



STATE BAR OF MICHIGAN

# Animal Law Section

Spring 2003



## Words from the Chair *Back to Basics and Beyond*

This is being written from sunny Northern California. I am interning at the Animal Legal Defense Fund, having returned to school at Wayne State in non-profit management. ALDF seemed the perfect fit for my interest in animal law and new career goals.

Last fall I thought about what I want to accomplish as Chair. The first step was a review of minutes from past meetings, questionnaires from years ago, and newsletters. I also studied the Section's bylaws, and they were such an invaluable guide that I will reprint a part of them:

Our purpose is "to promote the particular interests of lawyers practicing in the field of animal law, to plan and carry out programs, publications and activities of interest to lawyers practicing in the field of animal law and to coordinate programs for such lawyers with national and local bar associates."

Our six goals are to:

- ❖ Educate members of the State Bar and of the public about laws relating to the protection of animals and animal rights, including the development and modification of existing law.
- ❖ Promote legislation to advance animal protection and animal rights.
- ❖ Maintain and operate a referral service for and among attorneys practicing in the area of animal protection and animal rights.
- ❖ Promote animal protection and animal rights in Michigan through use of the legal system.
- ❖ Coordinate programs for lawyers practicing in the area of animal law with national and local bar associations.
- ❖ Cooperate and share information with other groups within the State Bar which have an interest in legal issues of interest to lawyers practicing in the area of animal law related topics.

The second step was to prioritize. The Section's goals are so broad, and there are so many worthy projects, that it is crucial to focus on a few activities, and do them well. We are,

after all, what is called in the nonprofit world an "all volunteer organization".

The Section Council decided on the following priorities at the December 2002 meeting:

- ❖ *Legislative Committee* more active in proposing, monitoring and commenting on legislation, both state and federal.
- ❖ *Prosecutors' Committee* formation.
- ❖ *Pro bono Program* development, using the existing State Bar framework; and continued development of referrals via the Section list-serve.
- ❖ *Seminars* on an annual basis.
- ❖ *Law Day Program*, directed toward young people.
- ❖ *Newsletter* publication on regular basis providing useful information for the practicing attorney.

We are working with a state representative to introduce legislation and for the first time have commented on a proposed federal regulation; the first meeting of the new prosecutors' committee will have taken place by the time you read this, in furtherance of the crucial goal of preventing animal cruelty; the State Bar pro bono committee has expressed interest in including animal cases, and wants our input in determining standards for assisting both low income individuals and certain non-profit animal organizations; the March seminar features outstanding nationally recognized speakers; a Law Day program to demonstrate the linkage between animal cruelty and violence to humans is being formulated; and you are reading what the editors worked hard to make a useful and informative publication.

Elsewhere in this Newsletter you will read more details of these activities. If any of these interest you, please consider getting involved.

The third step is, of course, to accomplish the goals and take on others. Animal issues are becoming increasingly topical and important in our society and as such, lawyers have a

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# STATE BAR OF MICHIGAN ANIMAL LAW SECTION

## OFFICERS

**BEATRICE M. FRIEDLANDER** CHAIRPERSON

6861 BUNKER HILL LANE  
CANTON, MI 48187-3033

**M. JEAN LIGON** CHAIRPERSON-ELECT

822 E GRAND RIVER AVE # 3  
BRIGHTON, MI 48116-1802

**SUZANNE CULLITON STEPHAN** SECRETARY

2752 HOLYOKE LANE  
ANN ARBOR, MI 48103-2203

**DONALD GARLIT** TREASURER

6861 BUNKER HILL LN  
CANTON, MI 48187-3033

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The Animal Law Section of the  
State Bar of Michigan

# Animal Law in Michigan Symposium

Friday, March 14, 2003

1:00 pm - 5:00 pm

## Agenda

- I. 1:00 - 1:10 p.m. Welcome**  
co-chairs Wanda Nash and Suzanne Stephan
- II. 1:15 - 3:30 p.m. Parallel Sessions**  
Signs and escorts will lead you to your choice:
  - A. CRUELTY: FIXING THE LINK BETWEEN ANIMALS AND CHILDREN -- *Dr. Mary Lou Randour, Doris Day Animal Foundation*
  - B. ANIMAL CONCERNS ARE LEGAL ISSUES -- *Dr. Peggy Larson, DVM, MS, JD*
- III. 3:45 - 4:30 p.m. Plenary Session**  
A NEW TORT FOR ANIMALS  
*Professor David Favre, MSU/DCL*  
*Executive Officer, Animal Legal and Historical Center*
- IV. 4:30 - 5:00 p.m. Reception**

### Please Note:

You will find various materials for your future use in research, in networking with speakers and colleagues alike, and in current literature on the many facets of animals' legal circumstances placed for easy access on the display tables.

# March 14 2003 Symposium

## Animal Law in Michigan

*The second annual Animal Law Symposium will begin at 1:00 pm Friday, March 14, 2003 in the Law Building at MSU/Detroit College of Law. Speakers this year include a lawyer-vet, a psychologist, and the executive director of the Animal Legal and Historical Center at MSU/DCL.*

**DR. MARY LOU RANDOUR**, Director of Education for the Doris Day Animal Foundation, is a psychologist, and a practicing clinician for seventeen years, who received post-graduate training at the Cambridge Hospital at Harvard Medical School and the Washington Psychoanalytic Institute. She presents seminars and workshops nationally on the topic of animal abuse and human violence for audiences which include police departments, domestic violence councils, educators, child service workers, attorneys, judges, animal control officers, and counselors. Dr. Randour also lobbies at the state and federal levels for legislation and administrative policies that would extend protection to animals, e.g., enacting felony provisions in state animal cruelty statutes and adding a category for animal cruelty in the collection of state and federal crime statistics.

Dr. Randour has conducted training workshops for mental health professionals on the assessment and treatment of juvenile and adult animal abusers. She is the first author of "AniCare Child: An Assessment and Treatment Approach for Childhood Animal Abuse" and co-author of "The AniCare Model of Treatment for Animal Abuse". Dr. Randour also is author of three books, the latest titled *Animal Grace: Entering a Spiritual Relationship with Our Fellow Creatures*.

**DR. PEGGY LARSON** is a veterinarian, a lawyer, and has a Masters in Science degree. She is the founder of the National Spay and Neuter Coalition, whose goal is to stop pet overpopulation through sterilization, and consists of 350 veterinary and shelter members. The Coalition provides training and internships for spay/neuter veterinarians, and is the clearinghouse of spay/neuter information. She and her husband are partners in the local (Williston VT) spay/neuter clinic

Dr. Larson has served as consultant to *Hard Copy* for their two-part series on rodeo animal abuse; with *Inside Edition* on the horse urine farms story, with the BBC on their documentary on inhumane treatment of rodeo animals, with a French TV station (ARTE) on their rodeo documentary. She writes policy for various organizations, and provided expert testimony on rodeo to the Animal Welfare Committee of the AVMA.

She has also been employed by the USDA as Veterinary Medical Officer on issues of federal livestock disease control programs, a TB outbreak in Vermont and avian influenza out-

break in Pennsylvania, and on animal welfare inspections. She was Vermont State Veterinarian and Chief of Livestock and Meat Inspection in 1984 and as such, overhauled and updated meat and poultry inspection programs and re-wrote Vermont's inspection regulations.

Dr. Larson was raised on a mixed grain and cattle facility in the Midwest; rode bareback bucking horses in rodeo and participated in other rodeo-related activities, was a large-animal vet for 8 years, had a small-animal practice in California from 1967-68, had a general vet practice in North Dakota from 1968-78 before her 1979-85 term with the USDA. She has an extensive history of research concerning animals and has published and presented on many aspects of animal health, and has spoken at many seminars and conferences on the issues of pet overpopulation and rodeo throughout the United States. She was an Associate professor at Vermont Technical College in 1990/91 as Director of the Veterinary Technology Program.

Besides all the past and present veterinary practice, Dr. Larson also clerked with the Franklin County State's Attorney's Office in Vermont following her graduation from Vermont Law School in 1988 and also served as legal intern to the Consumer Assistance Program, Office of the Vermont Attorney General in 1987.

**PROFESSOR DAVID FAVRE** is a Professor of Law at Detroit College of Law at MSU, and has recently established the Animal Legal and Historical Center based at DCL/MSU. He is a prolific author of books on state animal law, national wildlife law, and the international treaty protection for endangered species. His most recent book *Animal Law and Dog Behavior*, was published in 1999. He has taught a course on wildlife law for more than fifteen years. He has been an active member of the Board of the Animal Legal Defense Fund since its creation over twenty years ago. Dr. Favre has read and accumulated literally hundreds of animal court opinions and has a manuscript of a book on the federal Animal Welfare Act available for web publication.

Professor Favre spoke on the topic "Equitable Self-ownership for Animals" at the first Symposium (2002) and will conduct the plenary session at this year's Symposium. His remarks will be based on his presentation to Harvard University School of Law, and is entitled "A New Tort for Animals."

# Animal Law Section of State Bar of Michigan

## Treasurer's Report for 2002 Fiscal Year (FY) ended September 30, 2002

The purpose of this report is to assure the members that the Animal Law Section is very viable with a healthy financial status and your section dues are being spent responsibly.

Therefore, I would like to provide you with a brief summary of the following:

- ❖ Section's dues and expenses for the 2002 FY.
- ❖ Section's overall financial condition at the end of 2002 FY.
- ❖ Some basic Section summary financial information about our status as of January 31, 2003.

### Dues and expenses were as follows:

- ❖ Dues were \$3,910 for the fiscal year representing about 150 members and affiliate members.
- ❖ Net expenses of about \$1,935 were in three general categories:
  1. Seminar net expenses totaled about \$1,170 (comprised of total expense of \$2,405 partially offset by seminar revenue of \$1,235). Our main seminar expenses were mailings and advertisements. We plan a more focused advertising campaign this year. Our section members paid a lower rate for the seminar. We were not trying to "make money" with the seminar as we consider it an essential section function related to education.
  2. The single issue of the newsletter with all printing and mailing cost \$480. We plan two issues of the newsletter this year.

3. We had other expenses of \$285 which were primarily related to various mailings and notifications especially for the Annual Meeting.

Our overall financial condition at the end of 2002 FY was sound with a Section balance of \$8,255.

Our Section balance at the end of January, 2003 is \$11,655 reflecting dues receipts in October and November and minor expenses to date for the fiscal year.

I have reviewed all expenses and consider them to be reasonable and appropriate and have paid special attention to relating expenses to Section actions. The entire Council is very concerned that any costs incurred be reasonable and appropriate and will continue to act accordingly.

Finally, I want to mention the Annual Section Council Retreat held in May. This is an opportunity for the Council members to have a regular meeting as well as to discuss future direction and plans for the section. It is usually held over a weekend – last year it was in Nunica at the home of one of the Council members. I want to assure you that no section funds are spent for the retreat and all related expenses are paid by the Council members themselves.

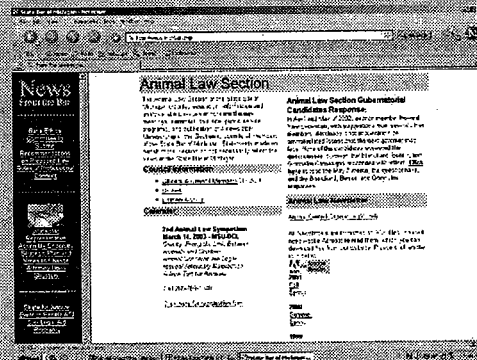
If you have any questions, please write me at [donaIdgarlit@yahoo.com](mailto:donaIdgarlit@yahoo.com).

Respectfully submitted,

Donald Garlit

February 24, 2003

Check out our website at  
[www.michbar.org/sections/animal](http://www.michbar.org/sections/animal)



# Drawing the Line by Dr. Steven M. Wise

Reviewed by Deborah Ness

We often find ourselves asking the question, "If humans are entitled to fundamental rights, then why are animals not entitled to similar basic fundamental rights?"

Professor Wise's book, *Drawing the Line*, is about the question on where to "draw the line" in deciding which non-human animals deserve basic liberty, equality and dignity rights. Among many of Professor Wise's beliefs regarding animal rights, is that a "being" which possesses "practical autonomy" should be given liberty and equality rights. And, some beings that do not possess practical autonomy should, at the very least, be given dignity rights. He defines practical autonomy as that which a being has if: 1) he/she can desire, 2) he/she can intentionally try to fulfill the desire and 3) he/she possesses a sense of self sufficiency to allow him/her to understand that it is he/she who wants something and it is he/she who is trying to get it. Dr. Wise devised a category system to be utilized to determine whether practical autonomy exists in his son, eight non-human beings and a honeybee.

The system is comprised of four categories of autonomy values, which are:

**Category 1-** Non-human animals who clearly possess sufficient autonomy for basic liberty rights. An autonomy value of .90 is the cut-off for basic legal rights using a narrow reading of the precautionary principle. The precautionary principle dictates how scientists are to respond when there is some evidence of autonomy, but not absolute proof.

**Category 2-** Non-human animals who, according to increasing evidence, possess sufficient autonomy for basic liberty rights. An autonomy value of .70 is the cut-off for the basic liberty rights using a moderate reading of the precautionary principle.

**Category 3-** Non-human animals about whom we do not know enough to reasonably determine whether they possess sufficient autonomy for basic liberty rights. This category probably includes most species.

**Category 4-** Non-human animals who, according to increasing evidence, lack sufficient autonomy for basic liberty rights.

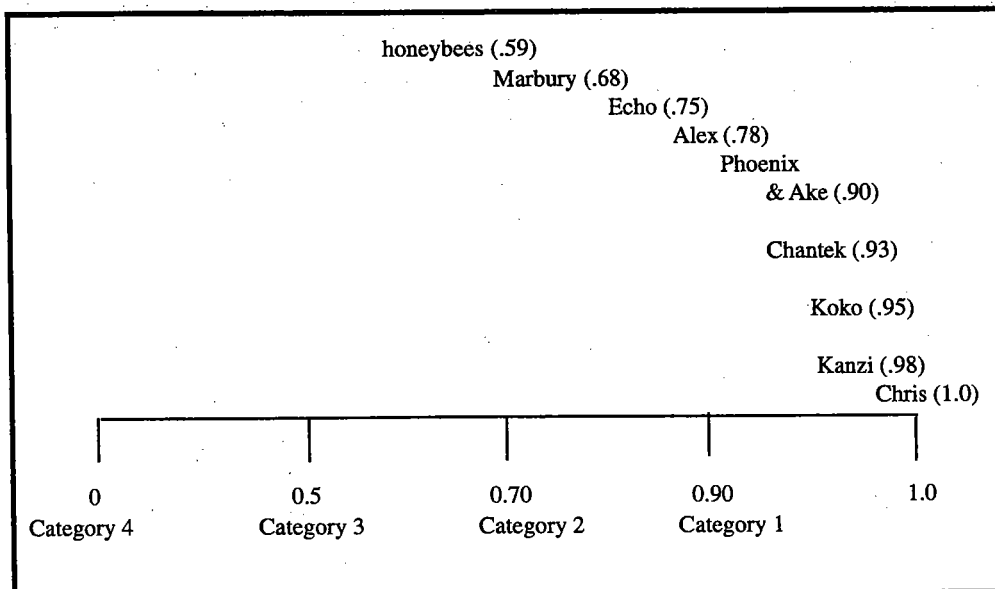
Dr. Wise applied the categories, in assessing the cognitive abilities, and evidence of practical autonomy to his four year old son (Christopher), his dog (Marbury), a bonobo (Kanzi), an African Grey parrot (Alex), 2 Atlantic Bottle-Nosed dolphins (Phoenix and Ake), an African elephant (Echo), an orangutan (Chantek), and a gorilla (Koko). He assigned autonomy values based on his judgment of evidence of practical autonomy in the above mentioned non humans and his son. Professor Wise's evidence was obtained from his own observations and from information and data received from renowned scientists in the field of animal study. The results of Dr. Wise's assessment can be viewed in the chart below.

Professor Wise concluded that Category 1 animals (dolphins, orangutan, gorilla, bonobo), and some in Category 2 animals (parrot, elephant and dog), measure well in human standard tests (for example, IQ scores, mirror self-recognition-MSR- tests and social relationship tests) and possess degrees of practical autonomy. Chimpanzees and bonobos, who are closely related genetically to humans, easily fit within Category 1 and are entitled to basic liberty, equality and dignity rights. Wise argues, too, that animals who fall into Categories three and four, and some in Category two, may not be entitled to basic liberty rights only because we humans do not value their kind of intelligence, learning style and sense of self.

In summation, Wise states that basic liberty rights should

be given in proportion to the degree of the animal's ownership of practical autonomy. If an animal has practical autonomy, then it deserves full liberty rights. If an animal does not possess it, then the degree to which an animal approaches autonomy might make one eligible to receive some proportion of liberty rights, such as dignity rights.

In closing, it must be stated that it is difficult to adequately review such an information intense book in only a few pages, therefore, reading this important book is highly recommended.



# Animal Legal and Historical Center

## February 2003

*Professor David Favre*  
*Michigan State University - DCL College of Law*

Beginning in March of 2002, Professor Favre, along with a staff of two part-time employees and about one dozen students, have both created the initial structure of the Animal Legal Center website and posted into this structure the first wave of content. Everyone can now visit the website at [www.animallaw.info](http://www.animallaw.info) and take a personal tour of what is available and what is contemplated. An electronic bookstore has been constructed, with animal posters and a few books being offered for sale. Because of a recent controversy with the Sportsman Alliance, which sought to shut down the site, visits to the site have increased to over 400 visits per day.

### Student Involvement

Most of the law students performed admirably in their research and editing for the site, and their efforts now populate the ANIMAL LEGAL CENTER website.

Some of the topics tackled by students include:

- ❖ Creation of a reference set of pleading and briefs from animal cases.
- ❖ Creation of a 50 state table summarizing laws created by referendum or initiative.
- ❖ An explanation of the Texas cruelty laws.
- ❖ A discussion about the legal issues surrounding dolphins.
- ❖ An overview of the United Kingdom laws dealing with Pet Sales and Anti-cruelty.
- ❖ An explanation of the topic *Animal Rights*.
- ❖ A comparative chart for the 50 states about their Endangered Species Acts.

What is our vision for the site over the next year?

1. To build upon the public library function by adding both primary legal materials and related articles.
2. To develop an educational program, both for those within the legal profession and for the general public. The courses and materials within this program will be for general non-credit education, for certificate programs, and for college and law school credit.
3. To provide for comparative analysis of national, local, and international law as relevant.
4. To publish original materials evaluating existing laws, cases, and regulations concerning animals; to re-publish relevant articles from around the world; to provide a space for original short opinion pieces that will deal with policy questions from multiple perspectives.
5. To enhance the content of the bookstore to the point where the cash flow from sales becomes a substantial portion of the funds needed to support the Web Center.

We seek support from all interested individuals. Support can be in the form of financial support, the providing of materials, or by becoming an editor to write about a topic that will appear on the Animal Legal & Historical Web Center. Please help provide the world with an efficient and much needed legal-based educational center for animal issues

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### Words from the Chair

*Continued from page 1*

crucial role to play in both the dialogue and the solution. Few would argue the abiding bond that exists between many humans and their companion animals. Cruelty to animals is outlawed in all 50 states and the District of Columbia, and the linkage between these acts and violence toward humans is now widely accepted and is used, for example, by the F.B.I. in its profiling. Environmental and human health issues have led to an increased focus on factory farming. Wildlife habitats are being engulfed by human developments.

In my estimation, the third step can be accomplished by cooperation and coordination with other bar associations and sections, both in this state and throughout the country. Why reinvent the wheel when we can work collaboratively?

So our work, both now and "beyond" is to better serve our members and other attorneys; the public; and, of course, the animals whose lives we seek to improve by our efforts on their behalf within the legal system.

*Bee Friedlander, Chair*



# Legislative Committee Update

## State Legislation

State Representative John Stewart (R., 20<sup>th</sup> District) met with Committee Members Thomas Boven and Barbara Goldman, Section Chair Bee Friedlander and Eileen Liska, Michigan Humane Society lobbyist, in November 2002, to discuss the upcoming legislative session. Possible legislation included amendments to the cruelty statute; cross-reporting of animal cruelty and child abuse; and non-economic damages for injury or death to a companion animal. After an earlier meeting with Rep. Stewart, he introduced H.B. 5580, for a special license plate with proceeds to benefit spay/neuter programs. It did not pass, but plans are to re-introduce in the current legislative session.

In December 2002, the Section Council took positions regarding two bills, neither of which passed: in support of the Pet Shop Bill, H.B. 6289, which would have given the Agriculture Department increased authority to regulate animal control and animal protection shelters as well as pet shops; and in opposition to H.B. 5478, which would have given the Natural Resources Commission authority to designate those species which are considered "game" and thus eligible to be hunted, an authority currently resting with the legislature.

Also in the last session, S. 1379 was introduced. It would have amended the Revised Judicature Act, MCL 600.101 et seq., to allow an owner to sue for non-economic damages of up to \$250,000 for loss of a companion animal due to another's gross negligence or willful and wanton misconduct. The Section Council did not take a position on this bill. It did not pass. Currently the Legislative Committee is monitoring the progress of license plate legislation, which has a working title of "PAW" (Promote Animal Welfare), to devise a mechanism by which money from the sale of these special plates can be most effectively distributed to public and private animal welfare organizations for use in programs to promote spay/neuter and to enforce anti-cruelty laws. It has not yet been re-introduced. Economic conditions in Michigan and the deficit may affect the ability to get animal-friendly legislation introduced, brought to a hearing and ultimately passed.

## Federal Legislation

In January 2003, the Section Council submitted a comment, drafted by Deb Niehuus, on the amendment to 14 CFR part 119, regulating the transportation of animals by the airlines. Specifically, the Comment addressed the proposed FAA Rule, Docket #: FAA-2002-13378, "Reports by Carriers on Incidents Involving Animals During Air Transport." In its comment, the Section Council noted the importance of safe conditions during transport for all animals, not just "domestic pets", suggesting that the regulation apply to all vertebrates. The Section Council further urged the FAA to make the incident reports available as soon as possible, and in a format that

would readily and easily allow the traveling public to compare the safety records of various airlines before deciding which one, if any, to entrust with the safety of their companion animals.

In February 2003, the Section Council wrote U.S. Senator Carl Levin thanking him for co-sponsoring S 269, the Captive Wildlife Safety Act, which would prohibit foreign and interstate commerce of certain exotic animals to prevent them from becoming "pets", although it would not ban all private ownership of these animals.

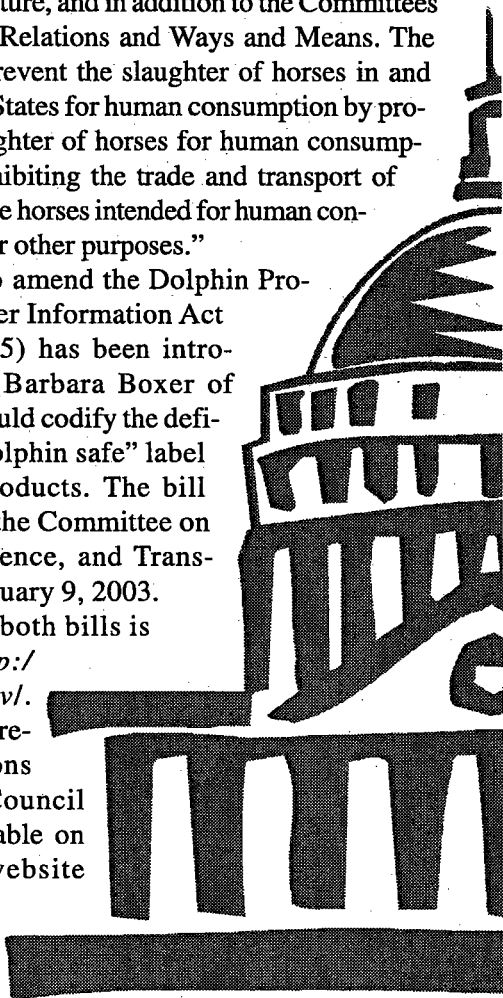
Other issues of potential interest to the Section are a proposal, not yet introduced, to ban bear baiting on federal lands in states that allow bear hunting. Michigan is one of 27 states allowing bear hunting, and one of 9 of those states that allow baiting, according to the Humane Society of the United States. These statistics are available at that organization's website, [www.hsus.org](http://www.hsus.org).

Other recent proposed legislation includes HR 857, "The American Horse Slaughter Prevention Act," which was introduced on February 13, 2003, sponsored by U.S. Reps. John Sweeney (R-NY) and John Spratt, Jr. (D-SC). There were no Michigan co-sponsors. It was referred to the Committee on Agriculture, and in addition to the Committees on International Relations and Ways and Means. The purpose is "to prevent the slaughter of horses in and from the United States for human consumption by prohibiting the slaughter of horses for human consumption and by prohibiting the trade and transport of horseflesh and live horses intended for human consumption, and for other purposes."

A bill, S 130, to amend the Dolphin Protection Consumer Information Act (16 U.S.C. 1385) has been introduced by Sen. Barbara Boxer of California. It would codify the definition of the "dolphin safe" label on tuna fish products. The bill was referred to the Committee on Commerce, Science, and Transportation on January 9, 2003.

The text of both bills is available at <http://thomas.loc.gov/>.

All documents reflecting positions taken by the Council should be available on the Section website within a month.



## Grant Money Available

Attorneys for Animals (Afa), a 501(c)(3) organization, has grants available of up to \$1,000 to any attorney pursuing an animal-protection case in Michigan. The grant may not be used for attorney fees, but may be used to defray costs such as filing fees, depositions, transcripts, records-requests, motion fees, etc. Interested attorneys should contact Beatrice Friedlander at (734) 483-4612.

## Letters, Articles, Etc. for Future Newsletters are Welcome

Please make submissions to the editor in (PC) MSWord or (PC) WordPerfect,  
ASCII Text format—kindly include hardcopy printout.

### Contact the Editor for Deadline Dates

ATTN: Sharon Noll Smith, Esq., Co-Editor, Animal Law Section Newsletter  
50700 Telegraph Road, Suite 4646  
Bingham Farms, MI 48025  
Telephone: (248) 594-6686  
or Deborah Ness at [dness7@aol.com](mailto:dness7@aol.com)



**Animal Law Section**  
State Bar of Michigan  
Michael Franck Building  
306 Townsend Street  
Lansing, MI 48933-2083

First-Class Mail  
U.S. Postage Paid  
Lansing, MI 48933  
Permit No. 191