findings, we were referred to the same specialty hospital that we had used for her knee surgeries. The surgical specialist provided us

is expensive.[75]

IV. ETHICAL OBLIGATIONS OF VETERINARIANS

In addition to the stance taken by the AVMA regarding veterinary liens, it is also inconsistent with its own Code of Ethics.

The AVMA has adopted a Uniform Code of Ethics for Veterinarians that many states have either adopted in full or in part.[76] One of the central principles embodied in the AVMA Code and state and local Veterinarian Association Codes is that the needs of the patient are paramount.[77] And, the patient is the dog.[78] Given the mandate of essentially forbidding a veterinarian to do no harm to the patient, it is hard to justify the legitimacy of a legal regime in which the veterinarian is authorized to refuse to return a dog to its owner because the owner does not have the immediate financial capacity to pay the total bill for services rendered. Sadly, a dog that is forced to live in a cage in a veterinarian's office and separated from its family for an extended period of time, suffers harm. So, the veterinarian who is ethically obligated to "do no harm" actually puts their own financial interest ahead of the patient's needs, inflicting harm on the party least able to protect itself.[79] However, the AVMA's Code of Ethics has not been universally adopted by state veterinary associations and the likelihood of a veterinarian being sanctioned for engaging in this type of behavior is minimal. The veterinarian can use the state's statutory lien law as a defense.

Veterinarians clearly benefit economically by supporting the view that dogs are like members of the family. As stated earlier, when owners view dogs as members of the family, they are willing to spend more

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with treatment options and cost estimates. We decided to have the mass surgically removed. The cost for this procedure was approximately $5,000. I raise these examples to illustrate the current nature of the kind of care that can be provided to dogs, the relative expense involved, and the fact that my wife and I consider our husky to be an important member of our family.

[75] *See* Mary Brophy Marcus, *supra* note 72 (detailing how expensive the new advanced technologies and specialized treatments can be for pet owners).

[76] *See, e.g.*, *Principles of Veterinary Medical Ethics of the AVMA*, AVMA, https://-www.avma.org/KB/Policies/Pages/Principles-of-Veterinary-Medical-Ethics-of-the-AVMA.aspx [https://perma.cc/5HDL-BEV5] (accessed Sept. 1, 2018) [hereinafter, *AVMA Code of Ethics*] (Establishing the Principles of Veterinary Medical Ethics of the AVMA); *Missouri Veterinary Medical Association Constitution*, https://cdn.ymaws.com/www.movma.org/resource/resmgr/imported/Constitution%20and%20bylaws%20WORKING%20document%204-1-14.pdf [https://perma.cc/YQ4F-B8D8] (stating how the Missouri Veterinary Medical Association's Code of ethics will be the same as the *AVMA Code of Ethics*); *New Hampshire Veterinary Medical Association Constitution*, N.H. VETERINARY MED. ASS'N, https://-www.nhvma.com/page/34? [https://perma.cc/8U7J-BZYV] (accessed Sept. 1, 2018) (declaring that New Hampshire will cooperate with the AVMA in its purpose).

[77] "A veterinarian should first consider the needs of the patient to prevent and relieve disease, suffering, or disability while minimizing pain or fear." *AVMA Code of Ethics*, *supra* note 76.

[78] *See id.* at § I (suggesting a differentiation between the patient and the client).

[79] *See id*. at § II ("A veterinarian should first consider the needs of the patient.").

money for veterinary treatment and care.[80] However, in our society, the refusal to release a human patient to his or her family would never be tolerated. As a result of this dichotomy, and the hypocritical positions taken by the AVMA, veterinarians are encouraged to treat dogs as members of the family in order to generate more income and are allowed to treat dogs as tables or automobiles if the dog's family can't pay the bill.

Veterinary lien issues could arise when the actual bill of the veterinarian is higher than the previous given estimate or there is a dispute over the legitimacy of a veterinarian's bill.[81] In billing disputes such as these, the veterinarian is given the power to demand full payment as a condition of releasing the dog to its owners.[82] The veterinarian may refuse to accept a payment schedule or partial payment. As a result, dog owners have little recourse but to meet the veterinarian's demands for payment in order to get their dog back. With respect to a disputed bill, the owner would have to pay the bill in full to get their dog back and then seek legal redress in order to dispute the bill.[83] And, as was discussed in Section II, if the measure of damages is limited to a purely economic market analysis, any recovery would be quite limited. Accordingly, this type of system tends to discourage a dog owner from seeking a recovery against the veterinarian. The cost of filing a lawsuit and hiring a lawyer becomes more expensive than the potential amount of recovery.[84]

However, it is important to remember that this type of conflict involves more than just the dog owner and the veterinarian. It also involves the dog who is the patient. What happens to the dog in this situation? The dog is involuntarily confined to a cage in a veterinarian's office getting limited exercise and separated from his human family. Studies have shown that dogs are likely to suffer from anxiety and increased stress when separated from their owners.[85] Even more harm will be inflicted if it is sold off at an auction or placed in a shelter or euthanized by the veterinarian creditor or by the shelter. The dog

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[80] *See infra* section III(c) (discussing how the humanization of pets leads to increased spending on veterinary care).

[81] *E.g.*, *AVMLA News: Winter 2014*, *Gomez v. Innocent 746 S.E.2d 645 (Ga. Ct. App. 2013) Veterinarian Lien: Using a veterinarian lien can be very costly*, AM. VETERINARY L. ASS'N. https://-www.avmla.org/wp-content/uploads/2011/09/AVMLA-Winter-2014.pdf [https://perma.cc/YA4P-7JZM] (accessed Sept. 1, 2018) [hereinafter *AVMLA News: Winter 2014*].

[82] *See* discussion *infra* section I and II (discussing veterinarian's power under modern lien and abandonment statutes to demand payment before releasing the dog).

[83] *Id.*

[84] *See AVMLA News: Winter 2014 supra* note 81 (discussing a $484 dispute that lead to a two-day jury trial where the court granted summary judgment, sua sponte, and an appellate court remanded for retrial).

[85] Stefanie Schwartz, *Separation anxiety syndrome in dogs and cats, 222* JAVMA *1526, 1526 (2003)* ("Dogs that are sent to board at kennels, hospitalized at veterinary clinics, abandoned by the roadside, surrendered to shelters, or left alone at home . . . may suffer various degrees of anxiety.").

has no rights and there are no safeguards to protect it if the owners cannot make full payment.[86] The dog becomes the helpless hostage innocently caught between the veterinarian (the very party who is ethically obligated to care for it) and the owner who wants the dog returned but might not be able pay the full balance by a given date.

V. VETERINARY LIENS ARE NOT NECESSARY TO ENFORCE THE PAYMENT OBLIGATIONS OF AN OWNER.

This article is not meant to dispute the fact that veterinarians are entitled to get paid for the work they perform. However, veterinarians should not be afforded the extra protection of a lien law to protect themselves from unpaid bills. They are the only health professionals afforded this protection.[87] First, veterinarians can employ other methods before accepting the dog as a patient to ensure the owner can pay for the treatment.[88] Second, in the event of an owner's failure to pay, the same collection mechanisms available to any creditor are available to veterinarians. If a child were taken to a doctor's office for treatment, it would be unconscionable for the doctor to keep the child until the parents could pay the bill. Typically, the doctor would either ask for payment before actual treatment or bill the parents for the services that were rendered.[89] In addition, veterinarians can implement treatment agreements that provide for the recovery of the costs and the attorney's fees incurred because of failure to pay and minimize the costs associated with collection procedures.

Prior to treatment, veterinarians should provide the owners with detailed and fair cost estimates. As such, this often will include a requirement that the owner make a sizeable deposit at the time of signing the treatment estimate. Providing owners with this information will, at the very least, give the owner a chance to determine whether or not the owner can afford it. At this stage, the veterinarian should also notify the owner of alternative options for treatment based on an understanding of an owner's financial situation.

Next, veterinarians can accept a partial payment schedule. Yes, some owners might not complete the payment schedule, but it is unfair to assume that all owners are 'deadbeats.' Although I can hear veterinarians screaming about potential collection problems if payments are late, missed or stopped, perhaps the owner could be required to sign a promissory note to memorialize the payment agreement. This note

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[86] *See AVMLA News: Winter 2014, supra* note 81 (showing an example of a case in which a dog had no legal rights or safeguards from being taken from the owner when the owner could not pay the bill in full).

[87] Other health professionals like MDs, DMDs and Nurse Practitioners cannot put a lien on their patients if a bill is not paid.

[88] It is beyond the scope of this article to examine the legitimacy of a veterinarian who initially refuses to provide services.

[89] If the family has health insurance, the doctor would seek reimbursement from the insurance company for services rendered. The insurance paradigm for dogs is very different as will be discussed later in this section.

could include a requirement that the owner pay late fees, interest and/or attorney's fees in the event of nonpayment. In addition, the note could also include an alternative dispute resolution clause that provides for mediation of disputes and/or arbitration to provide a speedier resolution regarding payment problems in lieu of filing a lawsuit in court.

Veterinarians should also provide dog owners with pet insurance information including the benefits and detriments involved in obtaining this type of insurance. Although pet insurance can provide some financial relief for dog owners facing large veterinary bills, the AVMA has done little to advocate or lobby for more consumer-friendly insurance policies. Dog owners should be encouraged to purchase insurance when their dog is young and healthy. This type of third party payment arrangement can ease the financial burden placed on a family whose dog requires expensive treatment. However, there are two systemic problems that have limited the use of pet insurance: (1) Often the owner must first pay the veterinary bill in full and then seek reimbursement from the pet insurance company;[90] and (2) pet insurance policies have exclusion clauses that disallow any claims related to prior existing conditions.[91] In addition, the economic benefit of such policies has been questioned.[92] Also, veterinarians could provide information to dog owners about the possibility of obtaining credit to help pay the cost of their veterinary bill[93] or other possible sources of financial assistance.[94]

VI. OWNER'S REMEDIES TO CONTEST THE IMPOSITION OF A VETERINARY LIEN

What can a dog owner do when a veterinarian imposes a veterinary lien on a dog? There is a range of options that might be available

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[90] Unlike human health insurance coverage which is handled by treating physicians, wherein the doctor's office bills the insurance company directly for reimbursement, veterinarians play a more passive role. The dog owner is responsible for seeking payment.

[91] These types of provisions make it financially imperative to obtain pet coverage when the dog is a young puppy. The longer an owner waits, the more expensive the policy and the more likely it becomes that there might be an issue of a prior existing condition. In addition, families that adopt dogs from a shelter may have little knowledge of a dog's medical history.

[92] For example, if the dog owner put the same amount of money into a bank account on a monthly basis equal to the insurance policy payments required, the owner can use the accumulated funds to offset an unexpected veterinary expense if necessary.

[93] For example, Care Credit.

[94] I recently discovered that the veterinarians, who my wife and I used to perform surgery on our husky for a torn ACL in her hind leg, started and made significant contributions to a foundation for the purpose of helping the owners of their patients who needed financial assistance. They also allowed owners to pay by no interest installment payments capped at six months. For a list of similar foundations, see Daniela Caride, *Financial Assistance for Pet Owners,* CAT MAN DO (Mar. 9, 2010), http://catexpert.blogspot.com/2010/03/financial-assistance-for-pet-owners.html [https://perma.cc/QQM7-3U5B] (accessed Sept. 1, 2018).

to an owner. An owner can attempt to negotiate a payment schedule with the veterinarian. In addition, the owner can attempt to use the courts by seeking an injunction to force the veterinarian to return the dog. Also, an owner can attempt to file a lawsuit seeking damages against the veterinarian for refusing to return the owner's dog, selling the dog to someone else, giving the dog to the local animal shelter, or destroying the dog. However, the viability and use of these remedies is significantly hampered by the current legal framework still predicated upon the base notion that dogs are classified as personal property and the veterinarian's ability to rely upon the legislative legitimacy providing for veterinary possessory liens.[95]

If an owner attempts to negotiate a payment schedule with a veterinarian, it would seem that the veterinarian has all the leverage. Why would a veterinarian agree to a payment plan if the veterinarian does not have to release the dog unless the owner can make full payment? The risk is that the owner will stop making payments once the dog is returned. On the other hand, does the veterinarian really want the responsibility of continuing to care for the dog, incurring more costs with little or no likelihood of recovering a balance owed if the dog is sold, given to a shelter, or euthanized? My sense is that one of the most important factors underlying whether such a negotiation will be successful is examining whether there is a prior relationship between the owner and veterinarian. Financially, it makes more sense to get partially paid than not to get paid at all.

An owner's reliance on the courts can be problematic. To be successful in getting a court to order the immediate return of the dog by way of injunction, the owner will have to convince the judge that there is a likelihood of succeeding on the merits of the case and that the harm to the owner and dog substantially outweighs any harm to the veterinarian.[96] In essence, the owner will have to convince the judge that the veterinarian is not entitled to rely on the veterinary lien statute. An owner's chances of success might improve if the veterinarian has not followed the notice requirements mandated by the statute.

As part of a lawsuit seeking an injunction requiring the return of the dog to its owner, the owner could attack the constitutionality of the veterinary lien law. The essence of such an argument would be that in today's society, the classification of dogs as merely personal property yet providing protection for dogs from being hurt or neglected by humans creates an inconsistency that no longer makes sense. Such an argument would assert that a state veterinary lien statute is arbitrary

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[95] *See, e.g.*, 3 PA. CONS. STAT. § 459-601(a) (stating "All dogs are hereby declared to be personal property . . ."); S. C. CODE ANN. § 40-69-285 (stating "[a] licensed veterinarian has a lien on each animal treated, boarded, or cared for while in the veterinarian's custody for payment of charges for treatment, board, or care of the animal").

[96] *See* Mark D. Bradshaw, *Injunctions – A Practical Guide to One of the Law's Most Powerful Tools*, STEVENS & LEE (Jan. 1, 2002), http://www.stevenslee.com/injunctions-a-practical-guide-to-one-of-the-laws-most-powerful-tools/ [https://perma.cc/R7RD-3X7M] (accessed Sept. 1, 2018).

and capricious and violates the substantive Due Process Clause of the 14th Amendment to the U.S. Constitution. Statutory veterinary liens can no longer be supported on any rational basis in order to protect veterinarians at the expense of their patients (the dogs they treat) and owners who cannot pay fees in full.

Similarly, a lawsuit seeking damages against the veterinarian encounters the same problem of contesting the legitimacy of a statutory veterinary lien. There are also two additional problems: timing and measure of damages. A lawsuit seeking damages is not going to get the dog returned to the owner in a timely manner.[97] And, courts have not developed a coherent theory concerning the value of a dog.[98] Courts have only recently begun to recognize the sentimental value of a dog to its owner.[99]

The most effective and efficient remedy available to an owner caught in this type of situation is the use of local media. This type of story has instant emotional and educational appeal. Most dog owners have no idea about the existence of veterinary lien laws. The idea that a veterinarian would refuse to return a dog to its owner unless full payment is made is likely to result in very bad press for the veterinarian. Newspapers and T.V. news stations love to investigate and inform their communities about this type of story. No veterinarian wants to be seen as "blackmailing" the dog's owner, even if the process is allowed under the lien statute. As veterinarians have encouraged our society to view dogs as members of families, the public would quickly equate this type of situation to a doctor who treats a child and refuses to return the child to the parents until the parents paid the bill in full.

VII. CONCLUSION

In our modern society, the science of veterinary medicine produces wonderful advances in diagnostic and treatment options. And, with these advancements the cost of veterinary care has substantially risen.[100] At the same time, the laws pertaining to dogs have recognized that in many ways dogs are not merely property.[101] They are living beings entitled to certain rights. And, based on pet industry studies,

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97 *See What to Expect – A Lawsuit Chronology*, FINDLAW, https://litigation.findlaw.com/filing-a-lawsuit/what-to-expect-a-lawsuit-chronology.html [https://perma.cc/4B9Y-BQDF] (accessed Sept. 1, 2018) (illustrating the general timing of a lawsuit which can take "as little as six months, to as long as years").

98 Mary Randolph, *When a Pet is Injured or Killed: Compensating the Owner*, NOLO, https://-www.nolo.com/legal-encyclopedia/free-books/dog-book/chapter9-6.html [https://perma.cc/5NH8-X83S] (accessed Sept. 1, 2018).

99 *Id.*

100 *See* Mary Brophy Marcus, *supra* note 72 (detailing how expensive the new advanced tech-nologies and specialized treatments can be for pet owners).

101 *See infra* section II (explaining that an owner of an automobile could deliberately strike his car with a sledgehammer, but animal cruelty laws would punish an owner who did the same to his dog).

most dog owners treat their dogs as members of their families.[102] As a result, families are willing to spend more money on their dogs to take advantage of new and often expensive treatment options. However, it is time for the AVMA to recognize these dynamic changes and advocate for the abolishment of antiquated lien laws. Dogs are clearly more than mere property and the AVMA's attempt to shove dogs back into a box that no longer fits should be abandoned. The justification of special treatment of veterinarians for collecting fees no longer works. Instead, rather than resisting change, the AVMA should be at the forefront of redefining the rights of dogs and their human companions in our current society.

From a consumer's perspective, veterinarians should be required to provide prior notice to each owner explaining the state's veterinary lien law and under what circumstances it can be used. Prior notice includes a conspicuous posting in the waiting rooms of a veterinary office. It should also include the veterinarian's position regarding the circumstances it can be used and information regarding the additional costs that may be added on to the bill such as boarding, care and feeding. In addition, veterinarians should be required to insert language into a proposed estimate, in bold print, explaining what may happen if the owner cannot pay the bill in full or the remaining balance if a partial payment was required before the veterinarian renders service. Based on my own anecdotal data, none of the dog owners I have spoken with regarding this topic had any prior knowledge about the existence of veterinary liens and the circumstances it can be used. These people were shocked to learn of their existence.[103]

In addition, state legislatures should be contacted to advocate for the abolishment of veterinary lien laws. To the extent that legislatures are not inclined to eliminate these liens, they should consider separating companion animals, like dogs, into a separate classification from livestock in recognition of the special position they hold in our modern society.

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[102] The Harris Poll, *More Than Ever, Pets are Members of the Family*, CISION: PR NEWSWIRE (July 16, 2015), https://www.prnewswire.com/news-releases/more-than-ever-pets-are-members-of-the-family-300114501.html [https://perma.cc/VE7J-QNWC] (accessed Sept. 1, 2018).

[103] The author has visited many dog friendly areas throughout the US with his three dogs and, upon questioning, not one person knew of the existence of veterinary lien laws.