

# THE ANIMAL COUNCIL

**P.O. Box 168, Millbrae CA 94030**

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June 20, 2016

mailto:SCOPS@sen.ca.gov

Senator Loni Hancock, Chair  
Senator Joel Anderson, Vice Chair  
State Capitol, Room 2031  
Sacramento, CA 95814  
Phone: (916) 651-4118

Attention: Jessica Devencenzi, Counsel

Re: AB 797, Motor vehicles: rescue of animal, as amended June 6, 2016, OPPOSE AS WRITTEN

Dear Senators, Hancock, Anderson and Members:

Please register our opposition to the above-captioned bill and include our organization on your Committee's Bill Analysis opposition list.

This bill creates a personal right for individuals to break into vehicles and remove animals that appear to be in danger. We appreciate drafters' efforts to require a reasonable belief that immediate action is needed before arrival of an official responder and compliance with six specified requirements, while we have both general and specific concerns, we want to address misleading information that arose at the June 14 hearing in Senate Judiciary. Senator Monning posed a question as to whether a "rescuer" who was bitten by a dog he released from a vehicle could sue the dog's owners for damages. To the question, both Assembly Member Steinorth and the Deputy District Attorney from Los Angeles answered no. The Deputy answered in detail that the claim would be barred by the doctrine of assumption of risk. This is incorrect, and there is a California case that allowed a similar claim of a person who voluntarily tried to handle a dog that had been hit by a car. The case is *Davis v. Gaschler*, 11 Cal. App. 4th 1393. California Civil Code Section 3342 provides strict liability for dog bites, so that assumption of risk by those other than affirmatively assuming occupational risk, such as a veterinarian or groomer being informed or observing dangerous behavior assumes the risk of being bitten. Ironically, we learned about Plaintiff Davis's bite shortly after the incident back in 1988 and knew her to be a knowledgeable dog handler, yet the court did not apply the assumption of risk doctrine. We do not believe that individuals who would attempt to rescue confined dogs would be barred from suing for or recovering damages for dog bites. Indeed, we believe that owners of dogs released under AB 797's provisions would be subject to the statutory strict liability for bites as they would to any civilian volunteers such as Ms. Davis.

Also, in the Davis case the dog had not been currently rabies vaccinated, and Ms. Davis had to undergo post-exposure treatment. Although California dog owners do a good job of rabies vaccination, there are dogs with lapsed vaccinations that pose public health risks in the event of exposures. The immunity granted by AB 797 would appear to preclude any liability for the rescuer even in the case of actual negligence that would cause losses to bystanders or other third parties, such as dog bites to humans or other animals or vehicle accidents.

We believe that the long established law of strict liability for dog bites cannot be defeated by this bill's provisions nor can individuals be expected to assume the risk under these kinds of circumstances. Member should carefully consider the increased risks to public safety and liabilities for dog owners by this kind of well-intended but very dangerous intervention by citizens unprepared to deal with the consequences. They were given incorrect information about the legal consequences of this type of intervention. An injured person does not just walk away when faced with medical bills, loss of income, pain, suffering and sometimes permanent disability or disfigurement.

Our concern is that extending this independent right, such as would be created in new Civil Code Section 41.100, to a person entails risks of losses to another person and the public far outweighs the benefit and expectation that a person, in an emotionally charged situation, will know and comply with six legal requirements for exercising the right. If he fails to comply, he has been misled and everyone unnecessarily endangered.

Accordingly, we must oppose this bill and respectfully ask that you not support it without further restriction on its use.

THE ANIMAL COUNCIL (TAC) is a California nonprofit, public benefit corporation founded in 1991 to seek positive, humane solutions to the challenges of detrimental animal public policies, legislation and regulation through study, analysis and application of animal husbandry, statistics and law, and at the same time preserve human benefit from all species, breeds and registries.

Very truly yours,



SHARON A. COLEMAN  
President, The Animal Council

Cc: Authors  
Committee Members